

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 15, 2026

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 26-G-0006 - In the Matter of an Enforcement Proceeding
Against Emerald Services of W N Y Inc for
Alleged Violations of 16 NYCRR Part 753 -
Protection of Underground Facilities, in the
Service Territory of National Fuel Gas
Distribution Corporation.

ORDER DENYING PETITION FOR REHEARING

(Issued and Effective October 23, 2026)

BY THE COMMISSION:

INTRODUCTION

On August 14, 2025, while excavating for driveway
replacement at 612 Crescent Avenue, Buffalo, New York, Emerald
Services of W N Y Inc¹ (Respondent) placed at risk a high-
pressure plastic gas main.

Department of Public Service staff (staff)
investigated the incident and found evidence that Respondent, on

¹ Emerald Services of W N Y Inc, 1504 Bailey Avenue, Buffalo,
New York 14212.

August 14, 2025, did in fact excavate without notification to the one-call system.

As a result, on October 1, 2025, staff issued a Notice of Probable Violation (NOPV) to Respondent via United States Postal Service First-Class Mail. Respondent requested for and received the evidence for the NOPV along with a 30-day extension to respond. The NOPV stated that failure to respond would be deemed acceptance of the facts as alleged, in which case a penalty would be determined.

On February 20, 2026, the Commission issued an Order Determining Penalty and Directing Payment for \$3,500 against Emerald Services of W N Y Inc.

On February 25, 2026, Emerald Services of W N Y Inc filed a Petition for Rehearing (Petition). The Petition acknowledged receipt of the evidence, that it did not consider it evidence but rather a report, and thought that this matter was resolved. The Petition stated that Emerald Services of W N Y Inc has excavated for over 20 years without being issued a violation, that it uses the one-call system frequently, and that it was hauling spoil piles, not excavating.

National Fuel Gas Distribution Corporation (NFGDC) provided photographs which depicted a mini-excavator and skid steer at the work site, a truck labeled with the Respondent's insignia used to transport the mini-excavator and skid steer, a truck with the Respondent's insignia used to haul soil piles, and the removal of the existing driveway.

Pursuant to 16 NYCRR §753-1.2(i), excavation is defined as any operation for the purpose of movement or removal of earth, rock, pavement or other materials in or on the ground by the use of mechanized equipment or by blasting, including but not limited to, digging, auguring, backfilling, boring, drilling, grading, plowing in, pulling in, fence post or pile

driving, tree root removal, saw cutting, jack hammering, trenching, and tunneling. The photographs support that the Respondent was performing excavation work, in addition to hauling spoil piles, which is further supported by NFGDC's observations of the same.

Pursuant to §753-3.1(a)(1), before commencing or engaging in any nonemergency 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. The evidence supports that Emerald Services of W N Y Inc failed to provide notice of intent to excavate to the one-call notification system.

On April 27, 2026, staff offered to resolve this matter with a reduced penalty contingent upon the successful completion of a training session with UDig NY.

On April 30, 2026, the Respondent contacted staff and reiterated that it was hauling soil piles. Staff requested for the contact with the company who allegedly hired the Respondent to haul soil piles.

On May 6, 2026, the Respondent contacted staff and reiterated that it was hauling soil piles and that it would provide the contact information for the responsible company.

On May 6, 2026, Emerald Services of W N Y Inc responded via email stating that it is declining the offer for a reduced penalty and training, and failed to provide the contact information for the responsible company.

DETERMINATION

Emerald Services of W N Y Inc identified no error of law or fact, nor any new circumstances, that would warrant a different determination. Accordingly, the Commission denies the

Petition and determines a penalty of \$3,500 against Emerald Services of W N Y Inc for a violation of 16 NYCRR §753-3.1(a)(1).

The Commission orders:

1. The Petition for Rehearing submitted by Emerald Services of W N Y Inc is denied.
2. A penalty of \$3,500 is determined against Emerald Services of W N Y Inc pursuant to Public Service Law §119-b(8).
3. Emerald Services of W N Y Inc is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$3,500 in payment of the penalty determined. The \$3,500 sum is subject to State Finance Law §92-S and shall be deposited into the environmental defense fund. The check shall be addressed to:

Laura Ferraro
Director of Finance and Budget
Department of Public Service
Three Empire State Plaza, 16th Floor
Albany, N.Y. 12223-1350

4. 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.
5. The proceeding is continued, pending compliance with Ordering Clause 3, following which it should be closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary