



Agenda Date: 7/12/23
Agenda Item: VIA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

RELIABILITY & SECURITY

IN THE MATTER OF ALLEGED VIOLATIONS OF THE)
UNDERGROUND FACILITY PROTECTION ACT,)
N.J.S.A. 48:2-73 ET SEQ.)
)
) ORDER ACCEPTING
SETTLEMENTS
)
) DOCKET NOS. GS23060351K
) et al. (see attached Appendix)

Parties of Record:

- Jose C.**, Jocar Construction
- Dom Capone, Jr.**, Borst Landscape
- William Flounders**, Cambridge Constructors & Engineers, LLC
- Rich Henry**, Arthur Henry Inc.
- Bill Butler**, Landscape Dynamix
- Edward Modrock**, Zadlock Outdoor Services
- Michael Edward**, J F Kiely Construction
- Patrick Creelman**, Winzinger Inc.
- John Wyckoff**, New Jersey Natural Gas Company
- Yario P. Costa**, Portugal in America
- Marcelino Herreva**, Jersey Shore Masonry LLC
- Patrick Pezzello**, PJM Developers LLC (Pezzello Contracting LLC)
- Sarah Winters**, Horizon Land Management Co.
- Richard Pierknock**, Garden State Paving

BY THE BOARD:¹

I. BACKGROUND

The New Jersey Board of Public Utilities (“Board”) has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq. (“Act”). The Act establishes the One-Call Damage Prevention System (“One-Call System”) for the protection of underground facilities that are used for the conveyance of water, forced sewage, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, traffic control, and/or hazardous liquids.

¹ Commissioner Marian Abdou did not participate.

In declaring its findings and the purpose of the Act, the Legislature stated, in pertinent part:

That damage to underground facilities caused by excavation and the discharge of explosives poses a significant risk to the public safety; that such damage to underground natural gas facilities poses a substantial risk to the public safety; and that the implementation of a comprehensive One-Call Damage Prevention System can substantially reduce the frequency of damage caused by these activities.

The Legislature therefore determines that it is in the public interest for the State to require all operators of underground facilities to participate in a One-Call Damage Prevention System and to require all excavators to notify the One-Call Damage Prevention System prior to excavation or demolition.
[N.J.S.A. 48:2-74.]

The Act defines “excavator” as “any person performing excavation or demolition” and “operator” as “a person owning or operating, or controlling the operation of, an underground facility.” N.J.S.A. 48:2-75.

Pursuant to the Act, violators of its provisions shall be subject to civil penalties of no less than \$1,000 and no more than \$2,500 per violation per day, not to exceed \$25,000 for any related series of violations. N.J.S.A. 48:2-88(a). Violations relating to natural gas or hazardous liquid underground pipelines or distribution facilities shall be subject to civil penalties not to exceed \$200,000 per violation per day, and not to exceed \$2,000,000 for any related series of violations. N.J.S.A. 48:2-86(c). In addition, costs may be assessed related to any Board investigation, inspection, or monitoring survey which leads to the establishment of a violation, and/or the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

Following reports of various alleged violations of the Act including, but not limited to, failure to properly mark facilities, not having a valid markout ticket, and failure to use reasonable care when excavating, Board Staff issued a Notice of Probable Violation to each of the alleged violators and informed them of the date and location of the alleged violations. A complete list of entities and violations is provided in Appendix A attached hereto and made a part hereof.

In an attempt to resolve these matters, the alleged violators listed in Appendix A submitted an Offer of Settlement to the Board for its review and consideration. Said Offers of Settlement are provided in Appendix A.

II. **DECISION AND FINDINGS**

After consideration of the matters provided in Appendix A, including the alleged violations and the Offers of Settlement, the Board **HEREBY FINDS** the Offers of Settlement to be reasonable and in the public interest, and **HEREBY ACCEPTS** the Offers of Settlement in full satisfaction of the alleged violations of the Act as provided in Appendix A attached hereto and made part hereof.

