STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 17, 2020

COMMISSIONERS PRESENT:

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

CASE 19-G-0572 - In the Matter of an Enforcement Proceeding Against Morsch Pipeline, Inc. for Alleged Violations of 16 NYCRR Part 753 - Protection of Underground Facilities, in the Service Territory of New York State Electric & Gas Corporation.

CASE 20-G-0416 - In the Matter of an Enforcement Proceeding Against Morsch Pipeline, Inc. for Alleged Violations of 16 NYCRR Part 753 - Protection of Underground Facilities, in the Service Territory of New York State Electric & Gas Corporation.

CASE 20-G-0417 - In the Matter of an Enforcement Proceeding Against Morsch Pipeline, Inc. for Alleged Violations of 16 NYCRR Part 753 - Protection of Underground Facilities, in the Service Territory of New York State Electric & Gas Corporation.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective September 24, 2020)

BY THE COMMISSION:

Respondent Information

Company Name:	Morsch Pipeline, Inc. (MPI)
Address:	3929 South Avon Road Avon, NY 14414

Alleged Violations Specifics

Dates of Violations:	March 21, 2019; June 26, 2019; and September 5, 2019
Locations:	201 Hamilton Street; 105 Lincoln Street; and Washington Street & Scott Street, all located in Wayland, NY
Description of Excavation Works:	Water main installation; Water service repair/installation; and Cutting & capping a water line
Damaged Facilities:	Two 2-inch plastic natural gas mains and a 4-inch plastic high-pressure natural gas main
Alleged Code Violations:	753-3.1(a)(2) and two separate occurrences of 753-3.8
Description of Violations:	Failure to provide proper notice of intent to excavate to the one-call notification system and two separate failures to maintain four inches of clearance between powered equipment and a buried facility.

Notice of Probable Violation (NOPV) Information

CASE 19-G-0572: On or about July 8, 2019, copies of the NOPV were mailed to Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. The certified mail receipt was signed and returned.

CASE 20-G-0416: On or about September 12, 2019, copies of the NOPV were mailed to Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. The certified mail copy was returned unclaimed, and the regular mail copy was not returned.

CASE 20-G-0417: On or about October 10, 2019, copies of the NOPV were mailed to Respondent by both United States

Postal Service First Class Mail and certified mail, return receipt requested. The certified mail copy was returned unclaimed, and the regular mail copy was not returned.

Proposed Penalty: $22,500

Primary Contact: Mr. Stephen R. Morsch, Sr.

Response: Letter dated September 10, 2019

Summary of Information Provided by Respondent:

CASE 19-G-0572: MPI admitted that the gas main was mistakenly struck and damaged, and that the gas main markings should have stated in yellow paint that it was a tee.

CASE 20-G-0416: MPI stated that there was lack of communication between MPI's drillling crew and that there was not a proper stake out at the location. MPI admitted that itstruck and damaged the gas main while using mechanized equipment for excavation.

CASE 20-G-0417: MPI stated that the damage occurred when the backhoe operator asked the spotter to clear the way, so the operator could proceed to clean out the debris.

Analysis of Evidence

16 NYCRR §753-3.1(a)(2) states:

> Such 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.

16 NYCRR §753-3.8 states:

> After verifying the location of an underground facility, the excavator shall not employ powered or mechanical excavating equipment closer than four inches in any direction from the staked, marked or otherwise designated or known outside diameter or perimeter of such facility or its protective coating unless agreed to in writing by the operator of the affected underground facility.

CASE 19-G-0572: Department of Public Service Staff (Staff) conducted an on-ste investigation and confirmed that the one-call ticket (03199-040-001) that MPI provided for the location where the damage occurred, had a start date of March 22, 2019. MPI commenced excavation on March 21, 2019.

CASE 20-G-0416: Staff conducted an on-site investigation and confirmed that MPI had a valid one-call ticket and successfully exposed the marked gas main by means of a hand-dug test hole. Staff confirmed that MPI failed to maintain the four-inches clearance between the excavator bucket and the exposed gas main while excavating around the water service.

CASE 20-G-0417: Staff conducted an on-site investigation and confirmed that MPI had a valid one-call ticket, that the markings were accurate and visible, and that MPI exposed the marked gas main by means of a hand dug test hole. Staff reported that MPI admitted that while using the backhoe to remove additional material, MPI struck and damaged the gas main.

On April 18, 2020, Staff offered to resolve these three matters with reduced penalties provided MPI completed training with Dig Safely New York. MPI did not respond to the offer.

Determination

The Commission finds that Morsch Pipeline, Inc. committed one violation of 16 NYCRR §753-3.1(a)(2) and two separate violations of 16 NYCRR §753-3.8, which resulted in damage to a 2-inch plastic high-pressure natural gas main, and two separate 4-inch plastic high-pressure natural gas mains. In reaching this determination, the Commission relied on: (1) Staff’s investigation report, (2) A one-call notification system

ticket search by Staff, (3) Statements made by Respondent to Staff, and (4) Photographs in the record.

The evidence relied on by the Commission showed that Respondent damaged a natural gas pipelines, 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 up to an additional $10,000 for each succeeding violation that occurs within a 12-month period. The maximum penalty for which Morsch Pipeline, Inc. is liable under the statute, therefore is $22,500. In this case, Morsch Pipeline, Inc. committed a first violation of §753-3.1(a)(2)on March 21, 2019, a second violation of §753-3.8 on June 26, 2019, and a third violation of §753-3.8 on September 5, 2019. In consideration of the nature, circumstances and gravity of the violation, the Commission determines a penalty of $22,500 is appropriate for these violations.

The Commission also strongly encourages 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 $22,500 is determined against Morsch Pipeline, Inc. pursuant to Public Service Law §119-b(8).

2. Morsch Pipeline, Inc. is directed to remit, by certified check payable to the "Department of Public Service,"

the sum of $22,500 in payment of the penalty determined. The $22,500 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