

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 19, 2018

COMMISSIONERS PRESENT:

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

CASE 18-G-0167 - In the Matter of an Enforcement Proceeding
Against Asplundh Construction Corporation for
Alleged Violations of 16 NYCRR Part 753 -
Protection of Underground Facilities, in the
Service Territory of KeySpan Gas East
Corporation d/b/a National Grid.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective April 30, 2018)

BY THE COMMISSION:

Respondent Information

Company Name: Asplundh Construction Corporation
Address: 93 Sills Road
Yaphank, NY 11980

Alleged Violation Specifics

Date of Violation: March 29, 2017
Location: 15 South Bayles
Port Washington, NY
Description of
Excavation Work: Natural Gas
Damaged Facility: 2-inch steel natural gas main
Alleged Code
Violation: 753-3.6

Description of
Violation:

Failure to verify location of marked
facilities by means of hand-dug test
hole

Notice of Probable Violation (NOPV) Information

On or about July 26, 2017, copies of the NOPV were mailed to the Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. The certified mail receipt was signed and returned.

Proposed Penalty: \$10,000

Response: Informal conference on September 20,
2017

Summary of Information Provided by Respondent

Asplundh Construction Corporation stated that it was contracted to directionally drill to install a new natural gas main approximately 50-inches away from the existing natural gas main. Asplundh Construction Corporation stated that this work was occurring outside the tolerance zone of the marked facility which, Asplundh believed, did not require the existing main to have been located by means of hand-dug test hole. Asplundh Construction Corporation did verify the locations of the underground facilities located within its bore path and reiterated that the existing natural gas main had been mismarked which is cause of this damage.

Analysis of Evidence

16 NYCRR §753-3.6 states:

Where an underground facility has been staked, marked or otherwise designated by the operator and the tolerance zone overlaps with any part of the work area, or the projected line of a bore/directional drill intersects the tolerance zone, the excavator shall verify the precise location, type, size, direction of run and depth of such underground

facility or its encasement. Verification shall be completed before the excavation or demolition is commenced or shall be performed as the work progresses.

Department Staff performed an on-site investigation which confirmed that the damaged natural gas facility was located approximately 16-inches away from the marked facilities; it was located within the tolerance zone; and it was damaged by Asplundh Construction Corporation when its directional drill veered closer to the main than expected.

Determination

We find that Asplundh Construction Corporation did commit a violation of 16 NYCRR §753-3.6, which resulted in damage to a 2-inch steel natural gas main. On June 26, 2017, the Commission issued an Order Determining Penalty and Directing Payment against Asplundh Construction Corporation for a violation of 16 NYCRR §753-3.10(a) which occurred on June 10, 2016, at 1450 Church Street, Bohemia, New York. 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 \$2,500 for the first offense and an additional \$10,000 for each succeeding violation that occurs within a 12-month period. Therefore, and in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$10,000 is appropriate for this violation.

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 \$10,000 is determined against Asplundh Construction Corporation pursuant to §119-b(8) of the Public Service Law.

2. Asplundh Construction Corporation is directed to remit, by certified check payable to the "Department of Public Service," the sum of \$10,000 in payment of the penalty determined. The \$10,000 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:

Ms. Carol Gnacik
Director of Finance and Budget
Department of Public Service
Three Empire State Plaza
16th 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