

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 19, 2002

COMMISSIONERS PRESENT:

Maureen O. Helmer, Chairman  
Thomas J. Dunleavy  
James D. Bennett  
Leonard A. Weiss  
Neal N. Galvin

CASE 02-G-0659 - In the Matter of an Enforcement Proceeding  
Against Halcyon Construction Corporation for  
Alleged Violation of 16 NYCRR Part 753 -  
Protection of Underground Facilities, in the  
Service Territory of Keyspan Energy of Long  
Island, filed in C 15686.

ORDER DETERMINING PENALTY AND DIRECTING PAYMENT

(Issued and Effective June 25, 2002)

BY THE COMMISSION:

Respondent Information

Company Name: Halcyon Construction Corporation (Halcyon)  
Address: 65 Marble Avenue  
Pleasantville, N.Y. 10570

Alleged Violation Specifics

Date of Violation: March 5, 2002  
Location: 1131 Harris Street  
Far Rockaway  
Description of  
Excavation Work: Installing water main  
Damaged Facilities: 1-inch plastic gas service  
Alleged Code  
Violation(s): 753-3.8

Description of  
Violation: Failure to maintain 4 inches of clearance  
between machinery and underground facilities

Notice of Probable Violation (NOPV) Information

Date of NOPV: April 4, 2002  
Proposed Penalty: \$1,000  
Response: Did not respond

Summary of Information  
Provided by Respondent: Not Applicable

Analysis of Evidence

Section 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 by the operator of the affected facility. Any such agreement shall be furnished to the excavator by the operator, upon request.

Staff conducted an on-site investigation and found that the gas facilities were accurately marked. A Halcyon representative admitted that they were aware of the gas service and accidentally hit it.

No response to the NOPV was received. The NOPV stated that failure to respond would be deemed acceptance of facts as alleged, in which case the proposed penalty would be determined.

Determination

We find that Halcyon Construction Corporation did commit a violation of §753-3.8, which resulted in damage to a 1-inch plastic gas service. While the Respondent has no history of prior violations, in consideration of the nature, circumstances and gravity of the violation, we determine a penalty of \$1000 is appropriate for this violation.

The Commission orders:

1. A penalty of \$1,000 is determined against Halcyon Construction Corporation pursuant to §119(b)(8) of the Public Service Law.

2. Halcyon Construction Corporation is directed to remit, by certified check payable to the "Department of Public Service" the sum of \$1,000 in payment of the penalty determined. The \$1,000 sum is subject to Section 18 of the State Finance Law and shall be deposited into the Underground Safety Training Account. The check shall be addressed to:

Mr. Al Howard  
Director of Finance and Budget  
Department of Public Service  
Three Empire State Plaza  
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.

By the Commission,

(SIGNED)

JANET HAND DEIXLER  
Secretary