

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
vs	:	
Vande Geest Plumbing and Heating,	:	
Inc.	:	06-0770
	:	
Determination of Liability under the	:	
Illinois Underground Utility Facilities	:	
Damage Prevention Act	:	
	:	

ORDER

By the Commission:

In a Staff Report dated November 14, 2006, the Staff ("Staff") of the Illinois Commerce Commission ("Commission") recounted alleged violations of the Illinois Underground Utility Facilities Damage Prevention Act ("Act") [220 ILCS 50].

For purposes of this Order, as indicated in the Staff Report, MidAmerican Energy Company ("MidAmerican") is a public utility as defined in Section 3-105 of the Public Utilities Act, and is an owner or operator of "underground utility facilities," as that term is defined in Section 2.2 of the Act, located throughout western Illinois, including natural gas distribution facilities installed beneath the surface of the ground at specific locations identified in each count in this Order. JULIE, Inc., whose headquarters is located at 3275 Executive Drive in Joliet, IL 60431, is the State-Wide One-Call Notice System as defined in Section 3 of the Act. Vande Geest Plumbing and Heating, Inc. ("Vande Geest" or "Respondent") is an Illinois corporation located at 3717 5TH Avenue, Moline, Illinois, 61265. Larry Vande Geest is the President of Vande Geest. The designated agent for Vande Geest is Ira Vande Geest at the same address.

Pursuant to 83 Ill. Adm. Code 265.100, MidAmerican submitted three incident reports to Staff reporting possible violations of the Act by Vande Geest. Based on the incident reports, Staff has recommended action against Vande Geest for violation of Section 7 of the Act.

Section 7 of the Act:

In the event of any damage to or dislocation of any underground utility facilities or CATS facilities in connection with any excavation or demolition, emergency or nonemergency, the person responsible for the excavation

or demolition operations shall immediately notify the affected utility and the State-Wide One-Call Notice System or, in the case of damage or dislocation in connection with any excavation or demolition within the boundaries of a municipality having a population of at least 1,000,000 inhabitants that operates its own one-call notice system, notify the affected utility and the one-call notice system that operates in that municipality. Owners and operators of underground utility facilities that are damaged and the excavator involved shall work in a cooperative and expeditious manner to repair the affected utility.

The Staff Report alleges the following:

COUNT I

JULIE Enforcement Case No. 0054-05

That on or about April 21, 2005, while excavating at 4034 27th Avenue, Rock Island, Illinois, Vande Geest hit and damaged a ½-inch plastic gas service owned and operated by MidAmerican and failed to notify MidAmerican, in violation of Section 7 of the Act.

COUNT II

JULIE Enforcement Case No. 0054-05

That on or about April 21, 2005, while excavating at 4034 27th Avenue, Rock Island, Illinois, Vande Geest hit and damaged a ½-inch plastic gas service owned and operated by MidAmerican and failed to notify JULIE, Inc., in violation of Section 7 of the Act.

COUNT III

JULIE Enforcement Case No. 0054-05

That on or about April 21, 2005, while excavating at 4034 27th Avenue, Rock Island, Illinois, Vande Geest hit and damaged a ½-inch plastic gas service owned and operated by MidAmerican and failed to work in a cooperative and expeditious manner to repair the affected utility, in violation of Section 7 of the Act.

COUNT IV

JULIE Enforcement Case No. 0073-05

That on or about February 11, 2005, while excavating for sewer repairs at 2911 43rd Street, Rock Island, Illinois, Vande Geest damaged a 1- inch gas service line, owned and operated by MidAmerican and failed to notify MidAmerican, in violation of Section 7 of the Act.

COUNT V

JULIE Enforcement Case No. 0073-05

That on or about February 11, 2005, while excavating for sewer repairs at 2911 43rd Street, Rock Island, Illinois, Vande Geest damaged a 1- inch gas service line, owned and operated by MidAmerican and failed to notify JULIE, Inc., in violation of Section 7 of the Act.

