



Agenda Date: 9/18/23

Agenda Item: 6A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

RELIABILITY & SECURITY

IN THE MATTER OF ALLEGATIONS OF VIOLATIONS OF)
THE UNDERGROUND FACILITY PROTECTION ACT,)
N.J.S.A. 48:2-73 TO 91 BY VEOLIA WATER CONTRACT)
OPERATIONS USA, INC. WITH RESPECT TO AN)
INCIDENT AT MADISON ST. AND NEWARK ST., IN)
HOBOKEN, NJ ON FEBRUARY 27, 2023)

ORDER ACCEPTING
SETTLEMENT
DOCKET NO. WS23070465

Party of Record:

Kendra Morris, Veolia Water Contract Operations USA, Inc.

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board") considers an Offer of Compromise and Settlement between Staff of the Board's Division of Reliability and Security, Bureau of One-Call ("Staff") and Veolia Water Contract Operations USA, Inc. ("VWCO") to resolve alleged violations of certain provisions of New Jersey's One-Call Damage Prevention System, N.J.A.C. 14:2-1.1 et seq.

BACKGROUND

Pursuant to the Underground Facility Protection Act, N.J.S.A. 48:2-73 et seq. ("UFPA"), the Board is the New Jersey state agency designated to oversee the One-Call Damage Prevention System ("One-Call System") and enforce the provisions of the UFPA. The UFPA established the 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.

INCIDENT TIMELINE

J. Fletcher Creamer & Sons Inc. (“JFC”) contracted with Public Service Electric and Gas Company (“PSE&G”) to replace a gas main throughout the City of Hoboken, New Jersey (“Hoboken”). On January 3, 2023, JFC informed the One-Call System of the project and planned excavation. The scope of work covered several markout requests along Newark St., Observer Highway, and Madison St. in Hoboken. The utilities and underground facility operators within the area of the scope of the work received notice, via One-Call System request number 230031423, to locate and mark their facilities before the work start date, January 7, 2023. The expiration date of the ticket was March 9, 2023.¹

On the morning of February 27, 2023, JFC damaged an unmarked 16-inch water main located at the intersection of Newark St. and Madison St., a location that required a markout. The water main at the intersection of Newark St. and Madison St. was operated by VWCO. VWCO is not a public utility, but a separate legal entity wholly unaffiliated with Veolia Water New Jersey. VWCO operates Hoboken’s water distribution system pursuant to an operating contract between Hoboken and VWCO.

The damage to the water main caused a significant release of water and loss of pressure to the system. A state of emergency was declared for Hoboken, and on February 28, 2023, the New Jersey Department of Environmental Protection issued a boil water advisory. Immediately after the damage, emergency markout request number 230583370 and routine request number 230583384 were issued to cover the scope of the repair, and another emergency request was made on February 28, 2023, under request number 230591697. JFC called in markout request number 230592587 on February 28, 2023, to resume work on the gas facilities. This request had a start date of March 4, 2023. Repairs were not completed until March 1, 2023. The boil water advisory was lifted on March 2, 2023.

INVESTIGATION AND ANALYSIS

Staff conducted an investigation and a review of documents related to the incident. This included reports and records from the New Jersey One-Call System Operator, markout records received from VWCO, and markout records from other underground facility operators who received a notice of the excavation. Staff was on site on February 28, 2023, while repairs were ongoing, and on March 3, 2023, Staff conducted a follow-up field investigation of the site of the damage. Staff issued Letters of Inquiry (“LOIs”) to JFC and VWCO on March 16, 2023. A response to the LOI from JFC was received on March 27, 2023. Veolia responded to Staff’s LOI on March 30, 2023.

VWCO’s response to Staff’s LOI identified United States Infrastructure Corporation (“USIC”) as the contractor working for VWCO responsible for locating and marking the Hoboken water facilities that were damaged on February 27, 2023. VWCO shared records indicating that three water mains run parallel under and adjacent to Newark Ave. Markout records dated January 9, 2023, including photographs of the intersection of Newark St. and Madison St., indicate that only two (2) of the mains were marked. Of the two (2) mains that were marked by USIC, it appears one (1) of the mains was marked outside the 18-inch zone of tolerance per N.J.S.A. 48:2-80 (a) (2) and N.J.A.C. 14:2-4.2.

