

**OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION**

Report to the Commission
March 3, 2015

ILLINOIS COMMERCE
COMMISSION

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CLERK'S OFFICE

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 ("the Act") [220 ILCS 50] and 83 Ill. Adm. Code 265.310, to determine whether Steve Lammers Plumbing, Inc. ("SLP") violated Section 4(d) of the Act and Section 7 of the Act and to determine the amount of penalty that should be assessed.

Background:

Pursuant to 83 Ill. Adm. Code 265.100, Ameren Illinois Company ("Ameren") submitted an incident report to the Commission Staff ("Staff") reporting a possible violation of the Act by SLP. Steve J. Lammers is the President of SLP, which is located at 2442 Bradmoor Drive, Quincy, Illinois 62301. According to records from the Illinois Secretary of State, Steve Lammers is also the registered agent for SLP.

Ameren 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 throughout central and southern Illinois, including natural gas distribution facilities installed beneath the surface of the earth at the incident location detailed in this report. In addition, JULIE, Inc, whose headquarters is located at 3275 Executive Drive, Joliet, Illinois 60431, is the State-Wide One-Call Notice System as defined in Section 3 of the Act.

One-Call Enforcement Case Number 0165-13:

On June 11, 2013, Ameren submitted an incident report to Staff reporting that on March 2, 2012, SLP violated the Act while excavating at 1874 Grove Avenue, Quincy, Illinois. In its review of this incident, Staff considered the evidence submitted by Ameren and SLP and a statement by the City of Quincy. Based upon that information, Staff alleged SLP willfully violated Section 4(d) of the Act and Section 7 of the Act based upon the following:

- (1) On March 2, 2012, at approximately 2:46 p.m., SLP struck and damaged a 2-inch plastic gas main with the bore head of a horizontal directional drill machine while excavating at 1874 Grove Avenue, Quincy, Illinois.

(2) Ameren alleges SLP failed to notify facility owners and operators through the State-Wide One-Call Notice System ("JULIE") prior to the commencement of excavation at 1874 Grove Avenue, Quincy, Illinois.

(3) SLP responded to Staff's Notice of Investigation and admitted to performing the excavation on March 2, 2012, which damaged the gas facility owned and operated by Ameren. SLP indicated that it submitted a locate request for the planned excavation; however, SLP was unable to provide evidence that a locate request had been submitted to JULIE prior to the start of excavation at 1874 Grove Avenue, Quincy, Illinois. SLP also indicated it was aware of the notification requirements of Section 7 of the Act, however it was unable to provide evidence that it notified JULIE of the damage to Ameren's gas facility on March 2, 2012.

(4) Staff performed a search of the JULIE locate database and was unable to find any indication SLP had provided notice of the planned excavation prior to the start of excavation on March 2, 2012, at 1874 Grove Avenue, Quincy, Illinois.

(5) Staff performed a search of the JULIE locate database and was unable to find any indication SLP notified JULIE of the damage to Ameren's gas facility on March 2, 2012.

On December 20, 2013, Staff issued a Notice of Violation to SLP regarding a violation of Section 4(d) of the Act and Section 7 of the Act. Staff found that SLP failed to notify facility owners and operators through JULIE of the planned excavation at 1874 Grove Avenue, Quincy, Illinois. According to Section 11(a) of the Act, the Commission has authority to assess a penalty of up to \$5,000.00 for a violation of Section 4(d) of the Act. Staff also found SLP failed to notify JULIE of the damage to Ameren's gas facility at 1874 Grove Avenue, Quincy, Illinois, after damaging the underground utility facility during their excavation activities. According to Section 11(b) of the Act, the Commission has authority to assess a penalty of up to \$2,500.00 for a violation of Section 7 of the Act. 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.

Based on the criteria listed, Staff assessed a penalty against SLP in the amount of \$1,215 for the two violations. SLP did not respond to Staff's Notice of Violation.

On March 6, 2014, pursuant to 83 Ill. Adm. Code 265.230, Staff provided notice to SLP that on March 20, 2014, case number 0165-13 was scheduled to be heard by the Underground Damage Prevention Advisory Committee ("Committee"). On March 20,

2014, Staff presented this case to the Committee. SLP was not present. The Committee voted to adopt Staff's recommendation contained in its December 20, 2013, Notice of Violation. In a letter dated April 15, 2014, Staff informed SLP of the Committee's decision. On April 29, 2014, Steve Lammers, president of SLP, contacted Staff and indicated that he did not agree with Staff findings. Staff informed Mr. Lammers that since he did not attend the Committee meeting his only option was to appeal the findings to the Commerce Commission for a formal hearing with an Administrative Law Judge ("ALJ"). SLP offered to settle the case for \$500.00. Staff indicated that the opportunity to request a settlement was at the Committee hearing. SLP then requested a hearing before an ALJ.

Section 4(d) of the Act requires every person engaging in nonemergency excavation or demolition to

provide notice not less than 48 hours but no more than 14 calendar days in advance of the start of the excavation or demolition to the owners or operators of the underground utility facilities in and near the excavation or demolition area through the State-Wide One-Call Notice System ***.

Section 7 of the Act states:

In the event of any damage to or dislocation of any underground utility 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 and cease excavation in the area of the damage when the damaged facility is a threat to life or property or if otherwise required by law ***. The person responsible for the excavation or demolition shall not attempt to repair, clamp, or constrict the damaged utility facility unless under the supervision or advisement of the utility facility owner or operator. *** In the event of any damage to any underground utility facility that results in the escape of any flammable, toxic, or corrosive gas or liquid, the person responsible for the excavation or demolition shall call 9-1-1 and notify authorities of the damage. 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.

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.

83 Ill. Adm. Code 265.310 states:

If the Advisory Committee decides that a penalty should be assessed, the alleged violator may pay the amount of the penalty within 30 days after the date of the mailing of the letter informing the alleged violator of the Advisory Committee's decision. Such payment shall constitute a final, nonreviewable resolution of the matter, and all activity with respect to the violation shall terminate. 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.

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 March 2, 2012, Steve Lammers Plumbing, Inc. violated Section 4(d) of the Act and Section 7 of the Act and to determine the amount of any penalty that should be assessed.


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