

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 17, 2016

COMMISSIONERS PRESENT:

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

CASE 16-G-0091 - In the Matter of an Enforcement Proceeding
Against Paving Solutions Inc. for Alleged
Violations of 16 NYCRR Part 753 - Protection
of Underground Facilities, in the Service
Territory of Central Hudson Gas & Electric
Corporation.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective March 28, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Paving Solutions Inc.
Address: 3 Koznits Drive - Suite #302
Monroe, NY 10950

Alleged Violation Specifics

Dates of Violations: March 30, 2015
Location: 18 Front Street
Beacon, NY
Description of
Excavation Work: Installation of water main
Damaged Facility: 2-inch steel coated high-pressure
natural gas main
Alleged Code
Violations: 753-3.5 and 753-3.10(b)

Descriptions of
Violations: Failure to preserve staking, marking,
or other designations; and
Failure to notify operator of damage.

Notice of Probable Violation (NOPV) Information

Date of NOPV: April 29, 2015
Proposed Penalty: \$12,500
Response: Informal conference on June 18, 2015

Summary of Information Provided by Respondent

Paving Solutions Inc. stated that, due to multiple contractors working on-site, it provided re-notification to the one-call center on a bi-weekly basis. Paving Solutions Inc. provided those ticket numbers and further explained that it intended to notify the facility operator of the coating damages identified at the end of the business day.

Analysis of Evidence

16 NYCRR §753-3.5 states:

Starting on the stated commencement date given in the excavator's notice to the one-call notification system, the excavator shall be responsible for protecting and preserving the staking, marking or other designation until no longer required for proper and safe excavation or demolition work at or near the underground facility.

16 NYCRR §753-3.10(b) states:

In the event of contact with or damage to an underground facility, the excavator shall immediately notify the operator of the facility.

Staff performed an on-site investigation which concluded that there were no facility markings present at the time of the damage. Staff confirmed that the markings originally placed were accurate by reviewing the photographs

provided by the locator. In addition, the one-call tickets, as provided by Paving Solutions Inc., all had commencement dates after the date of the damage had.

Lastly, with respect to the intent of Paving Solutions Inc. to report the coating damage at the end of the business day, 16 NYCRR §753-3.10(b) requires excavators to "immediately" notify the operator in the event of contact with or damage to an underground facility.

Determination

We find that Paving Solutions Inc. did commit violations of 16 NYCRR §753-3.5, and §753-3.10(b), which resulted in damage to a 2-inch steel coated high-pressure natural gas main. 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. Therefore, in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$12,500 is appropriate for this violation.

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 Paving Solutions Inc. pursuant to §119-b(8) of the Public Service Law.

2. Paving Solutions 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