¹ On February 22, 2023, JFC uncovered a telecommunications line operated by AT&T that was not properly marked, and reported the unmarked line to the One-Call System. An updated request number 230532156 was issued in response to the report of the unmarked line.

NOTICE OF PROBABLE VIOLATION

On June 1, 2023, Staff issued a Notice of Probable Violation (“NOPV”) with an Answering Certification and Offer of Settlement providing for a one-time payment of eighty thousand dollars (\$80,000), payable to the Treasurer of the State of New Jersey. Staff’s investigation determined that a series of operator violations were causal factors that contributed to the incident, including:

1. Failure to properly mark multiple facilities in violation of N.J.A.C. 14:2-5.2 and 5.4.
2. Failure to properly respond to markout requests in violation of N.J.A.C. 14:2-4.2.

Furthermore, VWCO was found to have violated post-incident One-Call System regulations:

1. Failure to report a One-Call incident² in violation of N.J.A.C. 14:2-4.4(d) and 4.4(g).
2. Failure to submit a quarterly hits report in violation of N.J.A.C. 14:2-4.4(j).

SETTLEMENT AND CORRECTIVE ACTIONS

Pursuant to the UFPA, violators of its provisions shall be subject to civil penalties of no less than \$1,000 and no 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). 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).

In determining the appropriate penalty amount to be assessed for an alleged violation, or the amount agreed upon in compromise, 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; the violator’s ability to pay the penalty; and other factors the Board determines to be appropriate.³

On June 22, 2023, VWCO submitted an Answering Certification agreeing to accept Staff’s offer of settlement and pay a monetary penalty of \$80,000. The June 22, 2023 Answering Certification was accompanied by a letter from VWCO’s Vice President of Operations outlining the corrective actions to remedy operational causes of the incident and reporting violations that occurred post incident. According to VWCO’s letter, VWCO has taken the following corrective actions:

- 1) On March 16, 2023, VWCO met with its contractor, USIC, responsible for conducting utility locates to review best practices and procedures.
- 2) On May 19, 2023, VWCO purchased a Ground Penetrating Radar (“GPR”) unit to assist with problem locates. When used by a trained operator, GPR can provide additional information to a locator regarding the depth and diameter of a facility, improving the accuracy of facility markings.

Additionally, on July 14, 2023, at the request of VWCO, a representative of VWCO met with Staff and One-Call System Operator Staff to correct reporting procedures and discuss compliance with the UFPA.

² Underground facility damages of significant consequences that cause a major disruption of traffic, business, or vital public service are defined as a One-Call incident. N.J.A.C. 14:2-1.2.

³ N.J.S.A. 48:2-86

DISCUSSION AND FINDINGS

The Board, after thoroughly reviewing the record in this matter, **HEREBY FINDS** the NOPV to be reasonable and in the public interest. The Board **FURTHER FINDS** that \$80,000 is an appropriate monetary penalty pursuant to the factors enumerated in N.J.A.C. 14:2-6.2(c). As such, the Board **HEREBY ACCEPTS** Staff's \$80,000 Offer of Settlement and VWCO's June 22, 2023 Answering Certification agreeing thereto.⁴

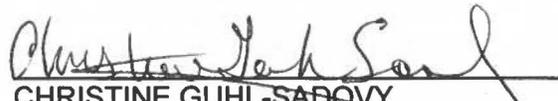
The Board **HEREBY FINDS** that this decision is without prejudice as to the position of the State of New Jersey or any agency or subdivision thereof.

NO FURTHER ACTION BY THE RESPONDENT IS REQUIRED.

This Order shall be effective on September 25, 2023.

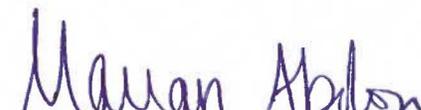
DATED: September 18, 2023

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.

⁴ Full payment of \$80,000 was received by the Board's Office of Budget and Finance on July 10, 2023. The acceptance of this Offer of Settlement applies solely to the damage that occurred at the intersection of Newark St. and Madison St. in Hoboken, New Jersey on February 27, 2023.

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PROTECTION ACT, N.J.S.A. 48:2-73 TO 91 BY VEOLIA WATER CONTRACT OPERATIONS
USA, INC. WITH RESPECT TO AN INCIDENT AT MADISON ST. AND NEWARK ST., IN
HOBOKEN, NJ ON FEBRUARY 27, 2023

DOCKET NO. WS23070465

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