

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 15, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 11-G-0629 - In the Matter of an Enforcement Proceeding
Against Ciarlo Construction Corp. for Alleged
Violations of 16 NYCRR Part 753 - Protection of
Underground Facilities, in the Service
Territory of KeySpan Gas East Corporation d/b/a
National Grid.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective December 16, 2011)

BY THE COMMISSION:

Respondent Information

Company Name: Ciarlo Construction Corp. (Ciarlo)
Address: 852 Fiske Street
Woodmere, NY 11598

Alleged Violation Specifics

Date of Violation: August 11, 2010
Location: 345 Rockaway Turnpike
Lawrence, N.Y.
Description of
Excavation Work: Powered excavation
Damaged Facilities: 2-inch natural gas main
Alleged Code
Violation(s): 753-3.1(a)(1)

Description of Violation: Failure to provide notice of intent to excavate to the one-call notification system

Notice of Probable Violation (NOPV) Information

Date of NOPV: March 25, 2011
Proposed Penalty: \$1,000
Response: Informal Conference on March 30, 2011

Summary of Information Provided by Respondent

Ciarlo stated that two different contractors had provided notice of intent to excavate to the one-call system for the front side of the building. Ciarlo further stated that the gas facility which was located on the back side of the building was supposed to be abandoned but was in fact live with gas.

Analysis of Evidence

16 NYCRR §753-3.1(a)(1) states:

Before commencing or engaging in any non-emergency excavation or demolition, each excavator shall provide notice of the location and date of the planned excavation or demolition to the one-call notification system serving the vicinity in which the excavation or demolition is to take place.

Staff reviewed the one-call notifications for Rockaway Turnpike since January 1, 2009 and concluded that Ciarlo did not provide notice of intent to excavate to the one-call notification system. Pursuant to 16 NYCRR §753-3.1(a)(1), the entity performing the excavation work is responsible for providing notice of intent to excavate to the one-call notification system.

Determination

We find that Ciarlo Construction Corp. did commit a violation of 16 NYCRR §753-3.1(a)(1), which resulted in damage

to a 2-inch natural gas main. While the Respondent has no history of prior violations, in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$1,000 is appropriate for this violation.

We also strongly encourage the Respondent to contact DigNet of New York City & Long Island (718-350-1670) to request a training session covering the use of the one-call notification system and Part 753 requirements. The principals of the company, any employees involved in excavation work, and any support staff that might be involved in making notifications to the one-call center, would benefit from such training.

The Commission orders:

1. A penalty of \$1,000 is determined against Ciarlo Construction Corp. pursuant to §119(b)(8) of the Public Service Law.

2. Ciarlo Construction Corp. is directed to remit, by certified check payable to the "Department of Public Service" the sum of \$1,000 in payment of the penalty determined. The \$1,000 sum is subject to Section 18 of the State Finance Law and shall be deposited into the underground facilities safety training account. The check shall be addressed to:

Ms. Carol Gnacik
Director of Finance and Budget
Department of Public Service
Three Empire State Plaza
16th Floor
Albany, N.Y. 12223-1350

3. If the check is not received within 30 days after issuance of this Order, Staff is authorized to refer the case to the New York State Department of Law with a request that an action to collect the determined penalty be brought in a court of competent jurisdiction.

4. The proceeding is continued, pending compliance with ordering clause 2, following which it should be closed.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary