



Agenda Date: 10/12/22
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 to -91)
)
) DOCKET NOS. GS22090576K
) et al. (see attached Appendix)

Parties of Record:

- William Condit, Executive Vice President**, Trinity Solar
- William Widmer**, South Jersey Gas Company
- Michael Giambra, Vice President Electrical & Substations**, Riggs Distler and Company, Inc.
- Amy Murphy**, Murphy Fence Company
- Lawrence F. Fenimore**, LF Fenimore Plumbing
- George Irrigation**
- Jeffrey Bowlby**, New Jersey-American Water Company, Inc.
- Skender Meka**, North American Eagle Construction
- B. Brzezinski**, Premium Excavating
- Byron Peters, Jr.**, Atlantic City Electric Company
- Daniel Smigel**, Pro se
- Lance Redaelli**, L&L Paving Company
- David Amarilla**, Pro se
- AL Shelton**, ACS Landscaping
- John Wyckoff**, New Jersey Natural Gas Company
- Lauren Elsaesser, Treasurer**, Railroad Construction Company
- Richard Jonsini**, Post to Post
- Mitchell Knapp**, Scenic Landscaping, LLC
- Kelli McMahon**, Esposito Company

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 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

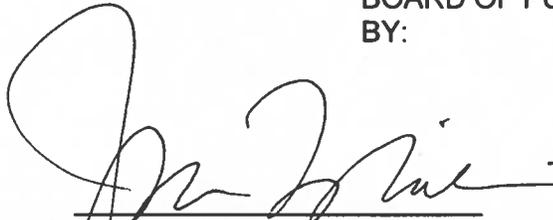
operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Act in connection with the above-referenced alleged violations. It must also be noted that the acceptance of the Offers of Settlement is for settlement purposes 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 October 19, 2022.

DATED: October 12, 2022

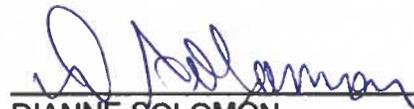
BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST: 

CARMEN D. DIAZ
ACTING 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

DOCKET NOS. GS22090576K et al. (see attached Appendix)

SERVICE LIST

<p>William Condit, Executive Vice President Trinity Solar 2211 Allenwood Road Wall, NJ 07719 bill.condit@trinitysolarsystems.com</p> <p>Mike Widmer South Jersey Gas Company One South Jersey Plaza Folsom, NJ 08037 mwidmer@sjindustries.com</p> <p>Mike Giambra, VP Electrical & Substations Riggs Distler and Company, Inc. 4 Esterbrook Lane Cherry Hill, NJ 08003 mgiambra@riggsdistler.com</p> <p>Murphy Fence Company 507 Seashore Road Cape May, NJ 08204 amy@murphyfence.com</p> <p>Lawrence F. Fenimore LF Fenimore Plumbing 458 Corsons Tavern Road Ocean View, NJ 08230</p> <p>George Irrigation 2316 New York Avenue Hunnigton, NY 11746</p> <p>Jeffrey Bowlby New Jersey-American Water, Inc. 167 JFK Parkway Short Hills, NJ 07078 jeffrey.bowlby@amwater.com</p> <p>Skender Meka North American Eagle Construction 57 E. Centre Street Nutley, NJ 07110</p>	<p>B. Brzezinski Premium Excavating 269 Canal Road Fairless Hill, PA 19054</p> <p>Byron Peters, Jr. Atlantic City Electric Company 5100 Harding Hwy Mays Landing, NJ 08330 byron.petersjr@exeloncorp.com</p> <p>Daniel M. Smigel 26A E. Lake Road Pilesgrove, NJ 08098-3129</p> <p>Lance Redaelli L&L Paving Company 89 Yellowbrook Road Farmingdale, NJ 07727 rfoggia@llpaving.com</p> <p>David Amarilla 511 Chapman Street Hillside, NJ 07205</p> <p>A L Shelton ACS Landscaping 702 Leaming Avenue Cape May, NJ 08204</p> <p>John Wyckoff New Jersey Natural Gas Company 1415 Wycoff Road Wall, NJ 07719 jwyckoff@njng.com</p>
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<p>Lauren Elsaesser, Treasurer Railroad Construction Company 7577 Grove Street Paterson, NJ 07503</p> <p>Richard Jonsini Post to Post 2545 Fire Road Egg Harbor Twp., NJ 08234</p> <p>Mitchell Knapp Scenic Landscaping, LLC 7 Argyle Street Haskell, NJ 07420</p> <p>Kelli McMahon Esposito Company 253 Main Street Matawan, NJ 07747</p> <p><u>Board of Public Utilities</u> 44 South Clinton Avenue, 1st Floor PO Box 350 Trenton NJ, 08625-0350</p> <p>Carmen Diaz, Acting Secretary board.secretary@bpu.nj.gov</p> <p>Stacy Peterson, Deputy Executive Director stacy.peterson@bpu.nj.gov</p> <p>Heather Weisband, Senior Counsel heather.weisband@bpu.nj.gov</p> <p><u>Division of Reliability & Security</u></p> <p>Francis Gaffney, Director francis.gaffney@bpu.nj.gov</p> <p>Jody Raines, Deputy Director jody.raines@bpu.nj.gov</p> <p>Phillip Galka, Bureau Chief phillip.galka@bpu.nj.gov</p> <p>Ann Lang ann.lang@bpu.nj.gov</p> <p>Lauren Mattox lauren.mattox@bpu.nj.gov</p>	<p><u>Attorney General's Office</u> Matko Ilic, DAG NJ Department of Law and Public Safety Richard J. Hughes Justice Complex 25 Market Street – P.O. Box 112 Trenton, NJ 08625 matko.ilic@law.njoag.gov</p>
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In the Matter of Alleged Violations of the Underground Facility Protection Act
N.J.S.A. 48:2-73 et seq., Order Accepting Settlements – Bureau of One Call Settlements
Appendix – October 12, 2022
Docket Nos. GS22090576K et al.

