



Agenda Date: 10/25/23
Agenda Item: 6A

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 TO 91 BY RVC CONSTRUCTION, LLC)
)
) FINAL ORDER OF PENALTY
) ASSESSMENT
)
) DOCKET NO. GS23080583

Party of Record:

Christel M. Lugo, Esq., on behalf of RVC Construction, LLC

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("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 a probable violation of the Underground Facility Protection Act, N.J.S.A. 48:2-73 to 91 ("Act") by RVC Construction, LLC ("RVC" or "Respondent").

BACKGROUND

The Board has jurisdiction to oversee and enforce the provisions of the Act. The Act established 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, 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

On May 11, 2022, Public Service Electric and Gas Company (“PSE&G”) filed a report concerning damage to an underground natural gas facility that occurred on April 21, 2022. Based on a review of the damage report and information provided, Board Staff (“Staff”) found that RVC: 1) engaged in excavation as defined by the Act; 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) on April 21, 2022, damaged an underground natural gas facility operated by PSE&G at 195 Kinderkamack Rd, River Edge, New Jersey.

On May 11, 2022, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, Staff issued a Notice of Probable Violation (“NOPV”) to Black Rock. The NOPV was served via regular and certified mail, and included an Answering Certification. See Attachment 1. The NOPV advised RVC that failure to file an Answering Certification within 21 days may result in the issuance of a FOPA, as required by N.J.A.C. 14:2-6.4(b)(5)(i) and N.J.A.C. 14:7-2.2(b)(5)(i). By letter dated August 19, 2022, RVC submitted a signed Answering Certification asking the Board to consider mitigating circumstances.

Notice of Settlement Conference

On June 14, 2023, RVC was served with a Notice of Settlement Conference (“Notice”) pursuant to N.J.A.C. 14:2-6.5(b) concerning the natural gas facility damage at 195 Kinderkamack Rd, River Edge, New Jersey. See Attachment 2. The Notice advised RVC that failure to appear on the scheduled date of June 28, 2023 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.

On June 28, 2023, a 9:30 a.m. Zoom video conference was held with Respondent who was represented by an attorney. No new evidence was presented during the video conference, and Respondent agreed to pay a penalty of \$3,000 by July 14, 2023. A revised NOPV and Answering Certification was sent via email to the Respondent and Respondent’s attorney on June 29, 2023. See Attachment 3. As of the date of this Order, Respondent has not filed the revised Answering Certification. As such, the Respondent is deemed to be in default pursuant to N.J.A.C. 14:2-6.6(a).

As RVC failed to respond to the revised NOPV and Answering Certification dated June 28, 2023, 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 terms of the revised NOPV agreed to by Respondent during the June 28, 2023 Settlement Conference was reasonable and in the public interest.

RVC failed to submit the revised Answering Certification by July 14, 2023. As such, the Board **HEREBY FINDS** that the Respondent is in default pursuant to N.J.A.C. 14:2-6.6(a) and the Board is not bound by the terms agreed to during the June 28, 2023 Settlement Conference. After consideration of the penalty factors provided 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 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 November 11, 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

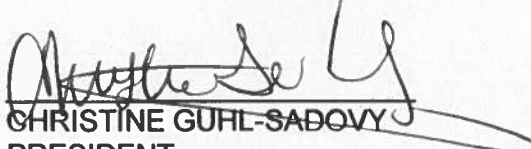
Please include a copy of this Order with your payment.

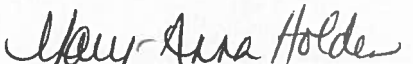
If the Respondent fails to make the required payment by November 11, 2023, the Board **HEREBY DIRECTS** Staff to docket this Order against the Respondent as a Judgment with the New Jersey Superior Court or transfer the unpaid debt to the Department of Treasury for the issuance of a Certificate of Debt pursuant to N.J.S.A. 2A:16-11.1.

This Order shall be effective on November 1, 2023.

