

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7122

Petitions to impose penalties upon Chagnon NL, Inc. re:)
probable Dig Safe violations involving (1) a)
Waitsfield-Fayston Telephone Company, Inc., d/b/a)
Waitsfield Telecom & d/b/a Champlain Valley Telecom,)
utility line located in Warren, Vermont, on 7/27/04 &)
8/2/04; and (2) a Verizon New England Inc., d/b/a)
Verizon Vermont, utility line located in St. Johnsbury,)
Vermont, on 5/24/05)

Order entered: 1/12/2006

I. INTRODUCTION

This docket concerns alleged violations of Vermont's Underground Utility Damage Prevention System statute, 30 V.S.A. §§ 7001-7008 ("Dig Safe Statute"), as set forth in three Notices of Probable Violation ("NOPV") brought by the Vermont Department of Public Service ("Department") against Chagnon NL, Inc. ("Chagnon"), pursuant to Public Service Board Rule 3.800. First, on October 28, 2004, the Department filed an NOPV alleging that, on July 27, 2004, Chagnon violated the provisions of 30 V.S.A. § 7006a, with regard to certain underground facilities of Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Telecom & d/b/a Champlain Valley Telecom ("Waitsfield") located in Warren, Vermont (Dig Safe Notice ("DSN") #141). Second, on November 23, 2004, the Department filed an NOPV alleging that, on August 2, 2004, Chagnon violated the provisions of 30 V. S. A. §§ 7006a and 7007, with regard to certain underground facilities of Waitsfield located in Warren, Vermont (DSN #142). Third, on October 10, 2005, the Department filed an NOPV alleging that on May 24, 2005, Chagnon violated the provisions of 30 V.S.A. § 7004, with regard to certain underground facilities of Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), located in St. Johnsbury, Vermont (DSN #225).

Each NOPV sought Board imposition of specific penalties, and in each case, Chagnon objected. However, on December 2, 2005, the parties filed a stipulation in full settlement of this docket, for which Public Service Board ("Board") approval now is sought.

For the reasons set forth below, I recommend that the Board approve the settlement stipulation filed by the parties.

II. FINDINGS

Pursuant to the provisions of 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings to the Board.

1. DSN #141 alleged that Chagnon failed "to maintain the utility/company [Waitsfield] markings designating the location of underground facilities and/or failed to properly notify Dig Safe Systems and request a remark after the markings were obliterated, worn away or removed." DSN #141 NOPV at 2.

2. DSN #142 alleged that Chagnon failed "to maintain the utility/company [Waitsfield] markings designating the location of underground facilities and/or failed to properly notify Dig Safe Systems and request a remark after the markings were obliterated, worn away or removed." DSN #142 also alleged that Chagnon "failed to immediately notify the affected utility/company [Waitsfield] after facilities were damaged during excavation activities." DSN #142 NOPV at 2.

3. DSN #255 alleged that Chagnon failed "to properly notify Dig Safe Systems of their proposed excavation activities." DSN #255 NOPV at 2.

4. With regard to each NOPV, the Department requested that the Board impose a monetary penalty and require Chagnon to attend an underground damage prevention seminar approved by the Department. DSN #141 NOPV at 3; DSN #142 NOPV at 3; DSN #255 NOPV at 3.

5. On December 2, 2005, the parties filed a Stipulation and Agreement ("Stipulation") that resolves all three NOPVs that are the subject of this docket. Stipulation at 1-2.

6. The Stipulation provides that Chagnon will pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00). Stipulation at 2.

7. The Stipulation further provides that "an officer, director or employee of Chagnon that is actively involved in excavation activities shall attend a Department-approved Underground

Damage Prevention Seminar" and that the Department will notify Chagnon of the date(s), time(s) and location(s) of such. Stipulation at 2.

III. DISCUSSION AND RECOMMENDATION

The allegations made in this docket indicate that on three separate occasions Chagnon violated Vermont's Dig Safe statute by failing to maintain necessary markings, failing to immediately notify a utility company of damage incurred during excavation activities, and/or failing to notify the Dig Safe System about proposed excavation activities.

Although Chagnon objected to the remedies sought by the Department in each of the NOPVs, Chagnon did not specifically deny any of the NOPVs' allegations. Furthermore, 30 V.S.A. §§ 7001-7008 and Public Service Board Rule 3.800 provide for imposition of penalties for per se violations of the Dig Safe statute.

The Stipulation filed by the parties imposes a financial penalty upon Chagnon for its failure to comply with the requirements of Vermont's Dig Safe statute, and this penalty falls within the parameters set by 30 V.S.A. § 7008.¹ The Stipulation also imposes an educational requirement upon Chagnon that is designed to help Chagnon understand the Dig Safe system as well as the importance of compliance with Dig Safe standards, and thereby enhance prevention of future underground utility facility mishaps. Therefore, I recommend that the Board approve the Stipulation.

This Proposal for Decision has not been circulated to the parties because they have waived their rights under 3 V.S.A. § 811 to file written comments or present oral argument thereon.²

Dated at Montpelier, Vermont, this 12th day of January, 2006.

s/Judith M. Kasper

Judith M. Kasper
Hearing Officer

1. Stipulation at 2; 30 V.S.A. § 7008.

2. Stipulation at 3.

IV. ORDER

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

1. The findings and recommendation of the Hearing Officer are hereby adopted.
2. Within seven (7) days of the date of this Order, Chagnon NL, Inc. ("Chagnon") shall pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont.
3. An officer, director or employee of Chagnon that is actively involved in excavation activities shall attend an Underground Damage Prevention Seminar at such time and place as designated by the Vermont Department of Public Service.

Dated at Montpelier, Vermont, this 12th day of January, 2006.

s/James Volz)	PUBLIC SERVICE BOARD OF VERMONT
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)	
s/David C. Coen)	
)	
s/John D. Burke)	

OFFICE OF THE CLERK

FILED: January 12, 2006

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: Clerk@psb.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.