

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 14, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 20-G-0167 - In the Matter of an Enforcement Proceeding
Against United Paving Corp 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 May 26, 2020)

BY THE COMMISSION:

Respondent Information

Company Name: United Paving Corp
Address: 6316 Northern Boulevard
East Norwich, NY 11732

Alleged Violation Specifics

Date of Violation: August 21, 2019
Location: 431 North Main Street
Freeport, NY
Description of
Excavation Work: Installation of a storm drain
Damaged Facility: 2-inch plastic natural gas main

Alleged Code

Violation: 753-3.1(a)(2)

Description of

Violation: Failure to provide proper notice of intent to excavate to the one-call notification system

Notice of Probable Violation (NOPV) Information

On or about January 14, 2020, copies of the NOPV were mailed to the Respondent by both United States Postal Service First Class Mail and certified mail, return receipt requested. A signed certified mail return receipt was not received; neither were the First Class nor the certified mail copies returned. Department of Public Service Staff (Staff) confirmed delivery using the United States Postal Service's tracking service.

Proposed Penalty: \$10,000

Response: Did not respond

Summary of Information

Provided by Respondent: Not Applicable

Analysis of Evidence

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.

Staff performed a one-call notification system ticket search and located one-call ticket number 192332782 called in by United Paving Corp on August 21, 2019 at 15:46 pm. The damage investigation report provided to Staff by the operator stated that United Paving Corp damaged the 2-inch plastic natural gas main while using mechanized equipment on August 21, 2019, at 13:50 pm. Therefore, United Paving Corp contacted the one-call notification system after the damage already occurred.

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

The Commission finds that United Paving Corp committed a violation of 16 NYCRR §753-3.1(a)(2), which resulted in damage to a 2-inch plastic natural gas main. In reaching this determination, the Commission relied on: (1) A one-call notification system ticket search by Staff, (2) Staff's investigative report, (3) No-call report submitted by the operator to Staff, (4) Damage investigation report provided by the operator to Staff, and (5) Photographs in the record.

The evidence relied on by the Commission showed that Respondent damaged a natural gas pipeline, thus releasing gas which created a threat to public safety and could have caused injury or even death. Further, Respondent failed to respond to the NOPV. 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. In this case, on May 24, 2019, the Public Service Commission issued an Order Determining Penalty and Directing Payment against United Paving Corp for violating §753-3.1(a)(1) on September 14, 2018 (May 24 Order). United Paving Corp failed to pay the penalty determined by the October 25 Order. On August 28, 2019, Staff referred the case to the Attorney General's Office. The maximum penalty for which United Paving Corp is liable under the statute, therefore, is \$10,000. In consideration of the nature, circumstances and gravity of the violation, the Commission

determines a penalty of \$10,000 is appropriate for this violation.

The Commission also strongly encourages 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 United Paving Corp pursuant to the Public Service Law §119-b(8).

2. United Paving Corp 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 State Finance Law §18 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
16th 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