

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-0518 - In the Matter of an Enforcement Proceeding
Against Clifton Park Landscape, Inc. for
Alleged Violations of 16 NYCRR Part 753 -
Protection of Underground Facilities, in the
Service Territory of Niagara Mohawk Power
Corporation, d/b/a National Grid.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective October 24, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Clifton Park Landscape, Inc.
Address: P.O. Box 4550
Clifton Park, NY 12065

Alleged Violation Specifics

Dates of Violations: March 25 and April 22, 2015
Locations: 628 Clifton Park Center Road
Clifton Park, NY
4 Howe Street
Saratoga Springs, NY
Description of
Excavation Work: Removing a tree stump and trenching for
the repair of a water pipeline
Damaged Facilities: Two 1-inch plastic high-pressure
natural gas services

Alleged Code

Violations: Two occurrences of 753-3.1(a)(1)

Description of

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

Notice of Probable Violation (NOPV) Information

On or about May 14, 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 Penalties: \$12,500

Responses: Letters dated May 25, 2015, and February 2, 2016

Summary of Information Provided by Respondent

For the violation that occurred on March 25, 2015, Clifton Park Landscape, Inc. stated that it was performing work for the homeowner, who was acting as the general contractor for this project. Clifton Park Landscape, Inc. further stated that it used mechanized equipment to remove a tree stump and that the homeowner provided notice of intent to excavate to the one-call notification system.

Similarly, for the violation that occurred on April 22, 2015, Clifton Park Landscape, Inc. stated that it verbally confirmed with the general contractor that it provided notice of intent to excavate to the one-call notification system. Clifton Park Landscape, Inc. subsequently struck and damaged the natural gas 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 actually performing the excavation work is responsible for providing notice of intent to excavate to the one-call notification system.

Determination

We find that Clifton Park Landscape, Inc. did commit two separate violations of 16 NYCRR §753-3.1(a) (1), which resulted in damage to two 1-inch plastic high-pressure natural gas services. Under General Business Law §765(1) (a), entities that fail to comply with the requirements of 16 NYCRR Part 753 are subject to a civil penalty of \$2,500 for the first offense and an additional \$10,000 for each succeeding violation that occurs within a 12-month period. Therefore, in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$12,500 is appropriate for these violations.

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 \$12,500 is determined against Clifton Park Landscape, Inc. pursuant to §119-b(8) of the Public Service Law.

2. Clifton Park Landscape, Inc. is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$12,500 in payment of the penalty determined. The \$12,500 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