

DM 05-110

R. ZOPPO CORP.

Violation of Underground Utility Damage Protection Program

**Order Granting Request for
Opportunity to Show Cause Why Determination of
Violations and Penalties Should be Changed**

O R D E R N O. 24,530

October 14, 2005

On January 7, 2005, Northern Utilities, Inc. (Northern) telephonically notified the Safety Division of the New Hampshire Public Utilities Commission (Commission) of damage to underground facilities that had taken place on January 7, 2005, at Ashworth Avenue and B Street in Hampton, New Hampshire. On January 12, 2005, R. Zoppo Corp. (Zoppo), a contractor, filed a written report of the same January 7, 2005 incident and on January 14, 2005, Northern filed a written report of the January 7, 2005 incident.

On April 28, 2005, Northern notified the Commission's Safety Division of damage to underground facilities that had taken place on that date at Ashworth Avenue and H Street in Hampton. Zoppo reported the same incident to the Safety Division on April 30, 2005.

The notifications were made pursuant to the Commission's Underground Utility Damage Prevention Program (Dig Safe), as set forth in N.H. Code Admin. Rules Puc Chapter 800. The Director of the Safety Division has been designated to make determinations regarding violations of the DigSafe program.

After conducting an investigation into numerous damage reports in the Hampton Beach Infrastructure Project, pursuant to PART Puc 807, ENFORCEMENT PROCEDURES, the Safety Division issued on May 4, 2005, Notice of Probable Violation (NOPV) Control Nos.

05011PV, 05016PV, 05018PV, 05036PV, 05037PV and 05038PV to Zoppo. At the request of Zoppo, Northern, and others pursuant to Puc 807.03, the Safety Division conducted an informal conference on May 18, 2005 to discuss all the incidents involving Northern's underground facilities at the Hampton Beach Infrastructure Project.

During discussion of the January 7, 2005 incident at Ashworth Avenue and B St in Hampton, the Safety Division became aware that Zoppo had failed to provide the Dig Safe Notification Center the name of each sub contractor or entity who might excavate at the intended excavation site on behalf of Zoppo as required by Puc 805.01 (c) (3). In addition, Zoppo failed to comply with RSA374:51,VI for excavations that Zoppo themselves made by allowing the notification to lapse by more than 30 days. Subsequently, on May 20, 2005, the Safety Division issued Notice of Violation (NOV) Control No. 05003V to Zoppo.

During discussion of the April 28, 2005 incident at Ashworth Avenue and H Street, the Safety Division found that Northern had marked their facilities in accordance with PART Puc 806 MARKING THE TOLERANCE ZONE and that Zoppo had caused damage to the natural gas facility owned and operated by Northern. Subsequently, on May 20, 2005, the Safety Division issued Notice of Violation (NOV) Control No. 05038V to Zoppo.

For NOV Control No. 05003V, Zoppo was assessed a civil penalty of \$5,000. For NOV Control No. 05038V, Zoppo was assessed a civil penalty of \$3,000. Both penalties were assessed pursuant to RSA 374:55, VIII.

Pursuant to Puc 807.05(a)(2), Zoppo filed a timely request for a hearing on June 1, 2005. In accordance with Puc 807.06(a), the Commission hereby provides Zoppo an opportunity to show why the determinations and penalties made by the Commission's designated staff should be changed.

It should also be noted that after review of Zoppo's June 1, 2005 request for hearing, it was apparent that the Safety Division had incorrectly stated that an NOPV had earlier been issued to Zoppo regarding the January 7, 2005 incident. An NOPV was never issued to Zoppo regarding this incident.

Based upon the foregoing, it is hereby

ORDERED, that R. Zoppo Corp. appear before the New Hampshire Public Utilities Commission at its offices at 21 South Fruit Street, Concord, New Hampshire at 1:30 p.m. on November 1, 2005 to show cause why the determinations made by the Commission's designated staff that R Zoppo Corp should not be held liable for civil penalties of up to \$13,000 and expenditures to collect the penalty pursuant to RSA 374:55; and it is

FURTHER ORDERED, that the Executive Director shall send a copy of this Order by first class mail, postage prepaid, to R. Zoppo Corp., which 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 fourteenth
day of October, 2005.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Michael D. Harrington
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary