



Agenda Date: 12/7/22
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)
)
) ORDER ACCEPTING
) SETTLEMENTS
)
) DOCKET NOS. WS22100636K
) et al. (see attached Appendix)

Parties of Record:

- Jeffrey Bowlby**, NJ American Water Company
- Byron Peters, Jr.**, Atlantic City Electric Company
- Kelly Prince**, Potts Excavating, Inc.
- Jim Parks**, Krise Electric
Tri Mountain Home Improvements
- Michael Malloy**, NJ American Water Company
- John Schenck**, Outdoor Décor
- Lawrence J. Dugan**, JP Orleans
- Douglas Shendock**, Gary Gardner, Inc.
- Loring Dunton**, C & L Service
- Dominic Palieto**, MAG Electrical
- Chelsey Van Heest**, Public Service Electric and Gas Company
- Melissa A. Burris**, Verizon/MCI
- Mike Widmer**, South Jersey Gas 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 December 14, 2022.

DATED: December 7, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



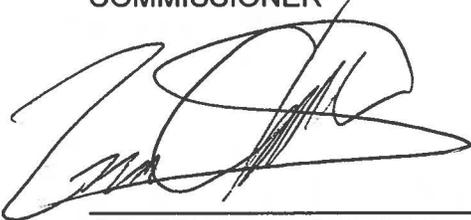
MARY-ANNA HOLDEN
COMMISSIONER



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. WS22100636K et al. (see attached Appendix)

SERVICE LIST

<p>Jeffrey Bowlby New Jersey American Water 167 JFK Parkway Short Hills, NJ 07078 jeffrey.bowlby@amwater.com</p> <p>Byron Peters. Jr. Atlantic City Electric Company 5100 Harding Hwy Mays Landing, NJ 08330 byron.petersjr@exeloncorp.com</p> <p>Kelly Prince Potts Excavating, Inc. 316 State Route 9 West Creek, NJ 08092 pottsexcavating@aol.com</p> <p>Jim Parks Krise Electric 254 Glassboro Road Monroeville, NJ 08343 Info@EricKriservices.com</p> <p>Tri Mountain Home Improvements 42 Carter Avenue North Middletown, NJ 07748</p> <p>Michael Malloy NJ American Water Company 167 JFK Parkway Short Hills, NJ 07078 michael.malloy@amwater.com</p> <p>John Schenck Outdoor Décor P.O. Box 1751 Laurel Springs, NJ 08021</p> <p>Lawrence J. Dugan JP Orleans 1819 John F. Kennedy Blvd. Philadelphia, PA 19103 JHoey@JPOrleans.com</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> <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 phillip.galka@bpu.nj.gov</p> <p>Ann Lang ann.lang@bpu.nj.gov</p> <p>Lauren Mattox lauren.mattox@bpu.nj.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 – December 7, 2022
Docket Nos. WS22100636K et al.

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
WATER	WS22100636K	WOC2022-0084	Did not properly mark out	\$3,000	NJ American Water		06/22/2022	Terrill Road, Scotch Plains, NJ	08/01/2022
WATER	WS22100637K	WOC2022-0086	Did not properly mark out	\$3,000	NJ American Water		06/24/2022	S. Washington Ave. Piscataway, NJ	08/01/2022
WATER	WS22100638K	WOC2022-0085	Did not properly mark out	\$3,000	NJ American Water		06/22/2022	Pulaski Street Dunellen, NJ	08/01/2022
ELECTRIC	ES22100639K	EOC2022-0032	Did not properly mark out	\$3,000	AC Electric		03/28/2022	Dune Drive Egg Harbor, NJ	09/06/2022
ELECTRIC	ES22100640K	EOC2022-0141	Did not have a valid mark out	\$3,000		Potts Excavating Inc.	06/20/2022	S. Tamarack Brielle, NJ	09/14/2022
GAS	GS22100641K	GOC2022-0927	Did not have a valid mark out	\$3,000		Krise Electric	08/10/2021	Salamo Ct. Mullica Hill, NJ	09/14/2022
GAS	GS22100642K	GOC2022-0200	Did not have a valid mark out	\$3,000		Tri Mountain Home Improvements	03/02/2022	Tuxedo Road Rumson, NJ	09/06/2022
NON	AS22100643K	NOC2022-0003	Did not properly mark out	\$3,000	NJ American Water		07/12/2022	Summit Ave Maplewood, NJ	09/06/2022
ELECTRIC	ES22100644K	EOC2022-0105	Did not have a valid mark out	\$3,000		Outdoor Décor	06/06/2022	Chrls Corliss Blvd E. Greenwich, NJ	09/06/2022
GAS	GS22100645K	GOC2021-0320	Did not have a valid mark out	\$3,000		JP Orleans	03/16/2021	Bluff Court Evesham, NJ	09/06/2022
GAS	GS22100646K	GOC2022-0817	Did not have a valid mark out	\$3,000		Gary Gardner, Inc.	06/15/2022	Autumn Park Blvd. Medford, NJ	09/06/2022
NON	AS22100647K	NOC2022-0004	Did not have a valid mark out	\$3,000		C&L Service	07/07/2022	Pebble Creek Court Hopewell Twp., NJ	09/06/2022
GAS	GS22100648K	GOC2022-0825	Did not have a valid mark out	\$3,000		MAG Electrical	06/18/2022	Golf Lane Mendham, NJ	09/06/2022
GAS	GS22100649K	GOC2022-0907	Did not properly mark out	\$3,000	PSE&G (G)		08/03/2021	Mt. Prospect Ave., Clifton, NJ	09/15/2022
TELCO	TS22100650K	TOC2021-0002	Did not properly mark out	\$3,000	MCI		03/04/2021	Green & York St. Jersey City, NJ	09/14/2022
GAS	GS22100651K	GOC2020-1530	Did not have a valid mark out	\$3,000		Utility Line Services	10/27/2022	Asbury Avenue Ocean City, NJ	09/14/2022
ELECTRIC	ES22100652K	EOC2022-0107	Did not properly mark out	\$3,000	AC Electric		06/15/2022	Pristine Place Washington Twp., NJ	09/06/2022
Total Cases	17								
Total Amount	\$51,000								