



Agenda Date: 4/6/22
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. 48:2-73-91)

ORDER ACCEPTING
SETTLEMENTS

DOCKET NOS. GS22020082K
et al. (see attached Appendix)

Parties of Record:

- Frank Donato III**, City of Ocean City Public Works
- Carolyn Jacobs**, South Jersey Gas Company
- Nick Depoto**, Elizabethtown Gas Company
- Byron Peters Jr.**, Atlantic City Electric Company
- Alison Sbriscia**, New Jersey Natural Gas Company
- Chelsey VanHeest**, Public Service Electric & Gas Company
- Donald Richards**, Jersey Central Power & Light Company
- Chris Nunez**, Lantier Construction/ A&L Concrete
- John Rudko**, CRJ Contracting
- Michael Seidenburg/ Justin Sgalio**
- Pete Gregory**, KG Construction
- Joy Putz**, Paving Plus
- Michael Tedeschi**, Esposito Construction
- Stephen Cimboic**, Capital Fence
- Charles Fasciano**, Ferreira Construction
- Michael B. Cole**, Mike Cole's Landscaping & Lawn Care
- Devin Santangelo**, J Fletcher Creamer
- Joe Lippincott**, Lippincott & Lippincott
- Trish Dick**, Joseph's Landscaping Company
- Paulo Matos/ Matthew Kiefer**, PM Construction
- Michael Quigley**, Michael Quigley Plumbing & Heating
- Michael G. Earle**, Earle Asphalt
- Michael Marino**, EM Utility Contractors
- Kevin Houser**, B&H Contracting
- Susan Panzarella**, Panzarella Contractors
- Ward Connon**, W. Connon & Associates
- Jeffrey Lefkovits**, G&S Technologies

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 (“Act”) pursuant to the provisions set forth in N.J.S.A. 48:2-73 to -91. The Act establishes the One-Call Damage Prevention System (“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 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.

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 System prior to commencing excavation or demolition activities, failing to hand dig and locate facilities, failing to use reasonable care, and/or failing to mark out or properly mark out underground facilities, Board Staff contacted the alleged entities and informed them of the date and location of the alleged violations. A complete list of entities and violations is provided in the Appendix attached hereto and made a part hereof.

In an attempt to resolve these matters, the entities in the Appendix submitted an Offer of Settlement to the Board for its review and consideration. Said Offers of Settlement are also provided in the attached Appendix. Each such Offer of Settlement is summarized in the Appendix.

II. **DECISION AND FINDINGS**

After consideration of the matters provided in the Appendix, 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 the Appendix attached hereto and made part hereof.

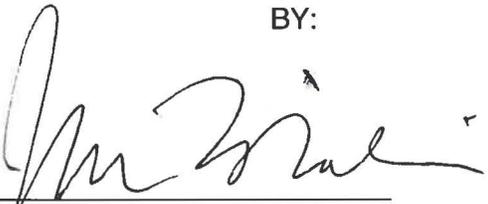
By acceptance of the Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Act in connection with the above-referenced alleged violations. It must 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 the Appendix. 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 April 13, 2022.

DATED: April 6, 2022

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: 

CARMEN D. DIAZ
ACTING SECRETARY

IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 to -91

DOCKET NOS. GS22020082K et al. (see attached Appendix)

