

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 13, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 16-G-0507 - In the Matter of an Enforcement Proceeding
Against Aspen Landscaping Contracting, Inc.
for Alleged Violations of 16 NYCRR Part 753 -
Protection of Underground Facilities, in the
Service Territory of Consolidated Edison
Company of New York, Inc.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective October 21, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Aspen Landscaping Contracting, Inc.
(Aspen Landscaping)

Address: 1121 Springfield Road
Union, NJ 07083

Alleged Violation Specifics

Date of Violation: October 16, 2015

Location: 5435 Post Road
Bronx, NY

Description of
Excavation Work: Planting trees

Damaged Facilities: 1-inch plastic high-pressure natural
gas service

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

On or about December 4, 2015, copies of the NOPV were mailed to the Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. While the certified mail receipt was signed and returned, the regular mail was not.

Proposed Penalty: \$2,500

Response: Letter dated December 22, 2015

Summary of Information Provided by Respondent

Aspen Landscaping stated that it was contracted to replace damaged trees which were a result of Hurricane Sandy. Aspen Landscaping provided notifications for the addresses given; however, one address was incorrect. Aspen Landscaping received a "Clear/No Conflict" from Consolidated Edison Company of New York, Inc. as a response to this incorrect address. Aspen Landscaping proceeded with excavation and damaged the service.

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.

Pursuant to 16 NYCRR §753-3.1(a)(1), the entity performing the excavation work is responsible for providing

notice of the precise location where it intends to excavate to the one-call notification system.

Determination

We find that Aspen Landscaping Contracting, Inc. did commit a violation of 16 NYCRR §753-3.1(a)(1), which resulted in damage to a 1-inch plastic high-pressure natural gas service. In consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$2,500 is appropriate for this violation.

We also strongly encourage the Respondent to contact New York 811 (516-639-8606) 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 \$2,500 is determined against Aspen Landscaping Contracting, Inc. pursuant to §119-b(8) of the Public Service Law.

2. Aspen Landscaping Contracting, Inc. is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$2,500 in payment of the penalty determined. The \$2,500 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)

KATHLEEN H. BURGESS
Secretary