COUNT VI
JULIE Enforcement Case No. 0073-05

That on or about February 11, 2005, while excavating for sewer repairs at 2911 43rd Street, Rock Island, Illinois, Vande Geest damaged a 1- inch gas service line, owned and operated by MidAmerican and failed to work in a cooperative and expeditious manner to repair the affected utility, in violation of Section 7 of the Act.

COUNT VII
JULIE Enforcement Case No. 0165-05

That on or about August 3, 2005 at about 10:30 a.m., while excavating at 1310 53rd Street, Moline, Illinois, Vande Geest damaged a 1¼-inch gas main, owned and operated by MidAmerican and failed to notify MidAmerican until approximately 3:18 p.m., in violation of Section 7 of the Act.

COUNT VIII
JULIE Enforcement Case No. 0165-05

That on or about August 3, 2005 at about 10:30 a.m., while excavating at 1310 53rd Street, Moline, Illinois, Vande Geest damaged a 1¼-inch gas main, owned and operated by MidAmerican and failed to notify JULIE, Inc. until approximately 3:03 p.m., in violation of Section 7 of the Act.

COUNT IX
JULIE Enforcement Case No. 0165-05

That on or about August 3, 2005 at about 10:30 a.m., while excavating at 1310 53rd Street, Moline, Illinois, Vande Geest damaged a 1¼-inch gas main, owned and operated by MidAmerican and failed to work in a cooperative and expeditious manner to repair the affected utility, in violation of Section 7 of the Act.

STAFF CONTACTS

JULIE Enforcement Case No. 0054-05 (Count I through Count III)

As recounted in the Staff Report, on June 28, 2005, Staff issued a Notice of Violation to Vande Geest regarding violations of Section 7 of the Act. Staff found that Vande Geest failed to call JULIE to report the damage, failed to call MidAmerican to

report the damage, and failed to work with MidAmerican in a cooperative and expeditious manner to repair the affected utility facility. According to Section 11(b) of the Act, the Commission has authority to assess a penalty of up to \$2500 for each of these violations. Based on the seriousness of these violations, Staff found that the maximum penalty was warranted. Having found three violations of Section 7 of the Act, Staff assessed a penalty against Vande Geest in the amount of \$7,500. Vande Geest did not respond to Staff's Notice of Violation.

On August 16, 2005, pursuant to 83 Ill. Adm. Code 265.230, Staff provided notice to Vande Geest that, on September 8, 2005, case number 0054-05 was scheduled to be heard by the Underground Damage Prevention Advisory Committee ("Committee"). On September 8, 2005, Staff presented this case to the Committee. Vande Geest was not present. The Committee voted to adopt Staff's recommendation contained in its June 28, 2005, Notice of Violation. In a letter dated September 8, 2005, Staff informed Vande Geest of the Committee's decision. Vande Geest did not respond.

JULIE Enforcement Case No. 0073-05 (Count IV through Count VI)

As recounted in the Staff Report, on July 29, 2005, Staff issued a Notice of Violation to Vande Geest regarding violations of Section 7 of the Act. Staff found that Vande Geest failed to call JULIE to report the damage, failed to call MidAmerican to report the damage, and failed to work with Mid-American in a cooperative and expeditious manner to repair the affected utility facility. According to Section 11(b) of the Act, the Commission has authority to assess a penalty of up to \$2500 for each of these violations. Based on the seriousness of these violations, where Vande Geest did not inform MidAmerican of the damage and made its own repairs, Staff found that the maximum penalty was warranted. Having found three violations of Section 7 of the Act, Staff assessed a penalty in the amount of \$7,500. Vande Geest did not respond to Staff's Notice of Violation.

On August 31, 2005, pursuant to 83 Ill. Adm. Code 265.230, Staff provided notice to Vande Geest that on September 8, 2005, case number 0073-05 was scheduled to be heard by the Committee. On September 8, 2005, Staff presented this case to the Committee. Vande Geest was not present. The Committee voted to adopt the Staff's recommendation contained in its July 29, 2005, Notice of Violation. In a letter dated September 8, 2005, Staff informed Vande Geest of the Committee's decision. Vande Geest did not respond.

