

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-0296 - In the Matter of an Enforcement Proceeding  
Against Elite Concrete, Inc. for Alleged  
Violations of 16 NYCRR Part 753 - Protection of  
Underground Facilities, in the Service  
Territory of National Fuel Gas Distribution  
Corporation.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective June 17, 2026)

BY THE COMMISSION:

BACKGROUND

On August 20, 2025, while excavating to replace a  
driveway at 180 Kohler Street, Tonawanda, New York, Elite  
Concrete, Inc.<sup>1</sup> (Respondent) placed at risk a low-pressure steel  
gas service.

New York has implemented a program to protect  
underground utility infrastructure, which includes regulations  
in 16 NYCRR Part 753. Specifically, 16 NYCRR §753-3.1(a)(1)

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<sup>1</sup> Elite Concrete, Inc., 153 Beyer Drive, Tonawanda, New York  
14150.

states: "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."

Department of Public Service staff (staff) investigated the incident and found evidence that Respondent, on August 20, 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. A response to the NOPV was received. Staff offered to resolve this matter with a reduced penalty provided the Respondent completed training with UDig NY (Consent Offer). However, Respondent failed to provide a response to the Consent Offer.

#### 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 Elite Concrete, Inc. committed a violation of 16 NYCRR §753-3.1(a)(1). 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 §753-3.1(a)(1), Elite Concrete, Inc. needlessly and carelessly created a significant risk to public safety. Thus, the gravity of this violation is substantial. The penalty assessed seeks to sanction Elite Concrete, Inc. 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 did not calculate a gas loss since the Respondent engaged in activity that did not result in damage to a gas pipeline. 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 did not result in a release of gas or other threats to public health and safety. In consideration of the nature, circumstances, and gravity of the violation, the Commission determines a penalty less than the statutory maximum is appropriate and assesses a penalty of \$3,500 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 \$3,500 is determined against Elite Concrete, Inc. pursuant to Public Service Law §119-b(8).
2. Elite Concrete, 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 protection fund. The check shall be addressed to:

Laura Ferraro  
Director of Finance and Budget

Department of Public Service  
Three Empire State Plaza, 16<sup>th</sup> 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