SERVICE LIST

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<p><u>Board of Public Utilities</u></p> <p>44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, NJ 08625</p> <p>Secretary of the Board board.secretary@bpu.nj.gov</p> <p>Heather Weisband, Senior Counsel heather.weisband@bpu.nj.gov</p> <p><u>Division of Reliability & Security</u></p> <p>Lauren Mattox, Executive Assistant lauren.mattox@bpu.nj.gov</p> <p>Thomasine Osborne, Analyst thomasine.osborne@bpu.nj.gov</p>	
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Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Gas	GS22020082K	GOC2021-0972	Failed to use reasonable care	\$3000.00	Elizabeth Town Gas	Lantier Constr./ A&L Concrete	08/03/2021	Perth Amboy, NJ	01/05/2022
Gas	GS22020084K	GOC2021-0980	Did not properly mark-out	\$3000.00	Elizabeth Town Gas	Unlisted	08/19/2021	Fords, NJ	01/05/2022
Gas	GS22020083K	GOC2021-0978	Did not properly mark-out	\$3000.00	Elizabeth Town Gas	CRJ Contracting	08/09/2021	Linden, NJ	01/05/2022
Gas	GS22020081K	GOC2021-0970	Did not have a valid mark-out	\$3000.00	South Jersey Gas	Justin Sgalio	08/14/2021	Wildwood, NJ	01/05/2022
Gas	GS22020088K	GOC2021-1382	Early dig	\$3000.00	NJ Natural Gas	KG Construction	10/29/2021	Long Branch, NJ	01/18/2022
Gas	GS22020097K	GOC2021-1699	Failed to use reasonable care	\$3000.00	PSE&G (G)	Paving Plus	12/13/2021	Pemberton, NJ	02/22/2022
Gas	GS22020098K	GOC2021-1705	Did not have a valid mark-out	\$3000.00	PSE&G (G)	Capital Fence	12/15/2021	Warren, NJ	02/22/2022
Gas	GS22020096K	GOC2021-1659	Failed to use reasonable care	\$3000.00	NJ Natural Gas	Ferreira Construction	12/16/2021	Bay Head, NJ	02/22/2022
Electric	ES22020105K	EOC2021-0232	Did not properly mark-out	\$3000.00	Atlantic City Electric	J Fletcher Creamer	09/29/2021	Monroe, NJ	02/22/2022
Electric	ES22020104K	EOC2021-0126	Did not properly mark-out	\$3000.00	Atlantic City Electric	Lippincott & Lippincott Excavating	04/06/2021	Barnegat, NJ	02/02/2022
Electric	ES22020107K	EOC2021-0304	Did not have a valid mark-out	\$3000.00	Atlantic City Electric	Joseph's Landscaping	12/28/2021	Monroe, NJ	02/22/2022
Gas	GS22020094K	GOC2021-1532	Did not properly mark-out	\$3000.00	NJ Natural Gas	PM Construction	11/23/2021	Rockaway, NJ	01/18/2022
Gas	GS22020093K	GOC2021-1527	Did not properly mark-out	\$3000.00	NJ Natural Gas	Michael Quigley Plumbing & Heat	11/18/2021	Brick, NJ	01/18/2022
Gas	GS22020091K	GOC2021-1442	Did not properly mark-out	\$3000.00	NJ Natural Gas	PM Construction	11/04/2021	Rockaway, NJ	01/18/2022
Gas	GS22020092K	GOC2021-1445	Did not properly mark-out	\$3000.00	NJ Natural Gas	Earle Asphalt	11/05/2021	Toms River, NJ	01/18/2022
Gas	GS22020090K	GOC2021-1447	Did not properly mark-out	\$3000.00	NJ Natural Gas	EM Utility Contractors	11/06/2021	Brick, NJ	01/18/2022
Gas	GS22020087K	GOC2021-1377	Did not properly mark-out	\$3000.00	NJ Natural Gas	B&H Contracting	10/22/2021	Holmdel, NJ	01/18/2022
Gas	GS22020100K	GOC2021-1725	Did not have a valid mark-out	\$3000.00	PSE&G (G)	Panzarella Contractors	12/29/2021	North Brunswick, NJ	02/03/2022
Gas	GS22020101K	GOC2021-1727	Did not have a valid mark-out	\$3000.00	PSE&G (G)	W. Connon & Associates	12/30/2021	Chatham, NJ	02/03/2022
Gas	GS22020099K	GOC2021-1708	Did not have a valid mark-out	\$3000.00	PSE&G (G)	G&S Technologies	12/16/2021	Kearny, NJ	02/10/2022
Electric	ES22020106K	EOC2021-0318	Did not have a valid mark-out	\$3000.00	JCP&L	Esposito Construction	12/27/2021	Brick, NJ	02/18/2022
Gas	GS22020086K	GOC2021-1366	Did not properly mark-out	\$3000.00	NJ Natural Gas	CRJ Contracting	10/18/2021	Fair Haven, NJ	01/18/2022
Gas	GS22020089K	GOC2021-1441	Did not properly mark-out	\$3000.00	NJ Natural Gas	PM Construction	11/04/2021	Rockaway, NJ	01/11/2022
Gas	GS22020095K	GOC2021-1658	Did not have a valid mark-out	\$3000.00	NJ Natural Gas	Mike Cole's Landscaping & Lawn Care	12/16/2021	Wildwood, NJ	02/03/2022
Gas	GS22020085K	GOC2021-1008	Did not have a valid mark-out	\$3000.00	South Jersey Gas	City of Ocean City Public Works	08/20/2021	Ocean City, NJ	11/24/2021
	25 Cases			\$75,000.00					