



Agenda Date: 4/18/2019
Agenda Item: VIB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

RELIABILITY & SECURITY

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| IN THE MATTER OF ALLEGED VIOLATIONS OF THE |) | ORDER ADOPTING |
| UNDERGROUND FACILITY PROTECTION ACT, |) | STIPULATION AND |
| N.J.S.A. 48:2-73 to -91 BY FULLERTON LANDSCAPE |) | SETTLEMENT AGREEMENT |
| ARCHITECTS |) | |
| |) | DOCKET NO. CS18060650 |

Party of Record:

Fullerton Landscape Architects

BY THE BOARD:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("the Act") pursuant to the provisions set forth in N.J.S.A. 48:2-73 to -91. To resolve the above-captioned matter against Fullerton Landscape Architects ("Company"), the Board reviews the Stipulation and Settlement Agreement ("Settlement") between Board Staff ("Staff") and the Company.

The primary purpose of the Act is to establish 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, 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 \$1,000.00 and not 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 subject the violator to civil penalties not to exceed \$100,000.00 per violation per day and not to exceed \$1,000,000.00 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).

In June 2016, Staff commenced an investigation following reports of damage to an underground facility operated by Comcast. In response to Staff's letter of inquiry, the Company advised that it was at the site of the alleged damage on the date of the incident and was conducting work in the back of the property. Comcast also responded to Staff and advised that the Company was the excavator on site on the date and time the damage occurred, and also that the Company did not request a mark-out prior to commencing its construction work.

Subsequently, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, on April 13, 2017, Staff issued a Notice of Probable Violation ("NOPV") to the Company, which included a blank Answering Certification Form. The NOPV was sent via regular and Certified Mail to the Company. The NOPV advised the Company that failure to file an Answering Certification 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). The Company signed and returned the certified mail receipt. The regular mail was not returned. Pursuant to N.J.A.C. 14:2-6.5(a) and N.J.A.C. 14:7-2.3(a), the Company must file an answering Certification within twenty-one (21) days of receiving the NOPV.

After review of its file, Staff believed that the Company had failed to file the Answering Certification. As a result, pursuant to N.J.A.C. 14:2-6.6(b) and N.J.A.C. 14:7-2.4(b), Staff presented the NOPV to the Board, requesting that the Board issue a Final Order of Penalty Assessment ("FOPA") against the Company. By Order dated October 29, 2018, the Board, after having reviewed the record, found the NOPV issued by Staff to be reasonable and in the public interest. As enumerated in the October 2018 Order, the Board issued the FOPA, and authorized Board Staff to docket a judgment against the Company in the amount of \$6,000.

Before the docketed judgment was entered in November 2018, the Company reached out to Staff and provided documentation that the Company had, in fact, timely submitted the Answering Certification in May 2017. Since that time, Staff and the Company engaged in settlement negotiations to resolve this matter, and subsequently, entered into a signed Settlement.

In relevant part, the Settlement provides that:

1. Fullerton Landscape Architects, LLC shall make a one-time payment of Three Thousand Dollars 00/100 (\$3,000.00) payable to the Treasurer, the State of New Jersey.
2. The Stipulation of Settlement and Payment of the Three Thousand Dollars 00/100 (\$3,000.00) through guaranteed funds shall be submitted by February 28, 2019.

3. Upon receipt of the executed Stipulation of Settlement and the Three Thousand Dollars 00/100 (\$3,000.00) through guaranteed funds, Staff will recommend at the next regularly scheduled Board meeting that the Board approve the settlement.

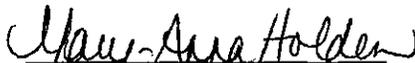
After review of the entire record, the Settlement and confirmation of receipt of the Company's Three Thousand Dollars 00/100 (\$3,000.00), the Board **HEREBY FINDS** that this Settlement is reasonable and in the public interest, and resolves this matter without the need for further litigation. Accordingly, the Board **HEREBY ADOPTS** the Settlement executed by Staff and the Company in its entirety as if fully set forth herein. The Settlement is attached hereto and made a part hereof.

This Order shall be effective on April 28, 2019.

DATED: 4/18/19

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT

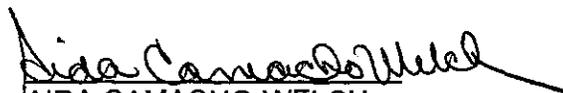

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST:


AIDA CAMACHO-WELCH
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 to -91, ORDER ADOPTING STIPULATION AND
SETTLEMENT AGREEMENT, BY FULLERTON LANDSCAPE ARCHITECTS**

DOCKET NO. CS18060650

SERVICE LIST

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Fullerton Landscape Architects
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Renee.Greenberg@law.njoag.gov

WHEREAS, Board Staff advised the Company that they found certain probable violations of N.J.S.A. 48:2-73 to -91 – specifically, N.J.S.A. 48:2-82(a), N.J.A.C. 14:2-3.1 and N.J.A.C. 14:2-3.2 ; and

