



Agenda Date: 10/11/23
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.)
)
) DOCKET NOS. GS23090645K
) et al. (see attached Appendix)

Party of Record:

Nick DePoto, Elizabethtown Gas Company
Chelsey Gaworecki, Public Service Electric and Gas Company
Seminole Construction
James B. Rumen, RJR Engineering Co.
Schilke Construction Company
Matthew Zappone, Pro Equipment, Inc.
David Read Jr., Mendham Twp. Public Works
River City Construction, Inc.

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 and Offer of Settlement to each of the alleged violators and informed them of the date and location of the alleged violations. A complete list of entities that accepted said Offers of Settlement is provided in Appendix A attached hereto and made a part hereof.¹

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.

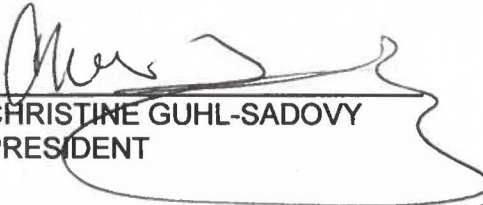
¹ The 25 Offers of Settlement were accepted by the alleged violators, and each made full payment on the dates provided in Appendix A.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.


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: 
SHERRIL 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. GS23090645K et al. (see attached Appendix)

SERVICE LIST

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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 Nos. GS23090645K et al.

Facility Damaged	BPU Docket #	One Call Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Natural Gas	GS23090645K	GOC2014-0086	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	3/6/2014	Linden, NJ	7/17/2014
Natural Gas	GS23090646K	GOC2015-0130	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	2/26/2015	Bridgewater, NJ	10/7/2015
Natural Gas	GS23090647K	GOC2015-0320	Did Not Have a Valid Markout	\$3,000	Seminole Construction	4/8/2015	Manahawkin, NJ	11/17/2015
Natural Gas	GS23090648K	GOC2016-0388	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	4/19/2016	Union, NJ	3/30/2017
Natural Gas	GS23090649K	GOC2016-0524	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	5/24/2016	East Brunswick NJ	11/15/2016
Natural Gas	GS23090650K	GOC2016-0528	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	5/24/2016	Park Ridge, NJ	7/25/2018
Natural Gas	GS23090651K	GOC2016-0650	Did Not Have a Valid Markout	\$3,000	RJR Engineering Co.	6/10/2016	Morris Twp, NJ	7/27/2018
Natural Gas	GS23090652K	GOC2016-0711	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	6/29/2016	West Milford, NJ	7/25/2018
Natural Gas	GS23090653K	GOC2016-0933	Failure to Use Reasonable Care	\$3,000	Schilke Construction Company	7/22/2016	South Amboy, NJ	11/9/2017
Natural Gas	GS23090654K	GOC2017-0962	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	6/28/2017	Carteret, NJ	5/10/2019
Natural Gas	GS23090655K	GOC2016-1069	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	08/25/2016	Union City, NJ	11/1/2018
Natural Gas	GS23090656K	GOC2016-1085	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	08/17/2016	Princeton NJ	8/20/2019
Natural Gas	GS23090657K	GOC2016-1300	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	9/21/2016	Garwood Nj	3/30/2017
Natural Gas	GS23090658K	GOC2016-1429	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	10/6/2016	Clark, NJ	7/31/2019
Natural Gas	GS23090659K	GOC2016-1441	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	10/17/2016	Dunellen, NJ	11/15/2018
Natural Gas	GS23090660K	GOC2016-1577	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	11/09/2016	Cinnaminson NJ	11/15/2018
Natural Gas	GS23090661K	GOC2016-1759	Did Not Have a Valid Markout	\$3,000	Pro Equipment Inc.	11/15/2016	Glassboro, NJ	11/29/2018

APPENDIX A

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

Docket Nos. GS23090645K et al.

Natural Gas	GS23090662K	GOC2016-1878	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	10/31/2016	Westfield NJ	6/13/2019
Natural Gas	GS23090663K	GOC2017-1298	Failure to Use Reasonable Care	\$3,000	Mendham Twp. Public Works	9/15/2017	Morristown	7/5/2019
Natural Gas	GS23090664K	GOC2017-1350	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	9/18/2017	Trenton NJ	8/30/2019
Natural Gas	GS23090665K	GOC2018-0005	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	1/10/2018	Scotch Plains, NJ	5/16/2019
Natural Gas	GS23090666K	GOC2018-1313	Did Not Properly Mark	\$3,000	Elizabethtown Gas Company	10/17/2018	Carteret, NJ	8/20/2019
Natural Gas	GS23090667K	GOC2018-1317	Did not Properly Mark	\$3,000	Elizabethtown Gas Company	10/24/2018	Roselle NJ	7/31/2019
Natural Gas	GS23090668K	GOC2019-0826	Did Not Have a Valid Markout	\$3,000	River City Construction Inc.	7/24/2019	Howell Township	9/20/2019
Natural Gas	GS23090669K	GOC2016-1580	Did Not Properly Mark	\$3,000	Public Service Electric & Gas Company	10/18/2016	Lyndhurst NJ	4/6/2017
Total Cases: 25								
Total Penalties: \$75,000								