

STATE OF VERMONT
PUBLIC SERVICE BOARD

Dig Safe Notice No. 585

In Re: Gurney Brothers Construction, Alleged Violation)
of August 15, 2008, as reported by Vermont Telephone)
Company, Inc.)

Order entered: 10/14/2009

ORDER RE: NOTICE OF PROBABLE VIOLATION

Background

1. Pursuant to 30 V.S.A. § 7001 et. seq., and Vermont Public Service Board Rule 3.800, the Vermont Department of Public Service ("Department") issued a Notice of Probable Violation of Underground Utility Damage Prevention System ("NOPV") to Gurney Brothers Construction ("Respondent").
2. Incident Date: August 15, 2008
3. Incident Location: 903 French Meadow Road, North Springfield, VT
4. Name and Address of Company that Reported the Incident to the Department: Vermont Telephone Company, Inc., 354 River Street, Springfield, VT 05156-2005
5. Date Incident Reported to Effected Utility: August 20, 2008
6. Date NOPV issued by Department: July 31, 2009 (#1589)
7. Department's Statement of Evidence Supporting the Alleged Violation: "The Department of Public Service investigated this incident and determined the following details. On 8/15/08, Gurney Brothers Construction was excavating to make repairs to a septic system at this site. Gurney Brothers Construction did not notify the one call center prior to excavating. During the course of the excavation, an unmarked Vermont Telephone Company service wire was damaged, causing a loss of service to the property owner for 2 hours. The site was not marked out because no notification was made to the one call system prior to excavating. Gurney Brothers Construction notified VTEL of the damaged facility. The Department of Public Service issued 0 Notices of Probable Violation (NOPVs) to Gurney Brothers Construction during the 12 months preceding this incident."
8. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7004

9. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Five Hundred Dollars (\$500.00), and attendance at a Department-approved underground damage prevention seminar.
10. The Respondent has agreed to take the remedial action(s) recommended by the Department.¹

Conclusion and Order

Because the Respondent has not contested the NOPV, or the allegations therein, we conclude that the remedial action proposed in the NOPV is appropriate, and should be imposed.²

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

(1) Within thirty days of the date of this Order, Gurney Brothers Construction shall pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont, and sent to the Public Service Board at 112 State Street, Montpelier, VT 05620-2701; and

(2) Gurney Brothers Construction shall attend an Underground Damage Prevention Seminar at such time and place as determined by the Vermont Department of Public Service.

1. *See*, Respondent's filing of 8/11/09.

2. *See*, Public Service Board Rule 3.807(G).

Dated at Montpelier, Vermont, this 14th day of October, 2009.

s/James Volz)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: October 14, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.