

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 21, 2021

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 20-G-0652 - In the Matter of an Enforcement Proceeding
Against H&L Contracting, LLC 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 January 28, 2021)

BY THE COMMISSION:

Respondent Information

Company Name: H&L Contracting, LLC
(HLC)

Address: 38 Homan Avenue
Bay Shore, NY 11706

Alleged Violation Specifics

Date of Violations: June 29, 2019

Locations: 215 Ridge Road and 77 & 93 Bucknell
Drive, Valley Stream, NY

Description of
Excavation Work: Roadway work

Damaged Facilities: Two 1¼-inch natural gas services

Alleged Code

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

Description of

Violations: two separate occurrences of failure to provide notice of intent to excavate to the one-call notification system

Notice of Probable Violation (NOPV) Information

On or about February 3, 2020, copies of the NOPV were mailed to the Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. The certified mail receipt was signed and returned.

Proposed Penalty: \$20,000

Response: Letter dated February 26, 2020

Summary of Information Provided by Respondent:

HLC stated that it was working on this roadway construction along with United Paving Corp. HLC stated that it was responsible of the milling portion of the roadway. HLC stated that the underground utilities were marked by the utility locator, and that the damaged gas services were buried at a depth of nine inches.

Analysis of Evidence

Pursuant to 16 NYCRR §753-3.1(a)(1), an entity performing excavation work is responsible for providing notice of intent to excavate to the one-call notification system. Specifically, 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.

Department of Public Service Staff (Staff) performed a one-call notification system ticket search and did not find a ticket called in by HLC for both locations at 215 Ridge Road and 77 & 93 Bucknell Drive, Valley Stream, New York for June 29, 2019. Therefore, HLC, twice in one day, at two different locations, used excavation machinery, without proper notification to the one-call system in violation of 16 NYCRR §753-3.1(a)(1).

In the NOPV letter on September 9, 2020, Staff recommended the maximum penalty of up to \$20,000. No response to the revaluation NOPV letter was received.

Determination

The Commission finds that H&L Contracting, LLC committed two separate violations of 16 NYCRR §753-3.1(a)(1), which resulted in damages to two 1¼-inch natural gas services. In reaching this determination, the Commission relied on: (1) a one-call notification system ticket search by Staff, (2) a Staff's investigative report, (3) a no-call report submitted by the operator to Staff, (4) a damage investigation report provided by the operator to Staff, (5) statement made by respondent to Staff, and (6) photographs in the record.

The evidence relied on by the Commission showed that Respondent damaged a natural gas pipeline, thus releasing gas which created a threat to public safety and could have caused injury or even death. Further, Respondent failed to respond to the offer. 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 up to \$2,500 for the first offense and an additional civil penalty of up to \$10,000 for each succeeding violation that occurs within a 12-month period. The maximum penalty for which H&L Contracting, LLC is liable under

the statute, therefore, is \$10,000 per violation. In this case, on September 27, 2020, the Commission issued an Order Determining Penalty and Directing Payment against H&L Contracting, LLC for violating §753-3.6(b) on July 18, 2019. Therefore, a penalty of \$10,000 each is appropriate for these two violations. In consideration of the nature, circumstances and gravity of the violations, the Commission determines a penalty of \$20,000 is appropriate for this violation.

The Commission also strongly encourages 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 H&L Contracting, LLC pursuant to Public Service Law §119-b(8).

2. H&L Contracting, LLC 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 State Finance Law §18 and shall be deposited into the underground facilities safety training account. The check shall be addressed to:

Mr. Curtis Funk
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, Department of Public Service 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)

MICHELLE L. PHILLIPS
Secretary