



Agenda Date: 1/31/24
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 ET SEQ.)
)
) ORDER ACCEPTING
SETTLEMENTS
)
) DOCKET NOS. GS23120884K
et al. (see attached Appendix)

Party of Record:

- Fiscal Manager of Operations**, Creative Pavers, Inc.
- Fiscal Manager of Operations**, D Nuse Landscape Design
- Don E Miller**, Don E Miller Septic Service
- Maureen Donatelli**, MJS Excavating, Inc.
- Fiscal Manager of Operations**, Down to Earth Landscaping
- Nick DePoto**, Elizabethtown Gas Company
- Fiscal Manager of Operations**, J. Fletcher Creamer
- Chelsey Gaworecki**, Public Service Electric and Gas Company
- Fiscal Manager of Operations**, J.F. Kiely
- Fiscal Manager of Operations**, Landberg Construction
- Fiscal Manager of Operations**, NVN Paving
- Fiscal Manager of Operations**, One Call Electric Heating and AC
- Fiscal Manager of Operations**, Osмосе
- Fiscal Manager of Operations**, P&A Construction

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, N.J.S.A. 48:2-73 et seq. (“Act”). The Act establishes the One-Call Damage Prevention System (“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, and/or hazardous liquids. 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 One-Call System prior to commencing excavation and failing to mark out or properly mark out underground facilities, Board Staff issued a Notice of Probable Violation and Offer of Settlement to each of the alleged violators and informed them of the date and location of the alleged violations. A complete list of entities that accepted said Offers of Settlement is provided in Appendix A attached hereto and made a part hereof.¹

II. DECISION AND FINDINGS

After consideration of the matters provided in Appendix A, 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 Appendix A 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 Appendix A. 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.

¹ The 24 Offers of Settlement were accepted by the alleged violators, and each made full payment on the dates provided in Appendix A.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

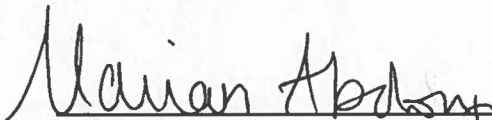
This Order shall be effective on February 7, 2024.

DATED: January 31, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE-GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRI 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.

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

DOCKET NOS. GS23120884K et al. (see attached Appendix)

SERVICE LIST

Creative Pavers Inc.
649 Swedesboro Road
Gibbstown, NJ 08027
Attention: Fiscal Manager of Operations

D Nuse Landscape Design
40 Longport Drive
Brick, NJ 08723
Attention: Fiscal Manager of Operations

Don E Miller Septic Service
362 Meany Road
Wrightstown, NJ 08562

Maureen Donatelli
MJS Excavating, Inc.
131 Madison Avenue
Rahway, NJ 07065

Down to Earth Landscaping
705 Wright Debow Road
Jackson, NJ 08527
Attention: Fiscal Manager of Operations

Nick DePoto
Elizabethtown Gas Company
520 Green Lane
Union, NJ 07083
cdepoto@sjindustries.com

J. Fletcher Creamer
101 E. Broadway
Hackensack, NJ 07601
Attention: Fiscal Manager of Operations

Chelsey Gaworecki
Public Service Electric & Gas Company
80 Park Pace
Newark, NJ 07102
chelsey.gaworecki@pseg.com

J.F. Kiely
916 US Hwy 9
Swainton, NJ 08210
Attention: Fiscal Manager of Operations
Landberg Construction
82 Tuckahoe Road
Dorothy, NJ 08317
Attention: Fiscal Manager of Operations

NVN Paving
431 Wagaraw Road
Fair Lawn, NJ 07410
Attention: Fiscal Manager of Operations

One Call Electric Heating and AC
393 Pulaski Street
South Plainfield, NJ 07080
Attention: Fiscal Manager of Operations

Osmose
635 Hwy 74S
Peachtree City, GA 30269
Attention: Fiscal Manager of Operations

P&A Construction
P.O. Box 28
Colonia, NJ 07057
Attention: Fiscal Manager of Operations

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Trenton NJ, 08625-0350

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Richard J. Hughes Justice Complex
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Trenton, NJ 08625
matko.ilic@law.njoag.gov

APPENDIX A

In the Matter of Alleged Violations of the Underground Facility Protection Act,
 N.J.S.A. 48:2-73 et seq.
 Docket Nos. GS23120884K et al.

