



Agenda Date: 2/14/24
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. CS24010019K
) et al. (see attached Appendix)

Party of Record:

- Michael Marsh**, Comcast
- Roger Shaffer**, New Jersey-American Water Company, Inc.
- Henry Varum**, Public Service Electric and Gas Company
- Fiscal Manager of Operations**, Quality Concrete
- Fiscal Manager of Operations**, Robert Worman Excavating
- Fiscal Manager of Operations**, Riggs Distler
- Fiscal Manager of Operations**, Santos Construction
- Lori Capaccio**, South Jersey Gas Company

BY THE BOARD:¹

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

¹ Commissioner Michael Bange recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

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.²

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.

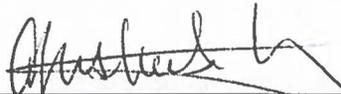
² The 24 Offers of Settlement were accepted by the alleged violators, and each made full payment on the dates provided in Appendix A.

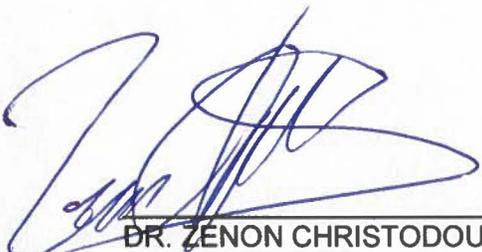
NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

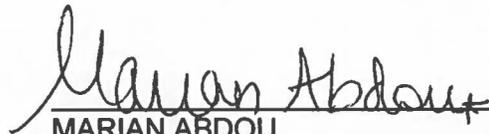
This Order shall be effective on February 21, 2024.

DATED: February 14, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
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. CS24010019K et al. (see attached Appendix)

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Attention: Fiscal Manager of Operations

Robert Worman Excavating
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Attention: Fiscal Manager of Operations

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Attention: Fiscal Manager of Operations

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Attention: Fiscal Manager of Operations

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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. CS24010019K et al.

Facility Damaged	BPU Docket #	Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Cable	CS24010019K	COC2016-0328	Did not properly mark out	\$3,000	Comcast	10/26/2016	East Brunswick, NJ	11/03/2023
Cable	CS24010020K	COC2016-0330	Did not properly mark out	\$3,000	Comcast	11/16/2016	East Brunswick, NJ	11/03/2023
Cable	CS24010021K	COC2016-0331	Did not properly mark out	\$3,000	Comcast	11/19/2016	East Brunswick, NJ	11/03/2023
Water	WS24010022K	WOC2017-0012	Did not properly mark out	\$3,000	NJ American Water	02/28/2017	Plainsboro, NJ	03/15/2019
Water	WS24010023K	WOC2019-0004	Did not properly mark out	\$3,000	NJ American Water	01/18/2019	Voorhees, NJ	07/05/2019
Water	WS24010024K	WOC2019-0008	Did not properly mark out	\$3,000	NJ American Water	02/05/2019	Raritan, NJ	07/05/2019
Water	WS24010025K	WOC2021-0016	Did not properly mark out	\$3,000	NJ American Water	03/10/2021	Camden, NJ	12/01/2023
Water	WS24010026K	WOC2021-0100	Did not properly mark out	\$3,000	NJ American Water	10/15/2021	Union, NJ	06/29/2023
Water	WS24010027K	WOC2021-0125	Did not properly mark out	\$3,000	NJ American Water	12/28/2021	Plainfield, NJ	06/29/2023
Water	WS24010028K	WOC2022-0062	Did not properly mark out	\$3,000	NJ American Water	04/21/2022	Beverly, NJ	12/01/2023
Electric	ES24010029K	EOC2017-0015	Did not properly mark out	\$3,000	PSE&G	01/11/2017	Lawrence, NJ	08/10/2023
Electric	ES24010030K	EOC2021-0337	Did not properly mark out	\$2,500	PSE&G	11/01/2021	Clifton, NJ	11/01/2023
Gas	GS24010031K	GOC2016-1094	Did not properly mark out	\$3,000	PSE&G	08/24/2016	Woodbury, NJ	08/10/2023
Gas	GS24010032K	GOC2016-1599	Did not properly mark out	\$3,000	PSE&G	10/26/2016	West New York, NJ	08/10/2023
Gas	GS24010035K	GOC2017-0891	Did not properly mark out	\$3,000	PSE&G	07/20/2017	Audubon, NJ	08/10/2023
Gas	GS24010036K	GOC2021-1570	Did not have a valid mark out	\$3,000	Quality Concrete	11/10/2021	Cherry Hill, NJ	05/02/2022
Gas	GS24010037K	GOC2022-0128	Did not have a valid mark out	\$3,000	Robert Worman Excavating	02/21/2022	Denville, NJ	04/20/2023
Gas	GS24010038K	GOC2021-1206	Did not have a valid mark out	\$3,000	Riggs Distler	09/27/2021	Williamstown, NJ	04/20/2023
Gas	GS24010039K	GOC2021-0839	Did not have a valid mark out	\$3,000	Santos Construction	07/12/2021	Manalapan, NJ	02/23/2023
Gas	GS24010040K	GOC2017-0848	Did not properly mark out	\$3,000	South Jersey Gas	07/06/2017	Millville, NJ	09/25/2023
Gas	GS24010041K	GOC2018-0050	Did not properly mark out	\$3,000	South Jersey Gas	01/22/2018	Villas, NJ	09/25/2023
Gas	GS24010042K	GOC2018-0878	Did not properly mark out	\$3,000	South Jersey Gas	07/26/2018	Galloway Twp., NJ	09/13/2023
Gas	GS24010043K	GOC2021-0312	Did not properly mark out	\$3,000	South Jersey Gas	04/13/2021	Egg Harbor City, NJ	07/19/2023

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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.
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Facility Damaged	BPU Docket #	One Call Case #	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
Gas	GS24010044K	GOC2021-0408	Did not properly mark out	\$3,000	South Jersey Gas	04/19/2021	Pleasantville, NJ	07/19/2023
Gas	GS24010058K	GOC2017-0263	Did not properly mark out	\$3,000	PSE&G	03/13/2017	Jersey City, NJ	08/10/2023
Total Cases: 25 Total Penalties: \$74,500								