

CONSENT ORDER APPROVAL

CASE: 22-G-0511 - In the Matter of an Enforcement Proceeding Against Restani Construction 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.

Company Name: Restani Construction Corp.

Principal Contact: Frank Acocella

Address: 42-04 Berrian Boulevard
Astoria, New York 11105

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

Date of Violation: November 16, 2021

Damaged Facility: 1-inch medium-pressure steel drip riser

Date of NOPV: January 24, 2022

Response: An informal conference on February 18, 2022

Proposed Penalty: \$500

Circumstances

On January 5, 2022, Department of Public Service Staff (Staff) received a no-call report from Consolidated Edison Company of New York, Inc (Con Edison) stating that Restani Construction Corp. (Restani) had damaged a 1-inch steel riser at 3000 Westchester Avenue, Harrison, New York. Staff performed a one-call ticket search for notifications provided for excavation work at 3000 Westchester Avenue, Harrison, from November 16,

2020, to November 17, 2021. Staff could not locate a notification of intent to excavate by Restani at the work area.

During an informal conference on February 18, 2022, Restani stated that a former employee was responsible for providing notification at the work area. Restani admitted to not have a one-call ticket. Restani stated that the damaged facility was unmarked and was damaged while milling.

Con Edison stated that it did not mark the work area. Con Edison reported that Restani was milling to replace a roadway, by removing a layer of the roadway and replacing it with fresh pavement. Restani's statement that it was milling and not excavating is unsupported by 16 NYCRR §753-1.2(j), which states that excavation consists of the movement or removal of earth, rock, and pavement in or on the ground using mechanized equipment. Therefore, milling is deemed to be a form of excavation. Restani failed to provide a notification for the work area. The available evidence supports that Restani committed a violation of §753-3.1(a)(1).

Mitigating Factors to Support a Reduced Penalty

1. Restani Construction Corp. has committed to take remedial actions to prevent re-occurrence and has fully complied with the terms of the Consent Order.
2. Restani Construction Corp. was cooperative throughout the investigation and enforcement proceeding.