



Agenda Date: 4/26/23
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.)
)
) DOCKET NOS. GS23010020K
) et al. (see attached Appendix)

Parties of Record:

- Dawn Money**, J.E. Mowery and Sons Excavating, Inc.
- John J. Caddle**, Apollo Sewer and Plumbing, Inc.
- Kelvin Collison**, New Jersey American Water Company
- Michael Widmer**, South Jersey Gas Company
- Robert Cherry**, Quality 1st Contracting
- Bruce M. Halliday**, One of a Kind Maintenance
- Robert Gunnels**, Public Service Electric and Gas Company
- Jim Rudolph**, Henkles & McCoy
- John Holly**, Big City Paving
- Richard S. Hyde, Jr.**, Lynx Waste & Recycling
- Jesus Nanaoz**, JN Hardscape
- John Wyckoff**, New Jersey Natural Gas Company
- Thomas Gill**, 10th Street Wharf
- Dean Petruzzelli**, Petruzzelli Brothers

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 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 issued a Notice of Probable Violation to each of the alleged violators and informed them of the date and location of the alleged violations. A complete list of entities and violations is provided in Appendix A attached hereto and made a part hereof.

In an attempt to resolve these matters, the alleged violators listed in Appendix A submitted an Offer of Settlement to the Board for its review and consideration. Said Offers of Settlement are provided in Appendix A.

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

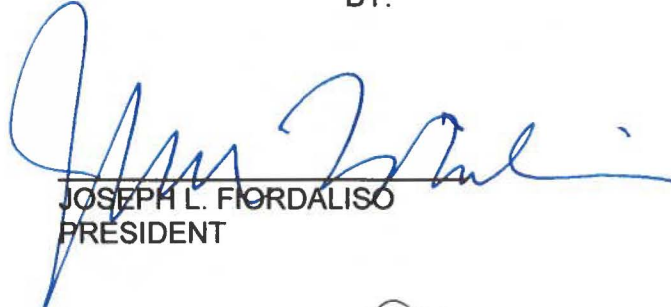
subdivision thereof if other violations are present, now or in the future.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

This Order shall be effective on May 3, 2023.

DATED: April 26, 2023

BOARD OF PUBLIC UTILITIES
BY:



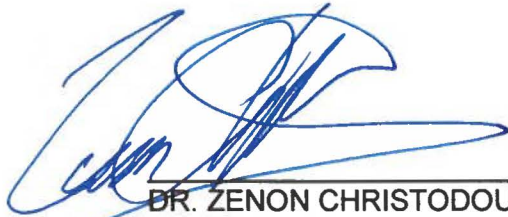
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



DR. ZENON CHRISTODOULOU
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 to -91

DOCKET NOS. GS23010020K et al. (see attached Appendix)

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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. GS23010020K et al.

Facility Damaged	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Alleged Violator	Violation Date	Location	Payment Date
GAS	GS23010020K	GOC2022-1131	Did not have a valid mark out	\$3,000	JE Mowery & Son, Excavating Inc.	9/14/22	Colts Neck, NJ	10/21/22
WATER	WS23010021K	WOC2021-0131	Did not properly mark out	\$3,000	NJ American Water Company	12/22/21	Irvington, NJ	11/17/22
GAS	GS23010022K	GOC2022-1045	Did not have a valid mark out	\$3,000	Apollo Sewer and Plumbing, Inc.	8/24/22	Holmdel, NJ	11/8/22
GAS	GS23010023K	GOC2021-0046	Did not properly mark out	\$3,000	South Jersey Gas Company	1/20/21	Folsom, NJ	10/31/22
GAS	GS23010024K	GOC2022-0494	Did not properly mark out	\$3,000	South Jersey Gas Company	5/4/22	Atlantic City, NJ	10/31/22
GAS	GS23010025K	GOC2022-0701	Did not properly mark out	\$3,000	South Jersey Gas Company	6/15/22	Mickleton, NJ	11/1/22
GAS	GS23010026K	GOC2022-0710	Did not properly mark out	\$3,000	South Jersey Gas Company	6/23/22	Villas, NJ	10/31/22
GAS	GS23010027K	GOC2021-0009	Did not properly mark out	\$3,000	South Jersey Gas Company	1/11/21	Wildwood, NJ	10/31/22
GAS	GS23010028K	GOC2021-1640	Did not have a valid mark out	\$3,000	Quality 1st Contracting	12/11/21	Manalapan, NJ	12/15/22
GAS	GS23010029K	GOC2021-0018	Did not have a valid mark out	\$3,000	One of a Kind Maintenance	1/6/21	Forked River, NJ	12/15/22
GAS	GS23010030K	GOC2022-1007	Did not properly mark out	\$3,000	PSE&G	7/26/22	Oakland, NJ	11/21/22
GAS	GS23010031K	GOC2021-1654	Failure to use reasonable care	\$3,000	Henkles & McCoy	12/14/21	Elizabeth, NJ	11/17/22
GAS	GS23010032K	GOC2021-1631	Did not have a valid mark out	\$3,000	Big City Paving	12/2/21	Colts Neck, NJ	11/23/22
GAS	GS23010033K	GOC2022-0604	Failure to hand dig and locate	\$3,000	PSE&G	5/5/22	Cherry Hill, NJ	11/22/22
GAS	GS23010034K	GOC2020-1630	Did not have a valid mark out	\$3,000	Lynx Waste & Recycling	12/1/21	Dover, NJ	12/15/22
GAS	GS23010035K	GOC2022-0902	Did not have a valid mark out	\$3,000	JN Hardscape	7/28/22	Middletown, NJ	12/1/22
GAS	GS23010036K	GOC2022-1493	Did not properly mark out	\$3,000	South Jersey Gas	11/9/22	Brigantine, NJ	11/29/22
GAS	GS23010037K	GOC2022-1495	Did not properly mark out	\$3,000	South Jersey Gas Company	11/10/22	Waterford Works, NJ	11/29/22
GAS	GS23010038K	GOC2022-1034	Did not properly mark out	\$3,000	New Jersey Natural Gas Company	8/16/22	Long Branch, NJ	12/15/22
GAS	GS23010039K	GOC2022-0390	Did not have a valid mark out	\$3,000	10th Street Wharf	4/29/22	Ocean City, NJ	12/16/22
GAS	GS23010040K	GOC2021-0275	Did not properly mark out	\$3,000	New Jersey Natural Gas Company	3/19/21	Beach Haven West, NJ	12/15/22
GAS	GS23010041K	GOC2022-0404	Did not properly mark out	\$3,000	New Jersey Natural Gas Company	4/25/22	Point Pleasant Beach, NJ	12/15/22
GAS	GS23010042K	GOC2022-0951	Did not properly mark out	\$3,000	New Jersey Natural Gas Company	8/4/22	Neptune, NJ	12/15/22

APPENDIX A

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Docket Nos. GS23010020K et al.

GAS	GS23010043K	GOC2022-0724	Did not properly mark out	\$3,000	New Jersey Natural Gas Company	6/21/22	Jackson, NJ	12/15/22
GAS	GS23010044K	GOC2021-0020	Did not have a valid mark out	\$3,000	Petruzzelli Brothers	1/6/21	Tinton Falls, NJ	12/16/22
GAS	GS23010045K	GOC2022-1494	Did not properly mark out	\$3,000	South Jersey Gas Company	11/9/22	Upper, NJ	11/29/22
Total Cases: 26 Total Penalty: \$78,000								