

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-0525 - In the Matter of an Enforcement Proceeding
Against Clearwater Enterprises, Inc. for
Alleged Violations of 16 NYCRR Part 753 -
Protection of Underground Facilities, in the
Service Territory of The Brooklyn Union Gas
Company d/b/a National Grid NY.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective October 24, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Clearwater Enterprises, Inc.
Address: 162-01 Cross Bay Boulevard
Howard Beach, NY 11414

Alleged Violation Specifics

Date of Violation: October 17, 2015
Location: 26 Falmouth Street
Bay Ridge, NY
Description of
Excavation Work: Building construction
Damaged Facility: 1¼-inch plastic natural gas service
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 May 19, 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: Did not respond

Summary of Information
Provided by Respondent: Not Applicable

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.

No response to the NOPV was received. The NOPV stated that failure to respond would be deemed acceptance of the facts as alleged, in which case the proposed penalty would be determined.

Determination

We find that Clearwater Enterprises, Inc. did commit a violation of 16 NYCRR §753-3.1(a) (1), which resulted in damage to a 1¼-inch plastic natural gas service. 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 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 Clearwater Enterprises, Inc. pursuant to §119-b(8) of the Public Service Law.

2. Clearwater Enterprises, 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