

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 18, 2019

COMMISSIONERS PRESENT:

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

CASE 19-G-0165 - In the Matter of an Enforcement Proceeding  
Against Scott Perri Landscaping Inc. for Alleged  
Violations of 16 NYCRR Part 753 - Protection of  
Underground Facilities, in the Service Territory  
of Central Hudson Gas & Electric Corporation.

CASE 19-G-0164 - In the Matter of an Enforcement Proceeding  
Against Scott Perri Landscaping Inc. for Alleged  
Violations of 16 NYCRR Part 753 - Protection of  
Underground Facilities, in the Service Territory  
of Central Hudson Gas & Electric Corporation.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective April 30, 2019)

BY THE COMMISSION:

Respondent Information

Company Name: Scott Perri Landscaping Inc. (Scott  
Perri Landscaping)

Address: 136 Felter Hill Road  
Washingtonville, NY 10992

Alleged Violation Specifics

Dates of Violations: March 20, 2018; and  
December 7, 2018

Locations: 30 Hudson Pointe, Lot 50  
Monroe, NY; and  
  
9 Hudson Pointe  
Monroe, NY

Descriptions of  
Excavation Work: Excavation for utility trench and  
drainage

Jeopardized Facilities: 4-inch plastic natural gas main; and ½-  
inch plastic natural gas service

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

Descriptions of  
Violations: Failure to provide proper notice of  
intent to excavate to the one-call  
notification system; and  
  
Failure to maintain four inches of  
clearance between powered equipment and  
a buried facility

Notice of Probable Violation (NOPV) Information

On or about August 10, 2018, and January 2, 2019,  
copies of the NOPVs were mailed to the Respondent by both United  
States Postal Service First Class Mail and certified mail,  
return receipt requested. For both violations, the certified  
mail receipts were signed and returned.

Proposed Penalty: \$20,000

Response: Telephone conversation on August 14,  
2018

Summary of Information Provided by Respondent

For the violation which occurred on March 20, 2018,  
Scott Perri Landscaping stated the following: it provided notice  
of intent to excavate to the one-call notification system; that  
it's "fed-up" with the mark-out process; that its commencement  
date was March 19, 2018; and that an on-site meeting was held

with the utility company and the developer where all parties agreed to it commencing excavation on March 20, 2018.

For the violation which occurred on December 7, 2018, Scott Perrir Landscaping failed to respond to the NOPV.

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

For the violation which occurred on March 20, 2018, the legal commencement date for one-call ticket number 03168-196-030-00 was March 21, 2018. As of March 20, 2018, "Frontier Communications" had not yet marked its facilities. The affected facility operator provided photographs to support that Scott Perri Landscaping had already excavated a trench for new utility services to the property. Therefore, Scott Perri Landscaping failed to provide notice at least two but not more than ten working days before the commencement of excavation. Staff offered to resolve this matter with a reduced penalty provided Scott Perri Landscaping Inc. completed training with Dig Safely New York. Scott Perri Landscaping Inc. declined that offer.

For the violation which occurred on December 7, 2018, Department Staff performed an on-site investigation which

concluded that Scott Perri Landscaping provide notice of intent to excavate to the one-call notification system, that the affected facility was accurately marked and exposed, and that Scott Perri Landscape struck and damaged the natural gas service while backfilling the drainage line trench. No response to the NOPV was received. The NOPV 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 Scott Perri Landscaping Inc. did commit two separate violations of 16 NYCRR §753-3.1(a)(2) and 16 NYCRR §753-3.8, which jeopardized a 4-inch plastic natural gas main and resulted in damage to a ½-inch plastic natural gas service, respectively. At the December 13, 2018, Session a Consent Order was approved with Scott Perri Landscaping for a violation of 16 NYCRR §753-3.6(a), which occurred on January 30, 2018, located at 35 Vista Drive, Highland, New York. Under General Business Law §765(1)(a), excavators and operators 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 the following 12-month period. Therefore, in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$20,000 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 \$20,000 is determined against Scott Perri Landscaping Inc. pursuant to §119-b(8) of the Public Service Law.

2. Scott Perri Landscaping Inc. is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$20,000 in payment of the penalty determined. The \$20,000 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:

Mr. Curtis Funk  
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, 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)

KATHLEEN H. BURGESS  
Secretary