Facility Damaged	BPU Docket #	Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Natural Gas	GS23120884K	GOC2022-1376	Did not have a valid mark out	\$3,000	Creative Pavers, Inc.	10/19/2022	Mullica Hill, NJ	09/25/2023
Natural Gas	GS23120885K	GOC2020-1626	Did not have a valid mark out	\$3,000	D Nuse Landscape Design	10/19/2020	Belmar, NJ	06/29/2023
Natural Gas	GS23120886K	GOC2021-1257	Did not have a valid mark out	\$3,000	Don E. Miller Septic Service	09/17/2021	Wrightstown, NJ	02/08/2023
Water	WS23120887K	WOC2021-0029	Did not have a valid mark out	\$3,000	MJS Excavating, Inc.	06/28/2021	Fords, NJ	02/08/2023
Natural Gas	GS23120888K	GOC2021-0271	Did not have a valid mark out	\$3,000	Down to Earth Landscaping	03/16/2021	Barnegat, NJ	02/23/2023
Natural Gas	GS23120889K	GOC2016-0306	Did not properly mark out	\$3,000	Elizabethtown Gas Company	04/15/2016	Carteret, NJ	09/07/2017
Natural Gas	GS23120890K	GOC2016-0481	Did not properly mark out	\$3,000	Elizabethtown Gas Company	05/09/2016	Woodbridge, NJ	09/07/2017
Natural Gas	GS23120891K	GOC2016-0484	Did not properly mark out	\$3,000	Elizabethtown Gas Company	05/16/2016	Fords, NJ	09/07/2017
Natural Gas	GS23120892K	GOC2016-1276	Did not properly mark out	\$3,000	Elizabethtown Gas Company	09/19/2016	Edison, NJ	10/09/2018
Natural Gas	GS23120893K	GOC2016-1295	Did not properly mark out	\$3,000	Elizabethtown Gas Company	06/27/2016	Union, NJ	10/09/2018
Natural Gas	GS23120894K	GOC2016-1304	Did not properly mark out	\$3,000	Elizabethtown Gas Company	09/21/2016	Elizabeth, NJ	10/09/2018
Natural Gas	GS23120895K	GOC2016-1783	Did not properly mark out	\$3,000	Elizabethtown Gas Company	11/30/2016	Metuchen, NJ	02/19/2019
Natural Gas	GS23120896K	GOC2016-1816	Did not properly mark out	\$3,000	Elizabethtown Gas Company	12/12/2016	Westfield, NJ	04/02/2019
Natural Gas	GS23120897K	GOC2016-1845	Did not properly mark out	\$3,000	Elizabethtown Gas Company	12/24/2016	Westfield, NJ	09/07/2017
Natural Gas	GS23120898K	GOC2017-0001	Did not properly mark out	\$3,000	Elizabethtown Gas Company	12/16/2016	Westfield, NJ	04/02/2019
Natural Gas	GS23120899K	GOC2017-0062	Failure to use reasonable care	\$3,000	J. Fletcher Creamer	01/26/2017	Jersey City, NJ	02/08/2018
Natural Gas	GS23120900K	GOC2017-0294	Did not properly mark out	\$3,000	Public Service Electric & Gas	04/04/2017	East Orange, NJ	09/25/2023
Natural Gas	GS23120901K	GOC2014-0035	Did not have a valid mark out	\$3,000	J.F. Kiely Construction	01/06/2014	Ventnor, NJ	09/26/2014
Natural Gas	GS23120902K	GOC2021-1621	Failure to use reasonable care	\$3,000	Landberg Construction	12/08/2021	Ocean City, NJ	04/20/2023
Natural Gas	GS23120903K	GOC2022-0682	Did not have a valid mark out	\$3,000	NVN Paving	06/14/2022	Deal, NJ	06/07/2023
Natural Gas	GS23120904K	GOC2021-1551	Did not have a valid mark out	\$3,000	One Call Elec Heating & AC	11/02/2021	Wayne, NJ	04/18/2022
Natural Gas	GS23120905K	GOC2021-0731	Did not have a valid mark out	\$3,000	Omoso	06/24/2021	Pleasantville, NJ	02/15/2023
Natural Gas	GS23120906K	GOC2015-0425	Failure to use reasonable care	\$3,000	P&A Construction	04/15/2015	Holgate, NJ	08/27/2018

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N.J.S.A. 48:2-73 et seq.
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Facility Damaged	BPU Docket #	One Call Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Natural Gas	GS23120907K	GOC2022-0051	Failure to use reasonable care	\$3,000	P&A Construction	01/27/2022	Beach Haven West, NJ	04/13/2022
Total Cases: 24 Total Penalties: \$72,000								