

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 18, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 17-G-0320 - In the Matter of an Enforcement Proceeding
Against Yaboo Fence Co., Inc. for Alleged
Violations of 16 NYCRR Part 753 - Protection
of Underground Facilities, in the Service
Territory of Central Hudson Gas & Electric
Corporation.

ORDER GRANTING PETITION FOR RECONSIDERATION

(Issued and Effective January 25, 2018)

BY THE COMMISSION:

Respondent Information

Company Name: Yaboo Fence Co., Inc. (Yaboo Fence)
Address: 95 West Nyack Way
West Nyack, NY 10994

Alleged Violation Specifics

Date of Violation: September 22, 2016
Location: 610 Little Britain
New Windsor, NY
Description of
Excavation Work: Installing fence
Affected Facility: Natural gas main
Alleged Code
Violation: 753-3.1(a)(1)

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

Analysis of Evidence

On July 24, 2017, the Commission issued an Order Determining Penalty and Directing Payment against Yaboo Fence for a violation of 16 NYCRR §753-3.1(a)(1) at 610 Little Britain, New Windsor (July 24 Order). The July 24 Order stipulated that a penalty of \$10,000 be determined and provided Yaboo Fence 30 days to remit payment.

On July 31, 2017, Yaboo Fence submitted a letter that was treated as a Petition for Reconsideration of the July 24 Order (Petition).¹ The Petition addressed the "obvious and regrettable delay in responding to the violation," further stating that Yaboo Fence "did not prioritize this paperwork, as [it] should have" and apologized for this mistake. The Petition further stated that Yaboo Fence is "a small local company," understands the importance of providing notice to the one-call system, has since revised its procedures to prevent re-occurrence of its failure to provide notice of intent to excavate, has shared this "potentially dangerous" error as a "lessons learned" with its employees, and reiterated that it did not cause damage to the affected natural gas facility. Yaboo Fence has agreed to complete a training session with Dig Safely NY, and is hopeful that the Commission would reduce the July 24 Order's penalty from \$10,000 to \$5,000.

¹ Pursuant to 16 NYCRR §3.7, a Petition for Rehearing must be brought within 30 days of issuance of a Commission order and alleges an error of law or fact warranting rehearing. Petitions for Clarification ask the Commission, in its discretion, to change the original order.

The Commission grants Yaboo Fence's Petition and approves the Consent Order, which provides for a reduced penalty and training.

Mitigating Factors to Support Reduced Penalty and Training

1. Yaboo Fence Co., Inc. addressed the "obvious and regrettable delay in responding to the violation," further stating that it "did not prioritize this paperwork, as [it] should have" and apologized for this mistake.

2. Yaboo Fence Co., Inc. understands the importance and gravity of providing notice of intent to excavate to the one-call notification system

3. Yaboo Fence Co., Inc. has used this violation as an educational opportunity for its employees and has since revised its procedures to prevent re-occurrence.

4. Yaboo Fence Co., Inc. has remitted \$5,000 of the previously determined \$10,000 penalty.

5. Yaboo Fence Co., Inc. has committed to take remedial actions to prevent re-occurrence and has completed a training session with Dig Safely NY.

Determination

We find that Yaboo Fence Co., Inc. did commit a violation of 16 NYCRR §753-3.1(a)(1). In consideration of the nature, circumstances and gravity of the violation, we grant Yaboo Fence Co., Inc.'s Petition for Reconsideration and approve the Consent Order for a reduced penalty and training.

The Commission orders:

1. The Petition for Reconsideration submitted by Yaboo Fence Co., Inc. is granted.
2. Yaboo Fence Co., Inc.'s submission of a \$5,000 penalty satisfies the penalty requirement in this Case.
3. The proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary