



Agenda Date: 11/19/18
Agenda Item: VIB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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, BY CLASSIC FENCE AND)
LANDSCAPE)
FINAL ORDER OF PENALTY)
ASSESSMENT)
DOCKET NO. ES16040299K)

Party of Record:

John Rocha, Classic Fence and Landscape

BY THE BOARD:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("Act") pursuant to the provisions set forth in N.J.S.A. 48:2-73 to -91. In this Order, the Board reviews the issuance of a Final Order of Penalty Assessment ("FOPA") pursuant to N.J.A.C. 14:2-6.6 and N.J.A.C. 14:7-2.4 regarding Classic Fence and Landscape ("Respondent").

The primary purpose of the Act is to establish 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, 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.

The Act subjects violators of its provisions to civil penalties of not less than \$1,000.00 and not 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 subject the violator to civil penalties not to exceed \$100,000.00 per violation per day and not to exceed \$1,000,000.00 for any related series of violations. N.J.S.A. 48:2-86(c). In addition, a violator may be assessed the cost of any Board investigation, inspection or monitoring survey which leads to the establishment of a violation and for the reasonable costs of preparing and litigating the matter. N.J.S.A. 48:2-86(b)(2).

On or about May 31, 2014, damage to an underground facility operated by Jersey Central Power & Light Company ("JCP&L") was reported to the Staff of the Board of Public Utilities ("Board Staff"). After being notified of the damage, Board Staff investigated the incident, including sending letters of inquiry ("LOI") to the operator, JCP&L, and the Respondent. By letter received January 5, 2015, the Respondent provided a response to the LOI indicating, amongst other things, that it installed a fence at the property in question. JCP&L also responded to Board Staff's LOI and indicated that the Respondent: (1) was the excavator; (2) Respondent did not request a locate for underground facilities prior to commencing construction; and (3) Respondent damaged an underground facility operated by JCP&L.

Subsequently, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, on February 17, 2015, Board Staff issued a Notice of Probable Violation ("NOPV") to the Respondent, which included a blank Answering Certification form. The NOPV was served via regular and certified mail to the Respondent. The NOPV advised the Respondent that failure to file the Answering Certification may result in the issuance of a FOPA, as required by N.J.A.C. 14:2-6.4(b)(5)(i) and N.J.A.C. 14:7-2.2(b)(5)(i). The Respondent signed the certified mail receipt on March 4, 2015. (See Exhibit A). The regular mail was not returned. (See Exhibit B).¹ Pursuant to N.J.A.C. 14:2-6.5(a) and N.J.A.C. 14:7-2.3(a), Respondent must file an answering Certification within twenty-one (21) days of receiving the NOPV. More than twenty-one (21) days have elapsed since the Respondent signed for the NOPV via certified mail. To date, the Respondent has not filed the Answering Certification with the Board or with Board Staff. (See Exhibit B).

As the Company has failed to file an Answering Certification, the Respondent is deemed to be in default pursuant to N.J.A.C. 14:2-6.6(a) and N.J.A.C. 14:7-2.4(a). Pursuant to N.J.A.C. 14:2-6.6(b) and N.J.A.C. 14:7-2.4(b), Board Staff has presented the NOPV to the Board and has requested that the Board issue a FOPA.

Pursuant to N.J.A.C. 14:2-6.6(d) and N.J.A.C. 14:7-2.4(d), the Board is not bound by any settlement offers made by Board Staff upon issuance of a NOPV and may order the payment of a civil administrative penalty up to the maximum permitted by law. In determining the appropriate penalty amount to be assessed, the Board must consider the factors enumerated in N.J.A.C. 14:2-6.2(c) and N.J.A.C. 14:7-2.7, including but not limited to the nature, circumstances and gravity of the violation, the degree of the violator's culpability and any other factors justice may require. The Board, having had an opportunity to review the record in this matter, **HEREBY FINDS** the NOPV issued by Board Staff to be reasonable and in the public

¹ Board Staff resent the NOPV on March 4 and July 11, 2016. (See Exhibit B). To date, the Respondent has not filed the Answering Certification with the Board or with Board Staff. Ibid.

interest. The Board, having reviewed the NOPV, **HEREBY FINDS** that an appropriate penalty for this matter is \$6,000.00, as Respondent was provided with an opportunity to challenge the alleged violation, failed to file an Answering Certification, damaged an underground facility operated by JCP&L, admitted to being on site, and did not have a valid mark out as. The Board **HEREBY ISSUES** this Final Order of Penalty Assessment and **ORDERS** that the Respondent shall be assessed the Civil Administrative Penalty of \$6,000.00. The Board **FURTHER ORDERS** that the Respondent shall pay the Civil Administrative Penalty as set forth in this Order no later than Monday, December 10, 2018.

Payment must be made out to the **TREASURER, STATE OF NEW JERSEY**

Sent to: Mike Greco, Acting Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625
Attn: One-Call Enforcement

*You must include a copy of this order with your check.

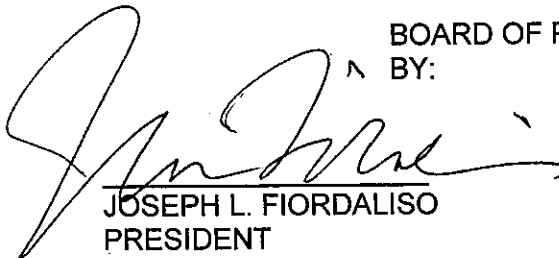
If the Respondent fails to make the required payment by Monday, December 10, 2018, the Board **HEREBY DIRECTS** Staff to docket this Order against Respondent as a Judgment with the Superior Court and take such other appropriate action consistent with the Penalty Enforcement Act, N.J.S.A. 2A:58-10.

