

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-0508 - In the Matter of an Enforcement Proceeding
Against Ardent Site Development Corp. 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: Ardent Site Development Corp.
Address: P.O. Box 729
Holmes, NY 12531

Alleged Violation Specifics

Date of Violation: August 4, 2015
Location: 48 Burling Lane
New Rochelle, NY
Description of
Excavation Work: Drainage
Damaged Facility: Plastic natural gas service valve
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

Notice of Probable Violation (NOPV) Information

On or about February 2, 2016, 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 February 12, 2016

Summary of Information Provided by Respondent

Ardent Site Development Corp. stated that it was sub-contracted to perform drainage work and provided the one-call notification that was made by the general contractor for this project. Ardent Site Development Corp. further stated that this damage was "caused by a young over zealous operator who failed to follow direction."

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 actually performing the excavation work is responsible for providing notice of intent to excavate to the one-call notification system.

Determination

We find that Ardent Site Development Corp. did commit a violation of 16 NYCRR §753-3.1(a)(1), which resulted in damage to a plastic natural gas service valve. 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 \$2,500 is appropriate for this violation.

We also strongly encourage the Respondent to contact Dig Safely New York (315-437-7394) 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 Ardent Site Development Corp. pursuant to §119-b(8) of the Public Service Law.

2. Ardent Site Development Corp. 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