

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 11, 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-0294 - In the Matter of an Enforcement Proceeding
Against Bothar Construction, LLC for Alleged
Violations of 16 NYCRR Part 753 - Protection of
Underground Facilities, in the Service
Territory of Corning Natural Gas Corporation.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective June 17, 2026)

BY THE COMMISSION:

BACKGROUND

On September 22, 2025, while excavating to install
sidewalks at 174 North Place, Corning, New York, Bothar
Construction, LLC¹ (Respondent) damaged a 2-inch high-pressure
plastic gas main.

New York has implemented a program to protect
underground utility infrastructure, which includes regulations
in 16 NYCRR Part 753. Specifically, 16 NYCRR §753-3.8 states:
"After verifying the location of an underground facility, the

¹ Bothar Construction, LLC, 170 East Service Highway, P.O. Box
961, Binghamton, New York 13901-1656.

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. Any such written agreement shall be furnished to the excavator by the operator, upon request."

Department of Public Service staff (staff) investigated the incident and found evidence that Respondent, on September 22, 2025, did in fact excavate within four inches of the gas main.

As a result, on September 24, 2025, staff issued a Notice of Probable Violation (NOPV) to Respondent via United States Postal Service First-Class Mail. A response to the NOPV was then received. Staff offered to resolve this matter with a reduced penalty of \$1,750 provided Bothar Construction, LLC complete training with UDig NY (Consent Order Agreement). Staff received \$1,700 remitted toward a penalty but Bothar Construction, LLC failed to complete training with UDig NY, thereby, failing to comply with the terms of the Consent Order Agreement.

LEGAL AUTHORITY

Under General Business Law §765(1)(a), for incidents that occurred prior to May 9, 2025, entities that failed 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 occurred within a 12-month period. Under General Business Law §765(1)(a), for incidents that occurred on or after May 9, 2025, entities that failed to comply with the requirements of 16 NYCRR Part 753 are subject to a civil penalty

of up to \$4,375 for the first offense and an additional civil penalty of up to \$17,500 for each succeeding violation that occurred within a 12-month period. Consistent with Public Service Law §119-b(8), in determining the civil penalty amount in this case, the Commission shall consider the nature, circumstances, and gravity of the violation, history of prior violations, effect on public health, safety, or welfare, and other considerations as necessary.

DETERMINATION

The Commission finds that Bothar Construction, LLC committed a violation of 16 NYCRR §753-3.8. In assessing a penalty, the Commission takes notice of the following considerations.

The one-call notification system serves a fundamental and indispensable role in the protection of underground facilities in the State. Absent a one-call ticket, the excavator lacks knowledge of the locations of buried utility infrastructure. Likewise, utilities would not be aware that an excavator may be endangering their facilities. Engaging in mechanized digging without knowing what lies beneath the surface can lead to disastrous consequences, endanger people, property, and the environment, and disrupt utility service. Damage to a gas line can cause an explosion or fire. By failing to comply with the requirements of 16 NYCRR §753-3.8, Bothar Construction, LLC needlessly and carelessly created a significant risk to public safety. Thus, the gravity of this violation is substantial. The penalty assessed seeks to sanction Bothar Construction, LLC and deter it and others from similar conduct in the future.

To quantify the total amount of gas lost due to avoidable pipeline damage, starting in late 2023, staff began

collecting and calculating gas emissions estimates from pipeline damage incidents. For this incident, staff estimated 59,760 cubic feet of gas lost to the atmosphere. In addition, Respondent has no history of adjudicated prior violations that occurred within the preceding 12-month period. Therefore, the statutory maximum civil penalty allowable for this offense is \$4,375. Here, Respondent engaged in activity that resulted in damage to a gas pipeline that caused the release of gas, thus creating a threat to public safety, health, and welfare. In consideration of the nature, circumstances, and gravity of the violation, the Commission determines a penalty of \$4,375 is appropriate for this violation.

In reaching this determination, the Commission relied on evidence collected which includes a one-call notification system ticket search by staff, staff's investigative report, an enforcement request submitted by the operator to staff, a damage investigation report provided by the operator to staff, and photographs in the record.

The Commission also strongly encourages Respondent to contact UDig NY (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 \$4,375 is determined against Bothar Construction, LLC pursuant to Public Service Law §119-b(8).
2. Bothar Construction, LLC is directed to remit, by certified check payable to the "Department of Public Service," the remaining sum of \$2,675 in payment of the penalty

determined. The remaining \$2,675 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:

Laura Ferraro
Director of Finance and Budget
Department of Public Service
Three Empire State Plaza, 16th Floor
Albany, NY 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