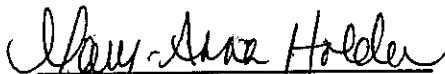
This Order shall be effective on November 29, 2018.

NO FURTHER ACTION BY THE RESPONDENT IS REQUIRED.

DATED: 11/19/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 to -91, BY CLASSIC FENCE AND LANDSCAPE**

DOCKET NO. ES16040299K

SERVICE LIST

John Rocha
Classic Fence And Landscape
56 Weaverville Road
Freehold, NJ 07728

James Giuliano, Director
Division of Reliability & Security
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
james.giuliano@bpu.nj.gov

Megan Lupo, Esq.
Counsel's Office
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megan.lupo@bpu.nj.gov

Renee Greenberg, DAG
Division of Law and Public Safety
124 Halsey Street
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Newark, NJ 07101-45029
renee.greenberg@law.njoag.gov

EXHIBIT A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350

CERTIFICATION OF ANN LANG

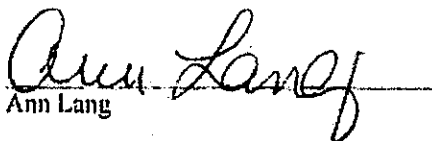
In the Matter of:

Classic Fence and Landscape
56 Weaverville Rd.
Freehold, NJ 07728

I, Ann Lang, hereby certifies and says:

1. I am an Environmental Engineer at the New Jersey Board of Public Utilities and have held that position at all times relevant to this Certification and I have reviewed all of the documents in this matter.
2. On June 10, 2014, damage occurred to an underground facility operated by JCP&L at 32 Yellowstone Ln., Howell, NJ 07731.
3. After being notified of the damage, Staff of the Board of Public Utilities ("Board Staff") investigated the incident, including sending letters of inquiry ("LOI") to both the operator, JCP&L, and the excavator, Classic Fence and Landscape. By letter received January 5, 2015, Classic Fence and Landscape responded to Board Staff's LOI. JCP&L also responded to Board Staff's LOI and indicated (1) that Classic Fence and Landscape was the excavator; (2) that Classic Fence and Landscape did not request a locate prior to commencing construction; and (3) that Classic Fence and Landscape damaged an underground facility operated by JCP&L.
4. Based on the results of an investigation conducted by Board Staff, Board Staff issued a Notice of Probable Violation and Offer of Settlement ("NOPV") dated February 17, 2015, March 4, 2016, and July 11, 2016 pursuant to the Underground Facility Protection Act, N.J.S.A. 48:2-73 to -91 to Classic Fence and Landscape.
5. On February 17, 2015, March 4, 2016, and July 11, 2016, the NOPV was mailed to Classic Fence and Landscape at 56 Weaverville Rd., Freehold, NJ 07728 by certified and regular mail.
6. The certified mail enclosing the NOPV and Answering Certification was signed for on 3/4/2015. The certified mail dated March 9, 2016 was returned unclaimed and the regular mail was not returned. The certified mail receipt and returned letter is attached hereto.
7. Despite having received proper notice, Classic Fence and Landscape failed to file the Answering Certification within twenty-one (21) days pursuant to N.J.A.C. 14:2-6.5(a). To date, Classic Fence and Landscape has not filed an Answering Certification.
8. As a result of this, Classic Fence and Landscape is in default pursuant to N.J.A.C. 14:2-6.6(a).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.


Ann Lang

Date: 10/26/18

EXHIBIT B

DELIVERY IS GUARANTEED.
Name and address on the reverse
can return the card to you.
cut to the back of the mailpiece,
cut if space permits.

Send to:

ic Fence
Leaverville Rd
old NY 07728

Agent
 Addressee

B. Received by (Printed Name)
[Signature]

C. Date of Delivery
JUL 27 2014

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail®
 Registered
 Insured Mail
 Priority Mail Express™
 Return Receipt for Merchandise
 Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

7004 1160 0001 0816 7707

Domestic Return Receipt

Service label
July 2013

08625 00350

RS

RC: 08625035050 *115
RETURN TO SEND
UNCLAIMED
UNABLE TO FORWARD

NIXIE
076 DE 1



UNION OF PUBLIC UTILITIES
44 SOUTH CLINTON AVENUE
PO BOX 350
TRENTON, NJ 08625-0350

7006 0100 0002 0898 1226
Domestic Return Receipt
July 2013

Fence
Leaverville Rd.
NY 07728

Important Reminders:
Certified Mail may ONLY be combined with Registered Mail.
Certified Mail is not available for any class of International Mail.
NO INSURANCE COVERAGE IS PROVIDED with Certified Mail values, please consider insured or Registered Mail.
For an additional fee, a Return Receipt may be requested to receive a Return Receipt Requested. To receive a Return Receipt (PS Form 3811) to the article and add applicable postage delivery. To obtain Return Receipt service, please complete a Return Receipt Requested. To receive a Return Receipt Requested, please complete a Return Receipt Requested. To receive a Return Receipt Requested, please complete a Return Receipt Requested.

Important Reminders:
Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
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