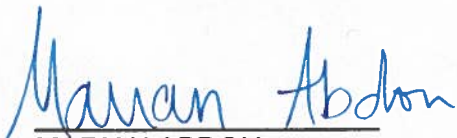
DATED: October 25, 2023

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 THE ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 TO 91 BY RVC CONSTRUCTION, LLC

DOCKET NO. GS23080583

SERVICE LIST

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Newark, NJ 07102

Wagner Costa
RVC Construction, LLC
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Newark, NJ 07028

Attorney General's Office

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Richard J. Hughes Justice Complex
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Board of Public Utilities

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Attachment 1

Case #: GOC2022-0452


State of New Jersey
BOARD OF PUBLIC UTILITIES
DIVISION OF RELIABILITY & SECURITY
44 South Clinton Avenue, 1st Floor
PO Box 350
Trenton, NJ 08625-0350

05/11/2022

In the Matter of:

RVC Construction
200 Ferry Street
Newark, NJ 07028

NOTICE OF PROBABLE VIOLATION AND OFFER OF SETTLEMENT

DATE OF PROBABLE VIOLATION: **04/21/2022**

LOCATION: **195 Kinderkamack Rd, River Edge, NJ 07661**

OPERATOR OF THE FACILITY: **PSE&G (G)**

BRIEF DESCRIPTION OF POSSIBLE VIOLATION: **DID NOT HAVE A VALID MARKOUT AT TIME OF EXCAVATION**

MARKOUT REQUEST NO.:

STATUTE, REGULATION, OR ORDER VIOLATED: **N.J.S.A. 48:2-82(a)**

Case #: **GOC2022-0452**

To Whom it May Concern:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("Act"), **N.J.S.A. 48:2-73 et seq.** The Act requires excavators to notify the NJ One-Call Center prior to excavating ("One Call Obligation"). Violators of the Act are subject to a civil penalty of not less than \$1,000 and not more than \$2,500 per violation per day. The civil penalty for a related series of violations may not exceed \$25,000. If the violation of the Act involves natural gas facilities, the maximum penalties are \$200,000 per violation per day, with a total maximum of \$1,000,000 for a related series of violations.

Board Staff has reviewed information received in connection with a complaint concerning an Excavation, as defined in **N.J.S.A. 48:2-75**, undertaken by **RVC Construction** ("Respondent") ("You") without fulfilling the One Call Obligation.

Specifically, the information reviewed included: (1) Operator reports submitted by Utilities pursuant to **N.J.A.C. 14:2-4.4**; and (2) New Jersey One Call ticket records; A Certification by , is attached hereto.

In this case, it has been determined that you failed to contact the One Call Center prior to commencing excavation in violation of **N.J.S.A. 48:2-82** and **N.J.A.C. 14:2-3.1** and **3.2**.

Attachment 2

PHIL MURPHY
GOVERNOR

SHEILA OLIVER
LT. GOVERNOR



State of New Jersey
BOARD OF PUBLIC UTILITIES
44 South Clinton Avenue
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/
(609)777-3300

June 14, 2023

**Joseph L.
Fiordaliso**
President

Mary-Anna Holden
Commissioner

Zenon Christodoulou
Commissioner

Christine Guhl-Sadovy
Commissioner

Marian Abdou
Commissioner

RVC Construction
200 Ferry Street
Newark, NJ 07028

NOTICE OF SETTLEMENT CONFERENCE OC CASE #: GOC2022-0452

Re: Probable Violation of the Underground Facility Protection Act
Location: 195 Kinderkamack Rd, River Edge, NJ
Date: 4/21/2022

Wagner Costa,

PLEASE TAKE NOTICE that the New Jersey Board of Public Utilities ("Board") oversees and enforces the provisions of the Underground Facility Protection Act, N.J.S.A. 48:2-73, et seq. ("Act"). Pursuant thereto, the Board is the State agency that oversees the One-Call Damage Prevention System ("One-Call System"), and enforces the rules and regulations promulgated pursuant to the Act.

