

STAFF REPORT TO THE COMMISSION

June 8, 2005

SUBJECT: Initiating a proceeding pursuant to Section 11(m) of the Illinois Underground Utility Facilities Damage Prevention Act and 83 Ill. Adm. Code 265.310

SUMMARY:

Staff recommends that the Illinois Commerce Commission ("Commission") enter an order initiating a proceeding, pursuant to Section 11(m) of the Illinois Underground Utility Facilities Damage Prevention Act ("Act") [220 ILCS 50] and 83 Ill. Adm. Code 265.310, to determine whether Quality Saw & Seal, Inc. ("Quality") violated Section 4(d) of the Act [220 ILCS 50/4(d)] and to determine the amount of penalty that should be assessed.

BACKGROUND:

Pursuant to 83 Ill Adm. Code 265, on August 23, 2004, North Shore Gas Company ("North Shore") submitted an incident report to the Commission Staff ("Staff") reporting a possible violation of the Act. In its incident report, North Shore alleged that, on August 10, 2004, Quality violated section 4(d) of the Act by failing to provide proper notice to the State-Wide One-Call Notice System ("JULIE") before excavating at 2180 Kipling Lane, Highland Park, Illinois.

Rita A. Fox is the President of Quality, which is located at 7600 West 79th Street, Bridgeview, Illinois, 60455. According to records from the Illinois Secretary of State, the designated agent for Quality is Scott L. Eilken at the same address. This case was assigned case number 0106-04.

In its review of this incident, Staff considered evidence submitted by North Shore and Quality. Staff alleges that Quality willfully violated Section 4(d) of the Act based upon the following:

- (1) JULIE, Inc., whose headquarters is located at 3275 Executive Drive, Joliet, IL 60431, is the State-Wide One-Call Notice System as defined in Section 3 of the Act.
- (2) North Shore is a public utility as defined in Section 3-105 of the Public Utilities Act, [220 ILCS 5/3-105] and is an owner or operator of "underground utility facilities," as that term is defined in Section 2.2 of the Act, located in northeastern Illinois, including natural gas distribution facilities installed beneath the surface of the ground at 2180 Kipling Lane, Highland Park, Illinois.
- (3) On August 10, 2004, while excavating at 2180 Kipling Lane, Highland Park, Illinois, Quality damaged a ¾ inch plastic gas service owned and operated by North

Shore. North Shore alleged that Quality was excavating at 2180 Kipling Lane, Highland Park, Illinois, without giving proper notice to owners and operators through JULIE.

- (4) In response to Staff's information request, Quality states that they were saw-cutting to remove paving materials for a roadway rehabilitation project when the damage to North Shore's ¾ inch gas service occurred. Quality states that they were operating under an agreement with Chicagoland Paving and that Chicagoland Paving had informed Quality that a locate request had been submitted to JULIE. Quality states that Chicagoland Paving's locate request is JULIE dig #A2172767. Quality freely admits that they did not call for a locate request, as they do not consider saw-cutting as excavation or demolition and, therefore, are not required to call JULIE. Quality alleges that North Shore's gas line was imbedded in the concrete as the concrete was 9 inches thick and the gas line was 8 ½ inches below the surface of the pavement.

Based upon the above information and the requirements of the Act, Staff determined that saw cutting did qualify as excavation or demolition and Quality should have requested that facilities be located. On November 16, 2004, Staff issued a Notice of Violation to Quality regarding a violation of Section 4(d) of the Act. According to section 11(a) of the Act, the Commission has authority to assess a penalty of up to \$5000 for this violation. Section 11(j) of the Act specifies that when a penalty is warranted, the following criteria shall be used in determining the magnitude of the penalty:

- (1) gravity of noncompliance;
- (2) culpability of offender;
- (3) history of noncompliance;
- (4) ability to pay penalty;
- (5) show of good faith of offender;
- (6) ability to continue business; and
- (7) other special circumstances.

When Staff developed the JULIE enforcement program, it was desired that penalties be assessed consistently, so that violators in cases with similar circumstances are assessed similar penalties. Toward that end, Staff developed a penalty formula whereby the above criteria could be applied in a uniform manner. Based on that formula, Staff assessed a penalty against Quality in the amount of \$450. Pursuant to 83 Ill. Adm. Code 265.230, Quality requested to appeal Staff's decision to the Underground Damage Prevention Advisory Committee ("Committee").

On December 16, 2004, Staff provided notice to Quality that on January 13, 2005, case number 0106-04 was scheduled to be heard by the Committee. On January 13, 2005, Staff presented this case to the Committee. The Committee also heard statements from Quality and North Shore. The Committee voted to adopt the Staff's recommendation contained in its November 16, 2004, Notice of Violation. In a letter dated January 14, 2005, Staff informed Quality of the Committee's decision. Pursuant to 83 Ill. Adm. Code 265.310, on February 3, 2005, Quality contacted Staff and asked to appeal the Committee's decision to the Commission.

Section 2.3 of the Act defines excavation as:

any operation in which earth, rock, or other material in or on the ground is moved, removed, or otherwise displaced by means of any tools, power equipment or explosives, and includes, without limitation, grading, trenching, digging, ditching, drilling, augering, boring, tunneling, scraping, cable or pipe plowing, and driving but does not include farm tillage operations or railroad right-of-way maintenance or operations or coal mining operations regulated under the Federal Surface Mining Control and Reclamation Act of 1977 or any State law or rules or regulations adopted under the federal statute, or land surveying operations as defined in the Illinois Professional Land Surveyor Act of 1989 when not using power equipment;

Section 2.4 of the Act defines demolition as the wrecking, razing, rending, moving, or removing of a structure by means of any power tool, power equipment (exclusive of transportation equipment) or explosives.

Section 4(d) of the Act requires that "[e]very person who engages in nonemergency excavation or demolition shall:"

provide notice not more than 14 days nor less than 48 hours (exclusive of Saturdays, Sundays, and holidays) in advance of the start of the excavation or demolition to the owners and operators of the underground facilities or CATS facilities in and near the excavation or demolition area through JULIE;

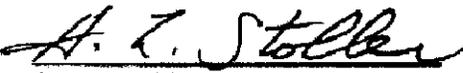
Section 11(m) of the Act provides:

If, after the Advisory Committee has considered a particular contested penalty and performed its review functions under this Act and the Commission's rules, there remains a dispute as to whether the Commission should impose a penalty under this Act, the matter shall proceed in the manner set forth in Article X of the Public Utilities Act, including the provisions governing judicial review.

RECOMMENDATION:

Pursuant to Section 11(m) of the Act and 83 Ill. Adm. Code 265.310, Staff requests the Commission enter the attached order to initiate a proceeding to determine whether, on August 10, 2004, Quality Saw & Seal, Inc. violated Section 4(d) of the Act and to determine the amount of any penalty that should be assessed.


Prepared by
William Riley
JULIE Enforcement Manager


Approved by
Harry L. Stoller
Energy Division Director