

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 17, 2016

COMMISSIONERS PRESENT:

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

CASE 16-G-0600 - In the Matter of an Enforcement Proceeding
Against Cioffi 1, 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 November 30, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Cioffi 1, Inc.
Address: 27 Skyline Drive
Thiells, NY 10984

Alleged Violation Specifics

Dates of Violations: February 8 and 17, 2016
Locations: 2 Weiner Drive
Monsey, NY
78 Francis Place
Spring Valley, NY
Descriptions of
Excavation Work: Site grading and drainage
Affected Facilities: Two separate 2-inch steel high-pressure
natural gas mains

Alleged Code
Violations: 753-3.1(a)(1)

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

Notice of Probable Violation (NOPV) Information

On or about March 11, 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: \$12,500

Response: Email correspondence on March 20, 2016

Summary of Information Provided by Respondent

For the violation which occurred on February 8, 2016, Cioffi 1, Inc. provided service disconnect letters from the utility operators and stated that it only demolished the structure, which would not necessitate that it provide notice of intent to excavate to the one-call notification system.

For the violation which occurred on February 17, 2016, Cioffi 1, Inc. provided a one-call notification and stated that this request was valid for its excavation work.

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.

For the violation which occurred on February 8, 2016, and pursuant to 16 NYCRR §753-3.1(a)(1), the entity performing the excavation or demolition work is responsible for providing notice of their intent to the one-call notification system.

For the violation which occurred on February 17, 2016, the emergency notification provided was made by Cioffi 1, Inc. on February 11, 2016, for the repair of a water service line. The duration was to be for 1-day, to a depth of 4-feet. Six photographs were provided by the affected facility operator which depict Cioffi 1, Inc. excavating to install a drainage line which had a trench measured to be roughly 75-feet long by 6-feet in depth. This excavation work performed by Cioffi 1, Inc. goes beyond the original scope of the emergency one-call ticket as provided by it.

Determination

We find that Cioffi 1, Inc. did commit two separate violations of 16 NYCRR §753-3.1(a)(1). Under General Business Law §765(1)(a), entities that fail to comply with the requirements of 16 NYCRR Part 753 are subject to a civil penalty of \$2,500 for the first offense and an additional \$10,000 for each succeeding violation that occurs within a 12-month period. Therefore, in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$12,500 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 \$12,500 is determined against Cioffi 1, Inc. pursuant to §119-b(8) of the Public Service Law.

2. Cioffi 1, Inc. is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$12,500 in payment of the penalty determined. The \$12,500 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.

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