By acceptance of the Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Act in connection with the above-referenced alleged violations. It must also be noted that the acceptance of the Offers of Settlement is for settlement

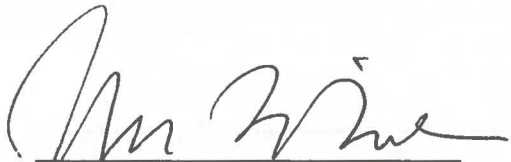
purposes only and applies strictly to the specific incidents described in Appendix A. This acceptance is without prejudice as to the position of the State of New Jersey or any agency or subdivision thereof if other violations are present, now or in the future.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

This Order shall be effective on July 19, 2023.

DATED: July 12, 2023

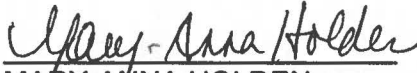
BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



DR. ZENON CHRISTODOULOU
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER



CHRISTINE GUHL-SADOVY
COMMISSIONER

ATTEST: 

SHERRI L. GOLDEN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 ET SEQ.

DOCKET NOS. GS23060351K et al. (see attached Appendix)

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APPENDIX A

Agenda Date: 7/12/23
Agenda Item: VIA

In the Matter of Alleged Violations of the Underground Facility Protection Act
N.J.S.A. 48:2-73 et seq., Order Accepting Settlements
Docket Nos. GS23060351K et al.

Facility Damaged	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
GAS	GS23060351K	GOC2023-0192	Did not have a valid mark out	\$3,000	Jocar Construction	03/27/23	Cranford, NJ	05/25/23
GAS	GS23060352K	GOC2019-0542	Did not have a valid mark out	\$3,000	Borst Landscape	05/31/19	Saddle River, NJ	05/24/23
ELECTRIC	ES23060353K	EOC2020-0259	Failed to use reasonable care	\$3,000	Cambridge Const. & Engineers LLC	10/21/20	Bordentown, NJ	05/16/23
ELECTRIC	ES23060354K	EOC2021-0189	Did not have a valid mark out	\$3,000	Arthur Henry, Inc.	07/02/21	Brigantine, NJ	05/24/23
GAS	GS23060355K	GOC2021-0918	Did not have a valid mark out	\$3,000	Landscape Dynamix	07/10/21	Mahwah, NJ	05/12/23
GAS	GS23060356K	GOC2023-0182	Did not have a valid mark out	\$3,000	Zadlock Outdoor Svcs.	03/08/23	Colts Neck, NJ	05/03/23
GAS	GS23060357K	GOC2020-1511	Failure to use reasonable care	\$3,000	JF Kiely Construction	10/21/20	Metuchen, NJ	05/15/23
GAS	GS23060358K	GOC2020-1521	Failure to use reasonable care	\$3,000	Winzinger, Inc.	10/20/20	Lawnside, NJ	05/16/23
GAS	GS23060359K	GOC2020-1762	Did not properly mark out	\$3,000	NJ Natural Gas	11/17/20	Oceanport, NJ	05/11/23
GAS	GS23060360K	GOC2023-0245	Did not have a valid mark out	\$3,000	Portugal in America	03/15/23	Montville, NJ	05/01/23
GAS	GS23060361K	GOC2023-0264	Did not have a valid mark out	\$3,000	Jersey Shore Masonry	03/28/23	Deal, NJ	05/05/23
GAS	GS23060362K	GOC2023-0140	Did not have a valid mark out	\$3,000	Pezzello Contracting LLC	03/10/23	Scotch Plains, NJ	05/02/23
GAS	GS23060363K	GOC2023-0097	Did not have a valid mark out	\$3,000	Horizon Land Mngmt. Company	02/23/23	Pittsgrove, NJ	05/15/23
GAS	GS23060364K	GOC2023-0162	Did not have a valid mark out	\$3,000	Garden State Paving	03/07/23	Marlton, NJ	05/01/23

Total Cases: 14
Total Penalty: \$42,000