

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
vs	:	
Nicholas Excavating, Inc.	:	
	:	08-0508
Determination of Liability under the	:	
Illinois Underground Utility Facilities	:	
Damage Prevention Act	:	

MOTION TO DISMISS

NOW COMES Staff of the Illinois Commerce Commission (“Staff”), by and through its attorney, who hereby moves to dismiss without prejudice the above-captioned proceeding. Staff states as follows:

1. On August 27, 2008 Staff submitted a Staff Report to the Illinois Commerce Commission (“Commission”) alleging a violation of the Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50, (“Act”) for failure to comply with Section 4(d) of the Act. Specifically, Staff alleged that Nicholas Excavating (“Nicholas”) violated Section 4(d) of the Act by failing to provide notice of the excavation or demolition to the owners or operators of the underground facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System (“JULIE”).

2. As a result of the aforementioned Staff Report, the Commission entered an Order to initiate proceedings against Nicholas to determine whether Nicholas violated Section 4(d) of the Act and to determine whether a penalty should be assessed.
3. Subsequently, Staff agreed to accept a payment in the amount of three thousand five hundred dollars (\$3,500.00) instead of the five thousand dollar (\$5,000.00) penalty which was recommended by Staff and assessed by the Underground Damage Prevention Advisory Committee. Staff agreed to accept a reduced penalty to avoid further litigation and because Nicholas has not been reported to have violated the Act since the incident which is the subject of this proceeding.
4. On October 21, 2008, the Commission received from Nicholas payment in the amount of three thousand five hundred dollars (\$3,500.00), a copy of which is attached hereto. Staff views this payment as resolving all outstanding issues and potential penalties in this matter against Nicholas. Consequently, Staff respectfully requests this matter be dismissed without prejudice.

WHEREFORE, for the above reasons and in consideration of the payment made by Nicholas to the Commission, Staff respectfully requests that this matter be dismissed without prejudice.

Respectfully submitted,

MEGAN C. McNEILL
Counsel for Staff of the Illinois
Commerce Commission

October 21, 2008

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NICHOLAS EXCAVATING, INC.

8280

Docket#08-0508

3,500.00

10/15/08 8280 Illinois Commerce Commission \$3,500.00

FOR SECURITY PURPOSES, THE BACK OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING IN THE BORDER.

NICHOLAS EXCAVATING, INC.
P.O. BOX 638
LEMONT, IL 60439
(708) 239-0838

STATE BANK OF COUNTRYSIDE
6734 JOLIET ROAD - COUNTRYSIDE, IL 60525
(708) 485-3100 - MEMBER FDIC

8280

70-2421/0719

Oct 15, 2008 8280 3500.00

Three Thousand Five Hundred and 00/100 Dollars DATE

CHECK NO. AMOUNT

PAY Illinois Commerce Commission
TO THE 527 E. Capitol Avenue
ORDER Springfield, IL 62701
OF

Man U. White

⑈008280⑈ ⑆071924212⑆ ⑈4040358000⑈

THE REVERSE SIDE OF THIS DOCUMENT INCLUDES A SECURITY SCREEN - HOLD AT ANGLE TO VIEW