

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 19, 2015

COMMISSIONERS PRESENT:

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

CASE 15-G-0605 - In the Matter of an Enforcement Proceeding  
Against Reet Construction Corp. for Alleged  
Violations of 16 NYCRR Part 753 - Protection  
of Underground Facilities, in the Service  
Territory of KeySpan Gas East Corporation  
d/b/a National Grid.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective December 1, 2015)

BY THE COMMISSION:

Respondent Information

Company Name: Reet Construction Corp. (Reet)  
Address: 6 Joel Place  
Port Washington, NY 11501

Alleged Violation Specifics

Dates of Violations: April 12, 2013; and  
April 15, 2013  
Locations: 50 Avondale Street  
Valley Stream, NY  
58 Avondale Street  
Valley Stream, NY  
Description of  
Excavation Work: Both were curbs and sidewalks  
Damaged Facilities: Two separate 1¼-inch natural gas  
services

Alleged Code  
Violation(s): Two separate instances 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

Date of NOPV: April 15, 2014

Proposed Penalty: \$20,000

Response: Letter dated April 24, 2014

Summary of Information Provided by Respondent

Reet provided a one-call notification for its work and claimed that the root causes of these damages were due to the facilities being buried at a shallow depth.

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.

Staff reviewed the one-call ticket and concluded that the commencement date for excavation was April 16, 2013. The first damage occurred on April 12, 2013, and the second on April 15, 2013. Pursuant to 16 NYCRR §753-3.1(a)(1), the entity performing the excavation work is responsible for providing notice of intent to excavate to the one-call notification system. This notice shall be served at least two but not more than ten working days, not including the date of the call, before the commencement date of the excavation or demolition.

Determination

We find that Reet Construction Corp. did commit two separate violations of 16 NYCRR §753-3.1(a)(1), which resulted in damage to two separate 1¼-inch natural gas services. Under General Business Law §765.1, 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. On July 26, 2013, the Commission issued and made effective an Order Determining Penalty and Directing Payment against Reet Construction Corp. for a violation of 16 NYCRR §753-3.1(d)(2), which occurred on October 12, 2012. Therefore, in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$20,000 is appropriate for these two violations.

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 \$20,000 is determined against Reet Construction Corp. pursuant to §119-b(8) of the Public Service Law.

2. Reet Construction Corp. is directed to remit, by certified check payable to the "Department of Public Service" the sum of \$20,000 in payment of the penalty determined. The \$20,000 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  
16<sup>th</sup> 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