



Agenda Date: 9/27/23
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. CS23080596K
) et al. (see attached Appendix)

Party of Record:

- John Desmelyk**, KMD Excavating
- Peter Carros**, Peter Terrace Carpentry
- Keith Butler**, Atlantic City Electric Company
- Akorfa Gidiglo**, Jersey Central Power & Light Company
- Kline Construction**
- Anthony Paleoniero**, Camden City Public Works
- Lisa Ballerini, Vincent Santaite**, Montana Construction
- Chelsey Gaworecki**, Public Service Electric and Gas Company
- Joseph Jurechko**, Kane Construction
- American Site Works**
- James Harden, Jr.**, Father & Sons Plumbing and HVAC
- Ed Runyon**, Cape May County Park and Zoo
- Kenneth Kowaleski**, KTK Construction LLC
- South Wind Farms**
- Andrea Kakiashvili**, Blue Creek Construction

BY THE BOARD:

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. 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 \$1,000.00 and no more than \$2,500.00 per violation per day, not to exceed \$25,000.00 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 \$200,000.00 per violation per day, and not to exceed \$2,000,000.00 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 under the Act including, but not limited to, failing to call the One-Call System prior to commencing excavation, failing to use reasonable care, and/or failing to mark out or properly mark out underground facilities, 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. The 25 Offers of Settlement were accepted by the alleged violators, and each made full payment on the dates 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.

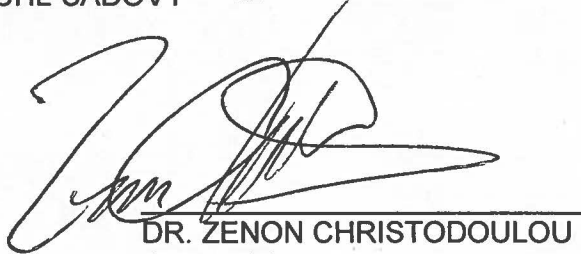
This Order shall be effective on October 4, 2023.

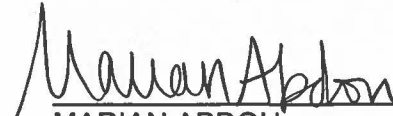
DATED: September 27, 2023

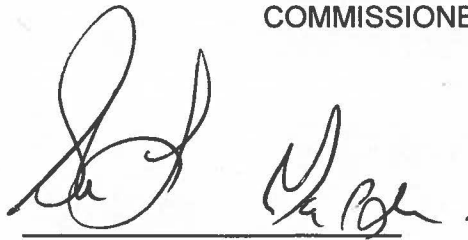
BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
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. CS23080596K et al. (see attached Appendix)

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APPENDIX A

In the Matter of Alleged Violations of the Underground Facility Protection Act N.J.S.A. 48:2-73 et seq.

Docket No. CS23080596K et al.

Facility Damaged	BPU Docket #	One Call Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Cable	CS23080596K	COC2016-0385	Excavator Failure to Use Reasonable Care	\$1,000	KMD EXCAVATING	7/28/2016	Bernards Twp, NJ	1/22/2018
Electric	ES23080586K	EOC2017-0048	Did not have a valid Markout at time of excavation	\$1,000	Peter Terrace Carpentry	3/20/2017	Beach Haven NJ	3/26/2019
Electric	ES23080587K	EOC2017-0133	Did not properly mark	\$3,000	Atlantic City Electric	5/30/2017	Berlin, NJ	10/30/2019
Electric	ES23080588K	EOC2017-0162	Did not properly mark	\$3,000	Jersey Central Power & Light	4/18/2017	Clinton, NJ	8/20/2019
Electric	ES23080589K	EOC2017-0331	Did not properly mark	\$3,000	Jersey Central Power & Light	11/28/2017	Berkeley Township NJ	4/26/2019
Electric	ES23080590K	EOC2017-0360	Did not properly mark	\$3,000	Atlantic City Electric	12/15/2017	Ocean City, NJ	2/26/2020
Electric	ES23080591K	EOC2018-0036	Did not properly mark	\$3,000	Jersey Central Power & Light	1/18/2018	Toms River, NJ	10/30/2019
Electric	ES23080592K	EOC2018-0039	Did not properly mark	\$3,000	Jersey Central Power & Light	2/6/2018	Lakewood Township, NJ	8/30/2019
Electric	ES23080593K	EOC2015-0021	Excavator Excavated outside work Area	\$2,000	Kline Construction	3/24/2015	Williamstown, NJ	11/28/2016
Electric	ES23080594K	EOC2015-0148	Did not have a valid Markout at time of excavation	\$2,000	Camden City Public Works	7/16/2015	Camden, NJ	8/11/2016
Electric	ES23080595K	EOC2016-0013	Did not have a valid Markout at time of excavation	\$2,000	Montana Construction	2/13/2016	Newark, NJ	8/30/2018
Electric	ES23080597K	EOC2016-0193	Did not properly mark	\$3,000	Public Service Electric & Gas Company	01/06/2017	East Brunswick, NJ	7/25/2018
Electric	ES23080598K	EOC2016-0143	Did not have a valid Markout at time of excavation	\$2,000	Kane Construction	7/19/2016	Highlands NJ	5/10/2019
Electric	ES23080599K	EOC2015-0155	Did Not Have a valid Markout	\$1,000	American Site Works	8/3/2015	Cinnaminson, NJ	2/19/2016
Electric	ES23080600K	EOC2016-0180	Did not have a valid Markout at time of excavation	\$2,000	Father & Sons Plumbing & HVAC	9/2/2016	Millville, NJ	11/1/2018
Electric	ES23080601K	EOC2017-0027	Did not have a valid Markout at time of excavation	\$2,000	Cape May County Parks and Zoo	1/3/2017	Cape May Court House NJ	1/14/2019
Electric	ES23080602K	EOC2018-0050	Did not properly mark	\$3,000	Jersey Central Power & Light	3/15/2018	Sayreville, NJ	4/24/2019

APPENDIX A

In the Matter of Alleged Violations of the Underground Facility Protection Act N.J.S.A. 48:2-73 et seq.

Docket No. CS23080596K et al.

Electric	ES23080603K	EOC2016-0199	Did not have a valid Markout at time of excavation	\$3,000	KTK Construction LLC	11/03/2016	Monroe Township NJ	2/16/2018
Electric	ES23080604K	EOC2018-0061	Did not properly mark	\$3,000	Atlantic City Electric	2/15/2018	Stafford Township, NJ	2/26/2020
Electric	ES23080605K	EOC2018-0076	Did not properly mark	\$3,000	Jersey Central Power & Light	2/21/2018	Lacey Township, NJ	8/30/2019
Electric	ES23080606K	EOC2020-0126	Did not properly mark	\$3,000	Atlantic City Electric	07/26/2020	Williamstown, NJ	2/2/2022
Electric	ES23080607K	EOC2021-0108	Did not have a valid Markout at time of excavation	\$3,000	South Wind Farms	5/28/2021	Pennington, NJ	2/22/2023
Electric	ES23080608K	EOC2022-0252	Failure to Use Reasonable Care	\$3,000	Blue Creek Construction	10/18/2022	Long Branch, NJ	3/9/2023
Electric	ES23080610K	EOC2021-0126	Did not properly mark	\$3,000	Atlantic City Electric	4/6/2021	Barneгат, NJ	2/8/2022
Electric	ES23080611K	EOC2017-0167	Did not properly mark	\$3,000	Public Service Electric & Gas Company	6/15/2017	Newark, NJ	10/30/2019
Total Cases: 25								
Total Penalties: \$63,000								