JULIE Enforcement Case No. 0165-05 (Count VII through Count IX)

According to the Staff Report, on January 10, 2006, Staff issued a Notice of Violation to Vande Geest regarding violations of Section 7 of the Act. Staff found that Vande Geest failed to call JULIE to report the damage, failed to call MidAmerican to report the damage, and failed to work with MidAmerican in a cooperative and expeditious manner to repair the affected utility facility. According to Section 11(b) of the Act, the Commission has authority to assess a penalty of up to \$2500 for each of these

violations. Based on the seriousness of these violations, where Vande Geest did not immediately inform MidAmerican of the damage and their continued disregard to the safety of the public and its employees, Staff found that the maximum penalty was warranted. Having found three violations of Section 7 of the Act, Staff assessed a penalty in the amount of \$7,500. Vande Geest did not respond to Staff's Notice of Violation.

On March 16, 2006, pursuant to 83 Ill. Adm. Code 265.230, Staff provided notice to Vande Geest that on April 13, 2006, case number 0165-05 was scheduled to be heard by the Committee. On April 13, 2006, Staff presented this case to the Committee. Vande Geest was not present. The Committee voted to adopt the Staff's recommendation contained in its January 10, 2006, Notice of Violation. In a letter dated April 18, 2006, Staff informed Vande Geest of the Committee's decision. Vande Geest did not respond.

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.

The Commission has adopted 83 Ill. Adm. Code 265 to administer the Act. Section 265.310 provides in relevant part:

If, within 30 days after the date of the mailing of the letter informing the offender of the Advisory Committee's decision, the offender either refuses to pay or fails to pay the amount of the penalty assessed by the Advisory Committee, Staff shall then prepare and submit to the Commission an order initiating a proceeding to determine whether a violation has occurred and a penalty should be assessed.

From the information contained in the Staff Report, it appears that the statutory and regulatory requirements have been met for the Commission to initiate a *de novo* proceeding under Article X of the Public Utilities Act [220 ILCS 5/Art. X] and under 83 Ill. Adm. Code 200 and 265 to determine whether violations have occurred and whether penalties should be assessed.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the respondent and subject matter of this proceeding;

- (2) the Staff Report dated November 14, 2006, should be made a part of the record of this proceeding;
- (3) the Commission should initiate a proceeding pursuant to Section 11(m) of the Act to determine whether Respondent has violated Section 7 of the Act and to determine whether penalties should be assessed.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a proceeding is initiated pursuant to Section 11(m) of the Illinois Underground Utility Facilities Damage Prevention Act to determine whether Vande Geest Plumbing and Heating, Inc., violated Section 7 of the Illinois Underground Utility Facilities Damage Prevention Act by failing to notify JULIE, Inc. and MidAmerican Energy Company that it had hit and damaged underground utility facilities owned and operated by MidAmerican Energy Company and by failing to work in a cooperative and expeditious manner to repair the damaged facilities, while excavating at locations within the State of Illinois as alleged in Counts I through IX in the prefatory portion of this Order.

IT IS FURTHER ORDERED that Vande Geest Plumbing and Heating, Inc. is made a Respondent to this proceeding.

IT IS FURTHER ORDERED that Respondent appear at the offices of the Commission at the time and date specified by the Administrative Law Judge assigned to this proceeding.

IT IS FURTHER ORDERED that the Chief Clerk of the Commission serve a copy of this Order by certified mail on Ira Vande Geest, 3717 5th Avenue, Moline, Illinois, 61265.

IT IS FURTHER ORDERED that the Staff Report dated November 14, 2006 is made a part of the record of this proceeding.

IT IS FURTHER ORDERED that the failure of the Respondent to appear may result in the entry of an Order finding that the Respondent has violated Section 7 of the Act and the assessment of penalties against Respondent.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this 29th day of November, 2006.

(SIGNED) CHARLES E. BOX
Chairman