

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 13, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 16-G-0221 - In the Matter of an Enforcement Proceeding
Against Winter Brothers, Inc. for Alleged
Violations of 16 NYCRR Part 753 - Protection
of Underground Facilities, in the Service
Territory of Orange and Rockland Utilities,
Inc.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective October 21, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Winter Brothers, Inc.
Address: 28 Clausland Mountain Road
Blauvelt, NY 10913

Alleged Violation Specifics

Date of Violation: March 11, 2016
Location: 15 Staff Sgt. Parker Drive
Blauvelt, NY
Description of
Excavation Work: Swimming pool
Damaged Facility: None
Affected Facility: Plastic natural gas service
Alleged Code
Violation: 753-3.1(a)(1)

Description of Violation: Failure to provide notice of intent to excavate to the one-call notification system

Notice of Probable Violation (NOPV) Information

On or about March 16, 2016, copies of the NOPV were mailed to the Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. While the certified mail receipt was signed and returned, the regular mail was not.

Proposed Penalty: \$2,500

Response: Phone call conversation on April 18, 2016

Summary of Information Provided by Respondent

Winter Brothers, Inc. stated that its owner was hospitalized while this excavation work was being performed and was unaware that a mark-out had not been provided.

Analysis of Evidence

16 NYCRR §753-3.1(a)(1) states:

Before commencing or engaging in any non-emergency excavation or demolition, each excavator shall provide notice of the location and date of the planned excavation or demolition to the one-call notification system serving the vicinity in which the excavation or demolition is to take place.

Pursuant to 16 NYCRR §753-3.1(a)(1), the entity actually performing the excavation work is responsible for providing notice of intent to excavate to the one-call notification system.

Determination

We find that Winter Brothers, Inc. did commit a violation of 16 NYCRR §753-3.1(a)(1). In consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$2,500 is appropriate for this violation.

We also strongly encourage the Respondent to contact Dig Safely New York (315-437-7394) to request a training session covering the use of the one-call notification system and Part 753 requirements. The principals of the company, any employees involved in excavation work, and any support staff that might be involved in making notifications to the one-call center, would benefit from such training.

The Commission orders:

1. A penalty of \$2,500 is determined against Winter Brothers, Inc. pursuant to §119-b(8) of the Public Service Law.
2. Winter Brothers, Inc. is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$2,500 in payment of the penalty determined. The \$2,500 sum is subject to Section 18 of the State Finance Law and shall be deposited into the underground facilities safety training account. The check shall be addressed to:

Ms. Carol Gnacik
Director of Finance and Budget
Department of Public Service
Three Empire State Plaza
16th Floor
Albany, N.Y. 12223-1350
3. If the check is not received within 30 days after issuance of this Order, Staff is authorized to refer the case to the New York State Department of Law with a request that an action to collect the determined penalty be brought in a court of competent jurisdiction.

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4. The proceeding is continued, pending compliance with ordering clause 2, following which it should be closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary