

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TECO PEOPLES GAS COMPANY,

Petitioner,

vs.

Case No. 18-0221

MEDALIST BUILDING GROUP, LLC,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice, Francine M. Ffolkes, Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted a final hearing in this case on March 14, 2018, in Port St. Lucie, Florida.

APPEARANCES

For Petitioner: Adam D. Griffin, Esquire
Aaron J. Brock, Esquire
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For Respondent: Louis E. Lozeau, Jr., Esquire
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STATEMENT OF THE ISSUES

The issues to be determined are whether: (1) a violation of section 556.107(1)(a), Florida Statutes, occurred; (2) relating

to a "high-priority subsurface installation" under section 556.116(1)(b); (3) which proximately caused an "incident" under section 556.116(1)(c); (4) for which a fine may be imposed against the violator in an amount not to exceed \$50,000.00.

PRELIMINARY STATEMENT

On January 10, 2018, Sunshine State One-Call of Florida, Inc. (Sunshine 811), sent a letter to DOAH enclosing a High Priority Subsurface Installation Incident Report and Commitment prepared by the Petitioner, TECO Peoples Gas Company (Peoples Gas), alleging a violation of section 556.107(1)(a) by the Respondent, Medalist Building Group, LLC (Medalist). The letter requested an administrative hearing. Under section 556.116(2)(c), DOAH has jurisdiction over this matter and a final hearing was scheduled for March 14. On March 9, the parties filed stipulations of fact.

At the final hearing, Peoples Gas presented the testimony of Josh Turpie, Scott Tinney, Lance Horton, Ruth Weintraub, and Jeremy LeMaster. Peoples Gas Exhibits 1 through 17, 19 and 20 were moved into evidence. Medalist presented the testimony of its owner, Jeremy LeMaster, and moved Medalist Exhibits 1 through 6 into evidence.

A one-volume transcript was filed with DOAH on April 12. Proposed findings of fact and conclusions of law were filed

jointly by the parties and they have been considered in the preparation of this Final Order.

FINDINGS OF FACT

Stipulated Facts

1. Sunshine 811 is the free-access notification system established under the Underground Facility Damage Prevention and Safety Act (the Act). See §§ 556.101 - 556.116, Fla. Stat. (2017). Section 556.105(1)(a) requires an excavator before beginning any excavation or demolition to provide Sunshine 811 with certain information that will allow a utility company to mark the location of underground facilities in the area of the proposed excavation.

2. On January 8, 2018, Francisco Plascencia, an employee and agent of Medalist, was operating a trackhoe excavator on the property located at or around 1380 SE Cove Road, Stuart, Florida.

3. While Medalist was digging to uproot a tree, the trackhoe excavator ruptured a six-inch underground gas-distribution main owned and operated by Peoples Gas.

4. Before beginning the excavation, Medalist did not "call 811" or otherwise notify Sunshine 811 about the excavation.

5. Accordingly, the excavation site did not contain "locate marks" identifying on the surface of the earth the location of the six-inch underground gas main.

The Parties

6. Medalist is owned by Jeremy LeMaster who is a licensed building contractor. Since 2007, Medalist has built over 500 homes in Martin County.

7. Peoples Gas is the utility company that owns and operates the underground gas-distribution main that is the subject of this proceeding. Peoples Gas is a member operator of Sunshine 811 and submitted the High Priority Subsurface Installation Incident Report and Commitment regarding the incident at 1380 SE Cove Road, Stuart, Florida.

The Incident

8. Joshua Turpie is the senior utility technician with Peoples Gas who performs line locates when Peoples Gas gets tickets from Sunshine 811. Mr. Turpie testified that if a contractor or homeowner calls Sunshine 811 before digging, it comes to him and he has a 48-hour window in which to mark the location of any underground gas line. This is done by placing flags, painting the ground and taking pictures.

9. On the morning of January 8, 2018, Mr. Turpie responded to a location on Cove Road at the request of his supervisor, Scott Tinney. Mr. Tinney informed him that a drastic drop in gas pressure was occurring, and it seemed to be in the area of Mr. Turpie's location.

10. At the location, Mr. Turpie found fire trucks and police cars, and saw that a gas-distribution main was ruptured. After assessing the situation and further discussing it with his supervisor, who was now on-site, he assisted Peoples Gas contractor with the "make safe" operation. This entailed fully exposing the gas main and using a "squeeze off tool" to clamp the main at a location upstream of the rupture to stop the flow of gas.

11. Mr. Turpie arrived on scene at 9:40 a.m. and the gas flow was stopped at 11:15 a.m. At the scene, Mr. Turpie also checked on his computer and saw that this particular gas-distribution main was designated as a high priority main because "it feeds basically everything in Stuart." An outage at this type of main would have a high customer impact. This particular gas main serviced 50 percent residential and 50 percent commercial customers.

12. For excavation work in the area of a high-priority gas main, Mr. Turpie would not only have flagged and marked the location, but also would have called the excavator and explained the high-priority nature of the gas main. In addition, a notification letter would also be sent to the excavator regarding the high-priority gas main and providing the contact information of relevant Peoples Gas employees. Peoples Gas would also have

the opportunity to determine if it needed to place an employee on-site during excavation.

