

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 19, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 16-G-0222 - In the Matter of an Enforcement Proceeding
Against Victor Excavating, Inc. for Alleged
Violations of 16 NYCRR Part 753 - Protection
of Underground Facilities, in the Service
Territory of Rochester Gas and Electric
Corporation.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective May 20, 2016)

BY THE COMMISSION:

Respondent Information

Company Name: Victor Excavating, Inc.
Address: 784 Old Dutch Road
Victor, NY 14554

Alleged Violation Specifics

Dates of Violations: September 23, 2014; and
December 19, 2014
Locations: 21 Aldrich Glen
Perinton, NY; and
41 Copper Beech Run
Perinton, NY

Descriptions of
Excavation Work: Installing drain pipes and excavating
for an electric service

Damaged Facilities: ½-inch plastic high-pressure natural
gas service (September 23, 2014
violation) and 2-inch plastic high-
pressure natural gas main (December 19,
2014 violation).

Alleged Code
Violations: Both were 753-3.1(a) (1)

Description of
Violations: Failure to provide notice of intent to
excavate to the one-call notification
system

Notice of Probable Violation (NOPV) Information

On or about July 22, 2015, copies of the NOPV were mailed to the Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. While the certified mail receipt was signed and returned, the regular mail was not.

Proposed Penalties: \$12,500

Response: Letter dated September 2, 2015

Summary of Information Provided by Respondent

In its September 2, 2015 letter, Victor Excavating, Inc. (Victor) stated that for both locations it believed it provided notice of intent to excavate to the one-call notification system due to the markings present while on site. It was not until after the damages had occurred that Victor realized that it had not provided notice of intent to excavate.

Analysis of Evidence

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 excavation or demolition to the one-call notification system serving the vicinity in which the excavation or demolition is to take place.

Victor Excavating, Inc. admitted that for both occurrences it failed to provide notice of intent to excavate to the one-call notification system.

Determination

We find that Victor Excavating, Inc. did commit two separate violations of 16 NYCRR §753-3.1(a) (1) within a one year period, which resulted in damage to a ½-inch plastic high-pressure natural gas service and a 2-inch plastic high-pressure natural gas main. 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. In consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$12,500 is appropriate for these violations.

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 \$12,500 is determined against Victor Excavating, Inc. pursuant to §119-b(8) of the Public Service Law.

2. Victor Excavating, Inc. 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
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