



Agenda Date: 10/11/23
Agenda Item: 6A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
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 TO 91 BY GREENWOOD TREE SERVICE, INC.)
)
FINAL ORDER OF PENALTY)
ASSESSMENT)
DOCKET NO. GS23080612)

Party of Record:

Philip D. Ward, Greenwood Tree Service, Inc.

BY THE BOARD:

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 to -91 ("Act"). By this Decision and Order, the Board considers the issuance of a Final Order of Penalty Assessment ("FOPA") pursuant to N.J.A.C. 14:2-6.6 and N.J.A.C. 14:7-2.4 regarding Greenwood Tree Service, Inc. ("Greenwood" or "Respondent").

BACKGROUND

The Act established the One-Call Damage Prevention 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, or traffic control, or for the transportation of a hazardous liquid. 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.

The Act subjects violators of its provisions to civil penalties of not less than \$1,000 and not 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 subject the violator 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, a violator may be assessed the cost of any Board investigation, inspection or monitoring survey which leads to the establishment of a violation and for the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

PROCEDURAL HISTORY

After receiving a damage report from New Jersey Natural Gas Company (“NJNG”) concerning a natural gas facility damage that occurred on February 7, 2022, Board Staff (“Staff”) investigated the damage and determined that Greenwood: 1) engaged in excavation; 2) did not have a valid markout at the time of excavation in violation of N.J.S.A. 48:2-82(a); and 3) damaged an underground facility operated by NJNG at 11 E 12th St., Barnegat Light, New Jersey.

Subsequently, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, on June 29, 2023, Staff served a Notice of Probable Violation (“NOPV”), via certified and regular mail, to Greenwood, which included a blank Answering Certification. See Attachment 1. The NOPV advised the Respondent that failure to complete and file the Answering Certification with the Board or with Staff within 21 days of receipt of the NOPV may result in the issuance of a FOPA.¹ According to United States Postal Service, the Respondent received the NOPV on July 3, 2023. The certified mail was delivered and signed by an individual at the address of record for Greenwood, and the regular mail was not returned. See Attachment 2. As of the date of this Order, more than 21 days have elapsed, and the Respondent has not filed the Answering Certification. As such, the Respondent is deemed to be in default pursuant to N.J.A.C. 14:2-6.6(a) and N.J.A.C. 14:7-2.4(a).

As Greenwood failed to respond to the June 29, 2023 NOPV and is deemed to be in default, the Board is not bound by any compromise or settlement offer made by Staff and may order the payment of a civil administrative penalty up to the maximum permitted by law. In determining the appropriate penalty amount to be assessed, the Board must consider the factors enumerated in N.J.A.C. 14:2-6.2(c), including but not limited to the nature, circumstances and gravity of the violation, history of prior offenses, the degree of the violator's culpability and any other factors as justice may require.

DISCUSSION AND FINDINGS

The Board, having thoroughly reviewed the record in this matter, **HEREBY FINDS** that the NOPV issued by Staff was reasonable and in the public interest. The Board **FURTHER FINDS** that the Respondent was advised that failure to respond to the Answering Certification would result in a default as provided in N.J.A.C. 14:2-6.6(a), and the allegations provided in the NOPV would be deemed uncontested.

¹ See N.J.A.C. 14:2-6.4(b)(5)(i); N.J.A.C. 14:2-6.5(a); N.J.A.C. 14:7-2.2(b)(5)(i); and N.J.A.C. 14:7-2.3(a).

To date, Staff has no record of a response from Respondent concerning the NOPV. As such, the Board **HEREBY FINDS** that the Respondent is in default pursuant to N.J.A.C. 14:2-6.6(a). As Respondent is deemed in default, the Board is not bound by the initial Offer of Settlement. After consideration of the penalty factors listed in N.J.A.C. 14:2-6.2(c), specifically 1) the nature of the violation was a causal factor directly related to the damage, and 2) the damage involved a high consequence natural gas facility struck by mechanized equipment, the Board **HEREBY FINDS** that the appropriate penalty for this matter is \$6,000.

As such, the Board **HEREBY ISSUES** this FOPA and **HEREBY ORDERS** that the Respondent shall be assessed a Civil Administrative Penalty of \$6,000. The Board **FURTHER ORDERS** that the Respondent shall pay the Civil Administrative Penalty as set forth in this Order no later than October 28, 2023.

Payment must be made out to the **TREASURER, STATE OF NEW JERSEY**

Send payment to:
Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625
Attn: One-Call Enforcement


Please include a copy of this Order with your payment.


If the Respondent fails to make the required payment by October 28, 2023, the Board **HEREBY DIRECTS** Staff to docket this Order against the Respondent as a Judgment with the New Jersey Superior Court or transfer the unpaid debt to the Department of Treasury for the issuance of a Certificate of Debt pursuant to N.J.S.A. 2A:16-11.1.

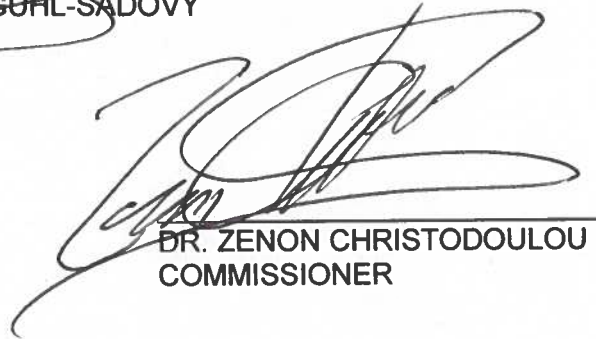
This Order shall be effective on October 18, 2023.