13. A contractor for Peoples Gas repaired the gas main. Peoples Gas employees also "locked off" every customer's meter. Four hundred and nine individual meters had to be physically locked off before restoration efforts could begin.

14. Restoration involved re-introducing gas to the system, purging the lines of air, and physically turning on each meter, checking gas appliances, and checking for leaks. This process was labor intensive and involved deploying 36 Peoples Gas employees from around the state and two contractors from Miami.

15. Peoples Gas set up a command center to which the employees from around the state reported. There, the teams were provided with outage lists of the metered customers in order to conduct the process of restoring service. Service restoration continued through the evening of January 9. On the morning of January 10, the deployed employees were sent back home and the local teams completed restoring service to residences.

Community Impact

16. At the location of the gas main rupture, first responders (i.e., fire rescue and police) set up a command center, redirected traffic away from that part of Cove Road, and evacuated nearby residences and a nearby school.

17. The customers without service during the outage included two hospitals, four nursing homes, a fire station, schools, a correctional facility, a church, businesses, and residences.

Property Damage and Service-Restoration Costs

18. Ruth Weintraub is the Peoples Gas supervisor for Damage Prevention & Public Awareness. Ms. Weintraub testified that she did an accounting of the expenses incurred as a result of the gas line rupture. Ms. Weintraub calculated the amount based on: (i) lost gas in the line; (ii) labor; (iii) equipment; (iv) lodging and meals; (v) charges from the third-party contractors; and (vi) administrative costs. The amount was no less than \$127,000.00, which would increase as Peoples Gas finalized its accounting.

Medalist's Actions

19. Mr. LeMaster testified that he was alerted to the incident by a text from a field supervisor who had called 911 to report the event. Mr. LeMaster arrived at the scene within approximately 30 minutes after getting the text, and remained at the site until there was complete clearance.

20. Mr. LeMaster testified that his employees are trained in Sunshine 811 procedures. "[T]hey don't dig without having locates." He surmised that Mr. Plascencia thought he was doing a good thing by using the trackhoe to remove a tree which was in

the center of a staked driveway at the job site. Mr. Plascencia was not instructed to remove the tree. In fact, the only work to be done that day was the placement of silt fences.

21. Prior to this incident, Medalist had never hit any underground lines and always contacted Sunshine 811 before digging. Mr. LeMaster testified that Mr. Plascencia was immediately terminated for not following company policy and procedures.

Sunshine 811

22. Lance Horton is the manager for Pipeline Safety & Occupational Services at Peoples Gas. Mr. Horton also served on the Board of Directors of Sunshine 811. He explained that the Sunshine 811 call and locate procedure is "a damage prevention program in the effort . . . to protect underground facilities, not just gas but also electric, communication facilities, water, [and] sewer." It is important to prevent "incidents such as this," which put utility employees, first responders, and members of the public in peril.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction in this section 556.116 proceeding to determine the facts and law concerning an alleged incident. See § 556.116(3), Fla. Stat. (2017).

24. Medalist's attempt to remove the tree without a prior call to Sunshine 811 before digging is a violation of section 556.107(1) (a).

25. The gas main ruptured by Medalist is a "high-priority subsurface installation" as that term is defined in section 556.116(1) (b).

26. Rupture of the gas main was an "incident" as that term is defined in section 556.116(1) (c). The incident resulted in property damage and service-restoration costs in excess of \$50,000.00.

27. The preponderance of the evidence proved that Medalist's violation of section 556.107(1) (a) was a proximate cause of the incident.

28. Under section 556.116(3), a fine may be imposed by DOAH on the violator in an amount not to exceed \$50,000.00. See § 556.116(3) (c), Fla. Stat. (2017). The fine is payable to the Sunshine 811 system and the findings in this proceeding may not be used in any civil action. See § 556.116(3) (e) and (f), Fla. Stat. (2017).

29. Thus, the purpose of this proceeding and the fine relates to the stated legislative intent of chapter 556, which is "to provide access for excavating contractors and the public to provide notification to the system [Sunshine 811] of their intent to engage in excavation or demolition." See § 556.101(2), Fla.

Stat. (2017). This “[a]ids the public by preventing injury to persons or property and the interruption of services resulting from damage to an underground facility.” See § 556.101(3), Fla. Stat. (2017).

30. Under the totality of the circumstances, including the service-restoration costs, the impact on the community, Medalist’s immediate response to the incident, and Medalist’s lack of any prior violations, a fine of \$15,000.00 is imposed.

DISPOSITION

Based on the foregoing findings of fact and conclusions of law, it is

ORDERED that Medalist’s violation of section 556.107(1)(a) was a proximate cause of the incident, and Medalist shall pay a fine in the amount of \$15,000.00 to the Sunshine 811 system.

DONE AND ORDERED this 15th day of May, 2018, in Tallahassee, Leon County, Florida.



FRANCINE M. FFOLKES
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of May, 2018.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.