

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on April 18, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
James S. Alesi  
David J. Valesky  
John B. Maggiore  
Uchenna S. Bright  
Denise M. Sheehan

CASE 24-G-0127 - In the Matter of an Enforcement Proceeding  
Against Donahue and Son Excavation for Alleged  
Violations of 16 NYCRR Part 753 - Protection of  
Underground Facilities, in the Service  
Territory of Niagara Mohawk Power Corporation,  
d/b/a National Grid.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective April 25, 2024)

BY THE COMMISSION:

BACKGROUND

On October 23, 2023, while installing drainage at 638  
Spinnerville Gulf Road, Ilion, New York, Donahue and Son  
Excavation<sup>1</sup> (Respondent) damaged a 1-inch plastic 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)  
states:

Before commencing or engaging in any non-emergency  
excavation or demolition, each excavator shall provide  
notice of the location and date of the planned

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<sup>1</sup> Donahue and Son Excavation, 146 Bell Hill Road, Ilion, New York  
13357.

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) conducted an investigation of the incident and found evidence that Respondent, on October 23, 2023, did in fact excavate without notification to the one-call system.

As a result, on November 1, 2023, Staff issued a Notice of Probable Violation (NOPV) to Respondent via United States Postal Service First-Class Mail. The NOPV stated that failure to respond would be deemed acceptance of the facts as alleged, in which case a penalty would be determined. The First-Class Mail envelope containing the NOPV was not returned, nor did Staff receive any answer from the Respondent.

#### LEGAL AUTHORITY

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 an additional civil penalty of up to \$10,000 for each succeeding violation that occurs 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 Donahue and Son Excavation 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), Donahue and Son Excavation needlessly and carelessly created a significant risk to public safety. Thus, the gravity of this violation is substantial. The penalty assessed seeks to sanction Donahue and Son Excavation and deter it and others from similar conduct in the future.

Staff will be monitoring escaped emissions data from damaged pipeline incidents to monitor environmental impacts. For this incident, Staff estimated 13,869 cubic feet of lost gas to the atmosphere. In addition, Respondent has no history of prior violations that occurred within the preceding 12-month period. Therefore, the statutory maximum civil penalty allowable for this offense is \$2,500. Here, Respondent engaged in activity that resulted in damage to a gas pipeline that caused the release of gas, and disruption of service, 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 \$2,500 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, a

no-call report 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 \$2,500 is determined against Donahue and Son Excavation pursuant to Public Service Law §119-b(8).

2. Donahue and Son Excavation is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$2,500 in payment of the penalty determined. The \$2,500 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:

Laura Ferraro  
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)

MICHELLE L. PHILLIPS  
Secretary