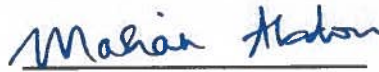
DATED: October 11, 2023

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 THE ALLEGED VIOLATION OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 TO 91 BY GREENWOOD TREE SERVICE, INC.

DOCKET NO. GS23080612

SERVICE LIST

Philip D. Ward
Greenwood Tree Service, Inc.
637 Main Street
West Creek, NJ 08092

Division of Reliability & Security

Francis Gaffney, Director
francis.gaffney@bpu.nj.gov

Attorney General's Office

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Board of Public Utilities

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Heather Weisband, Senior Counsel
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Attachment 1

Case#: GOC2022-0097

DIVISION OF RELIABILITY & SECURITY



State of New Jersey
 BOARD OF PUBLIC UTILITIES
 44 South Clinton Avenue, 1st Floor
 Post Office Box 350
 Trenton, NJ 08625-0350

BUREAU OF ONE-CALL
 & METER TESTING
bpu.onecall@bpu.nj.gov

06/29/2023

VIA U.S. CERTIFIED MAIL & REGULAR MAIL

Greenwood Tree Service
 637 Main Street
 West Creek, NJ 08092

RE: NOTICE OF PROBABLE VIOLATION

Failure to Comply with Certain Provisions of the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq.

Date of Probable Violation: 02/07/2022

Location: 11 E 12th St, Barnegat Light, NJ 08006

Case Number: GOC2022-0097

Dear Company Owner/Manager:

Pursuant to the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq. ("UFPA"), the New Jersey Board of Public Utilities ("Board") is the New Jersey state agency designated to oversee the One-Call Damage Prevention System ("One-Call System") and enforce the provisions of the UFPA.

On **02/07/2022**, excavation undertaken by you (or your company) allegedly resulted in damage to an underground facility operated by **NJ Natural Gas** at the above-referenced location. Based upon an investigation of the circumstances and a review of supporting documents, including report(s) submitted by the underground facility operator, the Board's Bureau of One-Call determined that **Greenwood Tree Service** is in probable violation of the following One-Call System regulation:

1. VIOLATION DESCRIPTION - DID NOT HAVE A VALID MARKOUT AT TIME OF EXCAVATION

2. STATUTE OR RULE VIOLATED - N.J.S.A. 48:2-82(a)

Pursuant to the UFPA, an excavator or underground facility operator who violates any provision of the One-Call System rules, the UFPA, or any order adopted pursuant thereto, shall be liable for penalties in the amount of not less than \$1,000, and not more than \$2,500, per day for each day the violation continues, with a maximum civil penalty of up to \$25,000 for any related series of violations. For violations concerning a natural gas pipeline or a hazardous liquid pipeline, a penalty of not more than \$200,000 for each violation may be assessed for each day the violation persists, up to a maximum of \$2,000,000 for any related series of violations.

The Bureau of One-Call may, pursuant to N.J.A.C. 14:2-6.4, settle the alleged probable violation through an Offer of Compromise and Settlement in lieu of formal proceedings. Attached to this correspondence is an Answering Certification that provides three (3) options. You **MUST select one of the three (3) options available to you within twenty-one (21) calendar days after receiving this Notice of Probable Violation ("NOPV") in order to avoid default.** A summary of the options is as follows.

Option One (1):

If you do not contest the charges and wish to avail yourself of a settlement opportunity via the Offer of Compromise, you must select Option 1 and sign, date, and return both the certification and payment within twenty-one (21) calendar days from the date of this notice.

Attachment 2

Case # GOC2022-0097

CERTIFIED MAIL™

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

SENDER: COMPLETE **DELIVERY**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Greenwood Tree Service
637 Main Street
West Creek, NJ 08092

2. Signature

Agent
 Addressee

X *Stacy Taylor*

B. Received by (Printed Name)

C. Date of Delivery

7-3-23

D. Is delivery address different from Item 1? Yes
If YES, enter delivery address below: No

JUL 2022-0097

3. Service Type

Adult Signature
 Adult Signature Restricted Delivery
 Certified Mail®
 Certified Mail Restricted Delivery
 Collect on Delivery
 Collect on Delivery Restricted Delivery
 Insured Mail
 Insured Mail Restricted Delivery (over \$500)

Priority Mail Express®
 Registered Mail™
 Registered Mail Restricted Delivery
 Signature Confirmation™
 Signature Confirmation Restricted Delivery

9590 9402 8039 2349 9884 65

7014 0510 0000 9073 4070

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

USPS Tracking®

FAQs >

Tracking Number:

Remove X

7014051000090734070

Copy Add to Informed Delivery (<https://informedelivery.usps.com/>)

Latest Update

Your item was delivered to an individual at the address at 10:55 am on July 3, 2023 in WEST CREEK, NJ 08092.

Get More Out of USPS Tracking:

USPS Tracking Plus®

Delivered

Delivered, Left with Individual

WEST CREEK, NJ 08092
July 3, 2023, 10:55 am

Departed USPS Regional Facility

SOUTH JERSEY NJ DISTRIBUTION CENTER
July 2, 2023, 7:03 pm

Feedback