

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

NIAGARA MOHAWK POWER CORPORATION D/B/A
NATIONAL GRID

Plaintiff,

-against-

ERIE COUNTY WATER AUTHORITY

Defendant(s).

SUMMONS

Index No. 809754/2019
Filed on: 8-6-19

The basis of venue
designated above is that the
Defendant is a municipality
within Erie County

Plaintiff's Address: 300 Erie Boulevard Syracuse, NY 13202

Defendant's Address: 295 Main St., Room 350, Buffalo, NY 14203

TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby summoned and required to submit to Plaintiff's attorneys an Answer to the Complaint in this action within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: 8/2/19

Joshua J. Aron
SOLOMON AND SOLOMON, P.C.
Attorneys for Plaintiff
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Albany, New York 12212-5019
Ph. (518) 456-7200
(File No.: 27120735)

ERIE COUNTY WATER AUTHORITY
295 MAIN ST.
BUFFALO, NY 14203

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

**NIAGARA MOHAWK POWER CORPORATION
D/B/A NATIONAL GRID**

Plaintiff,

-against-

**ERIE COUNTY WATER AUTHORITY
Defendant(s).**

COMPLAINT

Index No. 809754/2019

Plaintiff, Niagara Mohawk Power Corporation, by its attorneys, Solomon and Solomon, P.C., complaining of Defendant, respectfully alleges, upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, Plaintiff was and still is a domestic corporation duly organized and existing under the laws of the State of New York and has a place for the regular transaction of business at 300 Erie Blvd. West, Syracuse, New York.
2. At all times hereinafter mentioned, Plaintiff was the owner of certain conduits, cables and other power and/or gas facilities and appurtenances located in the vicinity of Fennel Ln., Amherst, NY.
3. Upon information and belief, the Defendant, Erie County Water Authority was and still is a municipality with a principal place of business located at 295 Main St. Room 350, Buffalo, NY 14203.
4. On or about 10/17/18, Defendant, its agents, servants and/or employees, while working in the vicinity of Fennel Ln., Amherst, NY on and beneath the conduits, service lines and/or mains and other power and/or gas facilities and appurtenances of Plaintiff, said Defendant its agents, servants and/or employees, used and employed excavating equipment.
5. On or about 10/17/18, Defendant its agents, servants and/or employees, knew or should have known of the presence of Plaintiff's conduits, service lines and/or mains and other power and/or gas facilities and appurtenances and the location thereof.
6. On or about 10/17/18, Defendant its agents, servants and/or employees notwithstanding its/their knowledge, actual or constructive or both, of the presence or location of Plaintiff's aforesaid conduits, service lines and/or mains and other power and/or

gas facilities and appurtenances, excavated, dug and performed work in the vicinity of Fennel Ln., Amherst, NY and during the course thereof, and in a reckless, careless and negligent manner, damaged Plaintiff's conduits, sewage lines, service lines and other power and/or gas facilities and appurtenances hereinbefore mentioned.

7. Said damages herein referred to were caused solely by the negligence of Defendant without any negligence or fault on the part of Plaintiff contributing thereto.

8. Defendant having knowledge, actual, constructive or both, of the existence of the Plaintiff's facilities at the accident site, conducted their operations in a careless, negligent, reckless and haphazard manner; exercised improper, negligent, reckless and haphazard supervision, over their agents, servants and/or employees; improperly and haphazardly planned and laid out work processes that they were carrying out at the aforesaid site; employed unskilled, inept, improper, negligent, careless, and reckless workers; was careless, negligent, reckless and haphazard about protecting the aforesaid property of the Plaintiff, failed to notify the Plaintiff that they would be working in the area of the Plaintiff's property and that the unskilled, inept, improper, negligent, careless and reckless contractors, workers, agents, servants and/or employees would be working in the immediate vicinity of Plaintiff's property; failed to avoid having their equipment strike Plaintiff's service facilities, all to the damage of the Plaintiff.

9. By reason of the foregoing, Plaintiff was damaged in the sum of \$12,423.21.

10. This is a claim for property damage only so that the limitations of liability of persons jointly liable as set forth in Article 16 of the CPLR do not apply to this action.

AS AND FOR A SECOND CAUSE OF ACTION

11. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "10" of Plaintiff's Complaint, inclusive, with the same full force and effect as though more fully set forth herein at length.

12. On or prior to 10/17/18, Plaintiff was a public service corporation organized and existing under and by virtue of the laws of the State of New York. On and before 10/17/18, Plaintiff owned and operated an underground conduit, service lines and other power and/or gas facilities and appurtenances situated in the vicinity of Fennel Ln., Amherst, NY.

13. Prior to and on the aforesaid date, there was in force and effect a statute enacted

for the protection of public service corporations' property of the class hereinabove described, to wit: Section 760 (et seq) of the General Business Law.

14. On or about 10/17/18, Defendant its agents, servants, and/or employees, excavated and/or dug the subsurface in the vicinity of Fennel Ln., Amherst, NY and said excavation was made without compliance with and/or in violation of Section 760 (et seq) of the General Business Law, resulting in damages to Plaintiff's aforesaid conduits, cables and other power and/or gas facilities and appurtenances in the sum of \$12,423.21.