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
GAS	GOC2020-1750	GS22090576K	Did not have a valid mark out	\$3,000		Trinity Solar	11/17/2020	Lerro Road, Pedricktown, NJ	07/13/2022
GAS	GOC2022-0635	GS22090577K	Did not have a valid mark out	\$3,000		NJ American Water	06/04/2022	Franklin Drive, Somers Point, NJ	06/22/2022
GAS	GOC2022-0633	GS22090578K	Did not have a valid mark out	\$3,000		Riggs Distler and Company, Inc.	06/02/2022	Universal Rd. Paulsboro, NJ	06/22/2022
GAS	GOC2022-0651	GS22090579K	Did not have a valid mark out	\$3,000		Murphy Fence Company	06/13/2022	Idaho Ave., Cape May, NJ	08/02/2022
GAS	GOC2022-0649	GS22090580K	Did not have a valid mark out	\$3,000		LF Fenimore Plumbing	06/13/2022	83 rd Street, Stone Harbor, NJ	06/16/2022
GAS	GOC2022-0659	GS22090581K	Did not have a valid mark out	\$3,000		George Irrigation	05/15/2022	Brookside Terr. Caldwell, NJ	06/22/2022
GAS	GOC2020-1791	GS22090582K	Did not have a valid mark out	\$3,000		SJ Gas	11/17/2020	Whitewater Lane Egg Harbor, NJ	07/13/2022
GAS	GOC2022-0631	GS22090583K	Did not properly mark out	\$3,000	SJ Gas		06/01/2022	Main Street, Cape May Ct H,NJ	06/22/2022
GAS	GOC2022-0634	GS22090584K	Did not properly mark out	\$3,000	SJ Gas		06/03/2022	Delaware Ave., Villas, NJ	06/22/2022
WATER	WOC2022-0010	WS22090585K	Did not properly mark out	\$3,000	NJ American Water		01/06/2021	West 1 st Street, Howell, NJ	06/09/2022
GAS	GOC2022-0366	GS22090586K	Did not have a valid mark out	\$3,000		North Amer. Eagle Const.	04/14/2022	Osborne Ave., Bay Head, NJ	05/03/2022
GAS	GOC2022-0601	GS22090587K	Did not have a valid mark out	\$3,000		Premium Excavating	05/05/2022	Rt. 130 North Burlington, NJ	06/29/2022
ELECTRIC	EOC2022-0032	ES22090588K	Did not properly mark out	\$3,000	ACE		03/28/2022	Dune Drive, Egg Harbor, NJ	05/24/2022
ELECTRIC	EOC2022-0107	ES22090589K	Did not properly mark out	\$3,000	ACE		06/15/2022	Pristine Place, Washington Twp., NJ	08/03/2022
ELECTRIC	EOC2022-0071	ES22090590K	Did not have a valid mark out	\$3,000		Daniel Smigel	03/14/2021	East Lake Rd #2 Pilesgrove, NJ	08/02/2022
GAS	GOC2021-0272	GS22090591K	Did not have a valid mark out	\$3,000		L&L Paving Company	03/16/2021	Yellowbrook Rd., Howell, NJ	07/20/2022
GAS	GOC2022-0652	GS22090592K	Did not properly mark out	\$3,000	SJ Gas		06/14/2022	Kings Hwy Mickleton, NJ	06/16/2022
GAS	GOC2022-0735	GS22090593K	Did not have a valid mark out	\$3,000		David Amarilla	07/01/2022	4 th Avenue Elizabeth, NJ	07/18/2022
GAS	GOC2020-1752	GS22090594K	Did not have a valid mark out	\$3,000		ACS Landscaping	11/16/2020	Walnut Avenue Elizabeth, NJ	07/07/2022
GAS	GOC2021-0057	GS22090595K	Did not properly mark out	\$3,000	NJ Natural Gas		01/10/2021	Galewood Drive Matawan, NJ	06/16/2022
GAS	GOC2020-1664	GS22090596K	Did not properly mark out	\$3,000	NJ Natural Gas		11/02/2020	Florence Court Toms River, NJ	07/06/2022
GAS	GOC2020-1690	GS22090597K	Did not have a valid mark out	\$3,000		Railroad Const. Company	11/09/2020	Wilson Avenue Newark, NJ	07/12/2022
GAS	GOC2022-0746	GS22090598K	Did not have a valid mark out	\$3,000		Post to Post	07/01/2022	John Seardord Lane Atlantic City, NJ	08/19/2022
GAS	GOC2020-1675	GS22090599K	Did not properly mark out	\$3,000	NJ Natural Gas		11/10/2020	Wall Cress Ct., Toms River, NJ	07/12/2022

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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	GOC2021-0236	GS22090600K	Did not have a valid mark out	\$3,000		Scenic Landscaping	03/29/2021	Argyle Road, Wanaque, NJ	07/29/2022
GAS	GOC2020-1689	GS22090601K	Did not have a valid mark out	\$3,000		Esposito Company	11/09/2020	Esposito Company	07/07/2022
Total Cases	26								
Total Amount	\$78,000								