PLEASE TAKE FURTHER NOTICE that on the Board issued you (or your company) a Notice of Probable Violation ("NOPV") citing alleged violation(s) of the Act at the above-referenced location. The Board is in receipt of your Answering Certification. Pursuant to N.J.A.C. 14:2-6.5(b), an informal settlement conference to discuss the NOPV and your Answering Certification is scheduled for the following date and time:

Date: 6/28/2023
Time: 9:30 AM
Location: Zoom Virtual Meeting
Virtual Meeting ID: 830 7603 3676
Password: 564510

Representatives from the Board's Staff and the Office of the Attorney General will participate in the conference. In order to encourage full participation, please submit any requests for needed accommodations, such as interpreters or listening devices, 48 hours prior to the scheduled date and time, to the Board's Secretary at board.secretary@bpu.nj.gov.

PLEASE BE ADVISED that failure to appear at the above date and time may result in the following:

1. A default as provided in N.J.A.C. 14:2-6.6(a);
2. The allegations provided in the NOPV will be deemed uncontested; and
3. The Board issuing a Final Order of Penalty Assessment assessing the maximum penalty authorized by law without further notice and without further opportunity to contest the penalty.

PLEASE CONFIRM ATTENDANCE WITHIN SEVEN (7) DAYS OF RECEIPT OF THIS NOTICE
VIA EMAIL AT: bpu.onecall@bpu.nj.gov

Attachment 3

State of New Jersey
BOARD OF PUBLIC UTILITIES
DIVISION OF RELIABILITY & SECURITY
44 South Clinton Avenue, 1st Floor
PO Box 350
Trenton, NJ 08625-0350

ANSWERING CERTIFICATION

GOC2022-0452

I, _____, hereby acknowledge that I have read and reviewed Board Staff's Notice dated 06/28/2023 regarding allegations of violations of the Underground Facility Protection Act (Act), N.J.S.A. 48:2-73 et seq. and the regulations promulgated pursuant thereto, including N.J.A.C. 14:2-1.1 et seq.

Please check one:

I DO NOT CONTEST THE CHARGES and acknowledge the conduct which has been charged and agree to:

1. Cease and desist from violating the provisions of N.J.S.A. 48:2-73 et seq. as set forth above.
2. Pay a minimum penalty in the amount of \$3000.00.

I understand and acknowledge that I must comply with the provisions of N.J.S.A. 48:2-73 et seq. and all regulations promulgated thereto. I am also aware that the action taken against me by the Board herein is a matter of public record, and that the Notice of Probable Violation and this Certification are public documents. I am enclosing herewith a check or money order in the sum of \$3000.00 made payable to the TREASURER, STATE OF NEW JERSEY

Sent to : Curtis Elvin, BPU Chief Fiscal Officer
NJ Board of Public Utilities
Office of Budget and Finance
44 South Clinton Avenue-9th Floor
PO Box 350
Trenton, New Jersey 08625-0350
Attention: One Call Enforcement

You must write GOC2022-0452 as indicated above, on your check.

If you accept a compromise and settlement, Board Staff will recommend that this matter, involving only the specific violation listed above, be terminated by a formal Board acceptance of this compromise and settlement at a regularly-scheduled public agenda meeting. You are advised that you have the right to request a hearing in this matter and that, if you accept this settlement offer, you are waiving your right to such a hearing or to otherwise contest this matter through the administrative or judicial processes. The Board will determine whether to accept Board Staff's recommendation to terminate this matter by Board acceptance of this compromise and settlement. If the Board does not accept this compromise and settlement, you will be notified.

I am aware that failure to comply with this settlement may subject me to further enforcement proceedings and any failure to make a required payment will result in the filing of a Certificate of Debt.

Annotation to 6/28/2023 Offer of Compromise and Settlement

I further agree to:

1. Make full payment of \$3,000 by no later than 7/14/2023
2. Update my company's procedures consistent with the provisions of N.J.S.A. 48:2-73 et seq. and N.J.A.C. 14:2-1.1 et seq.

Dated: ___/___/___

By: _____
Authorized representative of:
RVC Construction