AS AND FOR A THIRD CAUSE OF ACTION

15. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "14" of its Complaint, inclusive, with the same full force and effect as if same were more fully set forth herein at length.

16. Prior to and on the aforesaid date, there was in force and effect a statute enacted for the protection of public service corporations property of the class hereinbefore described, to wit: Section 119-b of the Public Service Law of the State of New York.

17. On or about 10/17/18, Defendant its agents, servants and/or employees excavated and/or dug the subsurface in the vicinity Fennel Ln., Amherst, NY and said excavation was made without compliance with and/or in violation of Section 119-b, resulting in damages to Plaintiff's facilities in the sum of \$12,423.21.

AS AND FOR A FOURTH CAUSE OF ACTION

18. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "17" of its Complaint, inclusive, with the same full force and effect as if same were more fully set forth herein at length.

19. At all times heretofore mentioned, there was in force and effect a certain code, rule or regulation of the State of New York enacted for the protection of public service corporations' property of the class hereinbefore described, to wit: Industrial Code Rule No. 53 (16 NYCRR Section 753 <et seq>).

20. On or about 10/17/18, Defendant, its agents, servants, and/or employees, excavated and/or dug into the subsurface in the vicinity of Fennel Ln., Amherst, NY and said excavation was made without compliance with the provisions of said Industrial Code Rule

No. 53, resulting in damages to Plaintiff's aforesaid conduits, cables and other power and/or gas facilities and appurtenances in the sum of \$12,423.21.

AS AND FOR A FIFTH CAUSE OF ACTION

21. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "20" of its Complaint, inclusive, with the same full force and effect as if same were more fully set forth herein at length.

22. At all times heretofore mentioned, Plaintiff had an easement located in the vicinity of Fennel Ln., Amherst, NY to wit: Plaintiff was able to and did run conduits, cables and other power and/or gas facilities and appurtenances.

23. At all times heretofore mentioned, Plaintiff was using and/or was in actual possession of the aforementioned conduits, cables and other power and/or gas facilities and appurtenances located at the vicinity of Fennel Ln., Amherst, NY.

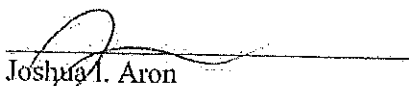
24. On or about 10/17/18 Defendant intentionally trespassed upon the aforesaid conduits, cables and other power and/or gas facilities and appurtenances.

25. As a direct and proximate cause of said trespass, it became necessary for Plaintiff to repair the damages to Plaintiff's aforesaid conduits, service lines and other power and/or gas facilities and appurtenances in the sum of \$12,423.21.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of \$12,423.21 with interest from 10/17/18 together with costs and disbursements of this action.

Dated: 8/2/19

Yours, etc.


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File # 27120735

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X
NIAGARA MOHAWK POWER CORPORATION D/B/A
NATIONAL GRID

Plaintiff/Petitioner,

- against -

Index No. 809754/2019

ERIE COUNTY WATER AUTHORITY

Defendant/Respondent.
-----X

**NOTICE OF ELECTRONIC FILING
(Mandatory Case)
(Uniform Rule § 202.5-bb)**

You have received this Notice because:

1) The Plaintiff/Petitioner, whose name is listed above, has filed this case using the New York State Courts E-filing system ("NYSCEF"), and

2) You are a Defendant/Respondent (a party) in this case.

● **If you are represented by an attorney:**

Give this Notice to your attorney. (Attorneys: see "Information for Attorneys" pg. 2).

● **If you are not represented by an attorney:**

You will be served with all documents in paper and you must serve and file your documents in paper, unless you choose to participate in e-filing.

If you choose to participate in e-filing, you must have access to a computer and a scanner or other device to convert documents into electronic format, a connection to the internet, and an e-mail address to receive service of documents.

The benefits of participating in e-filing include:

- serving and filing your documents electronically
- free access to view and print your e-filed documents
- limiting your number of trips to the courthouse
- paying any court fees on-line (credit card needed)

To register for e-filing or for more information about how e-filing works:

- visit: www.nycourts.gov/efile-unrepresented or
- contact the Clerk's Office or Help Center at the court where the case was filed. Court contact information can be found at www.nycourts.gov

To find legal information to help you represent yourself visit www.nycourthelp.gov

**Information for Attorneys
(E-filing Is Mandatory for Attorneys)**

An attorney representing a party who is served with this notice must either:

1) immediately record his or her representation within the e-filed matter on the NYSCEF site www.nycourts.gov/efile ; or

2) file the Notice of Opt-Out form with the clerk of the court where this action is pending and serve on all parties. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the knowledge to operate such equipment. [Section 202.5-bb(e)]

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: 10/9/19

Joshua I. Aron

Name

Solomon and Solomon, P.C.

Firm Name

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To: Erie County Water Authority

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6/6/18