WHEREAS, on April 13, 2017, Board Staff issued a Notice of Probable Violation (“NOPV”) to Fullerton Landscape Architects via regular and Certified mail, which described the alleged violation; and

WHEREAS, the Company received the NOPV as confirmed by the signed returned certified mail receipt; and

WHEREAS, after review of the file, Board Staff believed that the Company failed to file an Answering Certification in compliance with N.J.A.C. 14:7-2.4(a); and

WHEREAS, the Board of Public Utilities (“Board”), after finding that the Company was in default for failing to file the Answering Certification, issued a Final Order of Penalty Assessment (“FOPA”), BPU Docket No. CS18060650K, against Fullerton Landscape Architects in October 2018, and authorized Board Staff to docket a Judgment against Fullerton Landscape Architects in the amount of Six Thousand Dollars 00/100 (\$6,000.00); and

WHEREAS, before the Judgment was docketed, the Company reached out to Board Staff and submitted documentation that the Company had, in fact, timely submitted the Answering Certification in May 2017. According to the Answering Certification, the Company did not contest the alleged violation, but requested that Board Staff consider additional information. As a result of this information, Board Staff and the Company engaged in settlement negotiations and have reached an agreement to resolve any and all claims arising from or relating thereto; and

WHEREAS, each party agrees that this Stipulation represents a fair and reasonable settlement of all issues that were or could have been raised in regard to the above-captioned matter; and

WHEREAS, the resolution of this matter through the adoption of the stipulated positions set forth herein best serves the interests of the parties, supports judicial economy and preservation of valuable judicial, administrative and corporate resources, and is, therefore in the public interest; and

NOW THEREFORE, the parties hereby agree as follows:

1. As a compromise of civil penalties for the NOPV and Board issued FOPA, Fullerton Landscape Architects shall execute this Stipulation of Settlement and make a one-time payment of Three Thousand Dollars 00/100 (\$3,000.00) payable to the Treasurer, the State of New Jersey.
2. The Stipulation of Settlement and Payment of the Three Thousand Dollars 00/100 (\$3,000.00) through guaranteed funds (i.e., bank check, money order) shall be submitted by February 28, 2019, and sent to:

Michael Greco, BPU Chief Fiscal Officer
NJ Board of Public Utilities
Office of Budget and Finance
PO Box 350
Trenton NJ 08625
Attention One Call Enforcement

You must write **COC2016-0144** on your check.

3. Upon receipt of the executed Stipulation of Settlement and the Three Thousand Dollars 00/100 (\$3,000.00) through guaranteed funds, Staff will recommend at the next available regularly scheduled Board agenda meeting that the Board approve the settlement.

4. Failure to pay the civil penalty of Three Thousand Dollars 00/100 (\$3,000.00) through guaranteed funds (i.e., bank check, money order) by February 28, 2019 shall result in Board Staff docketing a judgment in the amount of Six Thousand Dollars 00/100 (\$6,000.00) against Fullerton Landscape Architects as authorized by the Board in its October 2018 Order.

6. Upon written approval of this Stipulation by the Board, it shall then constitute the entire agreement between the Board Staff and the Company with respect to the above referenced matter, and shall operate as a complete and final disposition subject only to the fulfillment of all the provisions of this Stipulation.

7. This Stipulation may not be amended in any way, or any part of its provisions waived, except by writing executed by all the parties to this Stipulation. In the event the Board modifies any provision of this Stipulation, absent express written consent of the parties, the Stipulation shall be void, and the parties shall be restored to their positions prior to the execution of the Stipulation.

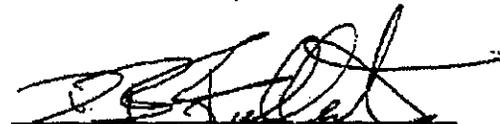
8. This Stipulation may be executed in as many counterparts as there are signatures, thereof, each of which shall be an original, but all of which shall constitute one and the same instrument. No amendment or waiver of any substantive provision of this Stipulation shall be effective unless it is agreed to by the authorized representative of each party hereto.

9. This Stipulation shall be governed by, and construed in accordance with the laws of the State of New Jersey.

NOW, THEREFORE, the Parties cause this Stipulation to be executed by their duty authorized officers or officials.

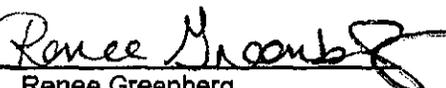
Douglas Fullerton, *pro se*
Fullerton Landscape Architects

3/1/19
Dated:

By: 
Douglas Fullerton
Fullerton Landscape Architects

GURBIR S. GREWAL
ATTORNEY GENERAL OF THE
STATE OF NEW JERSEY
Attorney for the Staff of the
New Jersey Board of Public Utilities

3/1/19
Dated:

By: 
Renee Greenberg
Deputy Attorney General