

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7136

Petition to impose penalties upon B & R)
Electric Inc. re: probable Dig Safe violation)
involving a Verizon New England Inc., d/b/a)
Verizon Vermont, utility line located in)
Burlington, Vermont, on 6/11/04)

Order entered: 1/26/2006

I. INTRODUCTION

This docket concerns an alleged violation of Vermont's Underground Utility Damage Prevention System statute, 30 V.S.A. §§ 7001-7008 ("Dig Safe Statute"), as set forth in a Notice of Probable Violation ("NOPV") brought by the Vermont Department of Public Service ("Department") against B & R Electric Inc. ("B&R") pursuant to Public Service Board Rule 3.800. Specifically, on November 3, 2004, the Department filed an NOPV alleging that on June 11, 2004, B&R 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").¹ The NOPV sought Public Service Board ("Board") imposition of specific penalties to which B&R objected. However, on January 10, 2006, the parties filed a Stipulation and Agreement ("Stipulation") in full settlement of this docket, for which 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. Dig Safe Notice ("DSN") #145.

1. The NOPV alleged that B&R violated the provisions of 30 V.S.A. § 7004 because it failed "to properly notify Dig Safe Systems of their proposed excavation activities." NOPV at 2.

2. The NOPV sought the following remedial action: imposition of a fine in the amount of Two Hundred Dollars (\$200.00) and B&R's attendance at a Department-approved underground damage prevention seminar. NOPV at 3.

3. The Stipulation clarifies that B&R did provide proper notification of proposed excavation activities as required by 30 V.S.A. § 7004(a), but did commence excavation activities prior to the passing of 48 hours from the time of such notification, contrary to 30 V.S.A. § 7004(b). Stipulation at 2.

4. On February 11, 2005, Mr. Mike Precourt, an employee of B&R attended a Department-approved underground damage prevention seminar. Letter of Jim Porter dated January 23, 2006.

5. On January 12, 2006, the Board received a check from B&R in the amount of Two Hundred Dollars (\$200.00) in payment of the proposed fine.

III. DISCUSSION AND RECOMMENDATION

B&R's response to the NOPV stated that B&R did notify Dig Safe in advance of commencing excavation activities, and that it started excavating three hours earlier than the "safe time to start."² B&R further stated that it has "been in business over 30 years with no other incident like this."³ The Department did not dispute this assertion.

B&R has attended a Department-approved underground damage prevention seminar and has submitted to the Board payment of the fine recommended by the Department. I recommend that the Board impose a civil penalty in the amount of Two Hundred Dollars (\$200.00), and accept B&R's check in that amount as payment of that penalty. I further recommend that the Board require B&R to attend a Department-approved underground damage prevention seminar, and accept as compliance with that requirement Mr. Mike Precourt's prior attendance at such a seminar.

2. Statement of Issues, Defenses and Mitigating Factors.

3. *Id.*

This Proposal for Decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it does not adversely affect any party.

Dated at Montpelier, Vermont, this 26th day of January, 2006.

s/Judith M. Kasper
Judith M. Kasper, Esq.
Hearing Officer

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 adopted.
- 2. B & R Electric Inc. ("B&R") is liable for a civil penalty in the amount of Two Hundred Dollars (\$200.00). A check in that amount already has been received by the Public Service Board, and hereby is accepted as payment in full of this civil penalty.
- 2. B&R is required to attend a Department-approved underground damage prevention seminar. Mr. Mike Precourt's attendance at such a seminar on February 11, 2005, has fulfilled this requirement.

Dated at Montpelier, Vermont, this 26th day of January, 2006.

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

OFFICE OF THE CLERK

FILED: January 26, 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.