

DM 01-142

SUPERIOR EXCAVATING, INC.

**Hearing on Violation of Underground Utility
Damage Prevention Program**

**Order to Show Cause Why Superior Excavating, Inc.
Should Not Be Held Liable For Penalties Assessed;
Expenses Incurred, and Whether Additional Penalties
Should Be Imposed**

O R D E R N O. 23,765

August 24, 2001

On September 13, 2000, Energy North Natural Gas Inc., d/b/a KeySpan Energy Delivery New England (KeySpan) in accordance with NHPUC Chapter Puc 800 Underground Utility Damage Prevention Program, N. H. Admin. Rules, Puc 807.01, reported damage to underground facilities at the intersection of Union Ave. and High St. in Pembroke, N. H. The report alleged that on August 2, 2000, Superior Excavating, Inc. (Superior) severed a 3/4" plastic temporary gas line while smoothing a municipal road using a back dragging technique with heavy equipment. According to the operator of the underground facility, the location of the temporary line had been marked earlier that day.

On January 19, 2001, the Safety Division, pursuant to Puc 806.02, issued a Notice of Probable Violation (NOPV) No. 00103, referencing RSA 374:55, V, relating to damage to marked facilities, by certified mail, to Superior Excavating,

Inc. Superior Excavating, Inc. responded with a letter dated February 7, 2001, requesting an informal conference. The conference was held on June 28, 2001, at the Commission offices.

At the conference, Superior Excavating stated they had complied with RSA 374:51 which requires 72 hour notice prior to excavating. Superior did not dispute the gas line was damaged, but did dispute the cause and persons responsible for the damage. Based on the information submitted by all parties at the informal conference, the Safety Division, pursuant to Puc 806.04, issued a Notice of Violation (NOV) No. 00130V on July 2, 2001, by certified mail, assessing a fine of three hundred dollars (\$300.00). Pursuant to Puc 806.05 (a), Superior Excavating, Inc. had ten (10) days to respond.

On July 9, 2001, pursuant to Puc 806.05(a)(2), Superior Excavating, Inc. filed a request in writing for a hearing before the Commission. On July 25, 2001, Superior submitted a separate request for a prehearing conference. The parties held a settlement conference on August 16, 2001, and were unable to reach agreement on all of the issues. At the conference, Staff concluded Superior Excavating was in violation of Puc 806.01(g) (interim rule eff. 05/01/00)

relating to excavations conducted in the tolerance zone and that the excavation be performed to insure the facilities do not sustain damage; as well as RSA 374:53 relating to the responsibility for maintaining markings.

Based on the foregoing, it is hereby

ORDERED, that Superior Excavating, Inc. appear before the New Hampshire Public Utilities Commission at its offices at 8 Old Suncook Road, Concord, New Hampshire at 10:00 a.m. on September 18, 2001, to show cause why Superior Excavating, Inc. should not be held liable for penalties up to five hundred dollars (\$500.00) and cost of repairs pursuant to RSA 374:55, V, and expenditures to collect the penalty pursuant to RSA 374:55,VII; and it is

FURTHER ORDERED, that the Executive Director shall send a copy of this Order by first class mail, postage prepaid, to Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England. KeySpan should be prepared to appear at the hearing and provide such records and testimony as are pertinent to this matter.

By order of the Public Utilities Commission of New
Hampshire this twenty-fourth day of August, 2001.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary