

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 23, 2003

COMMISSIONERS PRESENT:

William M. Flynn, Chairman
Thomas J. Dunleavy
James D. Bennett
Leonard A. Weiss
Neal N. Galvin

CASE 03-G-0910 - In the Matter of an Enforcement Proceeding
Against Pucello, Inc. for Alleged Violations of
16 NYCRR Part 753 - Protection of Underground
Facilities, in the Service Territory of St.
Lawrence Gas Corporation, filed in C 15686.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective July 29, 2003)

BY THE COMMISSION:

RESPONDENT INFORMATION

Company Name: Pucello, Inc. (Pucello)
Address: 111 West End Drive
Syracuse, NY
Principal Contact: Mr. J. Pucello

ALLEGED VIOLATION SPECIFICS

Date of Violations: February 4, 2003
Location: 1200 Patterson Street
Ogdensburg, NY
Description of
Excavation Work: Sewer excavation
Damaged Facilities: 3/4-inch steel gas service

Alleged Code
Violation(s): 753-3.1(a)(1), 3.10(b) and 3.10(c)

Description of
Violations:

1. Failure to provide notice of intent to excavate to the one call notification system and unauthorized repair of facilities;
2. Failure to notify the operator of facility damage; and
3. Failures to wait until repairs have been made before continuing work.

NOTICE OF PROBABLE VIOLATION (NOPV) INFORMATION

Date of NOPV: March 21, 2003

Proposed Penalty: \$16,000

Response: Did not respond

Summary of Information
Provided by Respondent: Not Applicable

ANALYSIS OF EVIDENCE

Section 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.

Section 753-3.10(b) states:

In the event of contact with or damage to an underground facility, the excavator shall immediately notify the operator of the facility.

Section 753-3.10(c) states:

All excavation or demolition in the immediate vicinity of the contact or damaged portion of the underground facility shall be suspended until such portion is repaired and the operator advises the excavator that excavation or demolition may proceed.

Staff's investigation found that Pucello was excavating without a locate request. After damaging the gas service, the excavator continued working around the damaged service and never called St. Lawrence Gas Company, Inc. about the damage.

No response to the NOPV was received. The NOPV stated that failure to respond would be deemed acceptance of facts as alleged, in which case the proposed penalty would be determined.

DETERMINATION

We find that Pucello did commit violations of §753-3.1(a)(1), §753-3.10(b) and §753-3.10(c), which resulted in damage to a natural gas service line and presented a great hazard to nearby persons and property. Such negligence could have resulted in an explosion, bodily injury and/or death. We determine a penalty totaling \$16,000 is appropriate for these violations.

We also strongly encourage Pucello to contact Dig Safely New York to request a training session covering the use of the One-Call system and Part 753 requirements. The principals of Pucello, 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 \$16,000 is determined against Pucello, Inc. pursuant to §119(b)(8) of the Public Service Law.

2. Pucello, Inc. is directed to remit by certified check payable to the "Department of Public Service" the sum of \$16,000 in payment of the penalty determined. The \$16,000 sum is subject to Section 18 of the State Finance Law and shall be deposited in the underground facilities safety training account. The check shall be addressed to:

Director of Finance and Budget
Department of Public Service
Three Empire State Plaza
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.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Acting Secretary