

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 14, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair  
Gregg C. Sayre  
Diane X. Burman  
James S. Alesi

CASE 18-G-0299 - In the Matter of an Enforcement Proceeding  
Against Able Island Construction Corp. for  
Alleged Violations of 16 NYCRR Part 753 -  
Protection of Underground Facilities, in the  
Service Territory of The Brooklyn Union Gas  
Company d/b/a National Grid NY.

CASE 18-G-0300 - In the Matter of an Enforcement Proceeding  
Against Able Island Construction Corp. for  
Alleged Violations of 16 NYCRR Part 753 -  
Protection of Underground Facilities, in the  
Service Territory of The Brooklyn Union Gas  
Company d/b/a National Grid NY.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective June 21, 2018)

BY THE COMMISSION:

Respondent Information

Company Name: Able Island Construction Corp.  
(Able Island Construction)

Address: 40 Lasalle Street  
Staten Island, NY 10303

Alleged Violations Specifics

Dates of Violations: October 6, 2017, and November 13, 2017

Locations: 138 Detroit Avenue, Staten Island, NY;  
and 44 Clinton Place, Staten Island, NY

Descriptions of  
Excavation Work: Sewer pipelines

Affected Facilities: 2-inch plastic high-presure natural gas  
main, and a natural gas pipeline

Alleged Code  
Violations: 753-3.8, and 753-3.1(a) (2)

Descriptions of  
Violations: Failure to maintain four-inches of  
clearance between powered equipment and  
a buried facility; and failure to  
provide notice 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.

Notices of Probable Violations (NOPV) Information

On or about March 15, 2018, copies of both NOPV letters were mailed to the Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. While we did not receive a signed certified mail return receipt for either of the NOPVs, neither the First Class nor the certified mail copies were returned, and Staff confirmed delivery of both using the United States Postal Service's tracking numbers.

Proposed Penalties: \$12,500

Response: Did not respond

Summary of Information  
Provided by Respondent: Not Applicable

Analysis of Evidence

16 NYCRR §753-3.8 states:  
After verifying the location of an underground

facility, the excavator shall not employ powered 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.

16 NYCRR §753-3.1(a)(2) states:

Such notice shall be served at least two by not more than ten working days, not including the date of the call, before the commencement date of the excavation or demolition; and

For the violation occurring on October 6, 2017, Department Staff conducted an on-site investigation which confirmed that Able Island Construction struck and damaged the natural gas main while engaged in excavation using mechanized equipment within the tolerance zone.

For the violation occurring on November 13, 2017, New York 811 reported Able Island Construction was engaged in excavation using mechanized equipment. The report further stated that the work Able Island Construction was performing was not considered an emergency, but rather was for the installation of a new sewer lateral to a home that had not yet been constructed. Department Staff reviewed the emergency notification (ticket #173170548), and confirmed that it was made on the same date of reported excavation work.

No responses to either of the NOPV letters were received. The NOPV letters stated that failure to respond would be deemed acceptance of the facts as alleged, in which case the proposed penalty would be determined.

Determination

We find that Able Island Construction Corp. did commit two separate violations of 16 NYCRR §753-3.8, and 16 NYCRR §753-3.1(a)(2). In consideration of the nature, circumstances and gravity of the violations, we determine a penalty of \$12,500 is appropriate for these violations.

We also strongly encourage the Respondent to contact New York 811 (516-639-8606) 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 Able Island Construction Corp. pursuant to §119-b(8) of the Public Service Law.

2. Able Island Construction Corp. 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