

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-0104 - In the Matter of an Enforcement Proceeding  
Against Infinity Enterprises for Alleged  
Violations of 16 NYCRR Part 753 - Protection  
of Underground Facilities, in the Service  
Territory of Niagara Mohawk Power Corporation,  
d/b/a National Grid.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective March 29, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Infinity Enterprises  
Address: 43 Kelly Road  
Fulton, NY 13069

Alleged Violation Specifics

Dates of Violations: November 10, 2015, and  
December 14, 2015

Locations: 137 East Brighton Avenue  
Syracuse, NY, and

136 Chester Street  
Syracuse, NY

Descriptions of  
Excavation Work: Building demolition

Affected Facilities: 6-inch and 4-inch steel natural gas  
mains

Alleged Code  
Violations: 753-3.1(a)(1)

Descriptions of  
Violation: Failure to provide notice of intent to excavate to the one-call notification system

Notice of Probable Violation (NOPV) Information

Dates of NOPVs: December 4, 2015, and  
January 12, 2016

Proposed Penalties: \$12,500

Response: Did not respond

Summary of Information  
Provided by Respondent: Not Applicable

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.

No response to either of the NOPVs were received. The NOPVs stated that failure to respond would be deemed acceptance of facts as alleged, in which case the proposed penalties would be determined.

Determination

We find that Infinity Enterprises did commit two separate violations of 16 NYCRR §753-3.1(a)(1), which affected both a 6-inch and 4-inch steel natural gas mains and resulted in damage to the 4-inch steel 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. 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 Infinity Enterprises pursuant to §119-b(8) of the Public Service Law.

2. Infinity Enterprises 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  
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