



Agenda Date: 9/27/23
Agenda Item: 6C

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 TO 91 BY BLACK ROCK)
ENTERPRISES, LLC) DOCKET NO. GS23080562K

Party of Record:

Black Rock Enterprises, LLC

BY THE BOARD:

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 to 91 ("Act"). By this Order, the Board considers 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 Black Rock Enterprises, LLC ("Black Rock" or "Respondent").

BACKGROUND

The Act established 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, 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 and not 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). Violations relating to natural gas or hazardous liquid underground pipelines or distribution facilities shall subject the violator to civil penalties not to exceed \$200,000 per violation per day and not to exceed \$2,000,000 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).

PROCEDURAL HISTORY

On November 7, 2022, New Jersey Natural Gas Company (“NJNG”) filed a report concerning a natural gas facility damage that occurred on October 27, 2022. Based upon a review of the damage report and information provided, Board Staff (“Staff”) found that Black Rock: 1) engaged in excavation as defined by the Act; 2) failed to use reasonable care at the time of excavation in violation of N.J.S.A. 48:2-82(d)(3); and 3) on October 27, 2022, damaged an underground natural gas facility operated by NJNG at 306 2nd Ave, Bradley Beach, New Jersey.

Notice of Probable Violation

On December 16, 2022, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, Board Staff issued a Notice of Probable Violation (“NOPV”) to Black Rock. See Attachment 1. The NOPV was served via regular and certified mail and included an Answering Certification. According to United States Postal Service tracking, the certified mail and Answering Certification was delivered on January 3, 2023. See Attachment 2. The NOPV advised Black Rock that failure to file an 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). Pursuant to N.J.A.C. 14:2-6.5(a) and N.J.A.C. 14:7-2.3(a), the Respondent must file an Answering Certification within 21 days of receiving the NOPV. More than 21 days have elapsed since Black Rock received the certified mail.

To date, the Respondent has not filed the Answering Certification with the Board or with Staff and is, therefore, 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).

Notice of Settlement Conference

On May 9, 2023, Black Rock was served with a Notice of Settlement Conference (“Notice”) pursuant to N.J.A.C. 14:2-6.5(b) in response to Answering Certifications returned by Respondent asking Staff to consider mitigating circumstances for two (2) other NOPVs issued to Respondent for alleged violations of the Act.¹ See Attachment 3. The Notice provided Black Rock an opportunity to discuss the cases referenced in the Answering Certifications and the October 27, 2022 damage at 306 2nd Ave, Bradley Beach, New Jersey. According to United States Postal Service tracking, the certified mail was delivered on May 12, 2023 to Respondent’s address of record. See Attachment 4. An informal settlement conference was scheduled for May 25, 2023,

¹ Black Rock provided Answering Certifications to Board Staff’s NOPVs for Case Numbers GOC2022-0037 and GOC2016-0380 asking Board Staff to consider mitigating circumstances.

providing Respondent an opportunity to discuss multiple outstanding NOPVs including the October 27, 2022 damage.

The Notice advised Black Rock that failure to appear on the scheduled date and time would result in a default as provided in N.J.A.C. 14:2-6.6(a), and the allegations provided in the NOPVs would be deemed uncontested. Black Rock failed to appear on May 25, 2023, and to date, Staff has no record of a response from Respondent concerning the notice to appear. Respondent is, therefore, deemed in default pursuant to N.J.A.C. 14:2-6.6(a).

Failure to File the Answering Certification and/or Appear

As Black Rock has failed to respond to the December 16, 2022 NOPV and appear on May 25, 2023 for a scheduled settlement conference, the Respondent is deemed to be in default pursuant to N.J.A.C. 14:2-6.6(a). The Board is, therefore, not bound by any compromise or settlement offer made by Staff 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), including but not limited to the nature, circumstances and gravity of the violation, history of prior offenses, the degree of the violator's culpability and any other factors as justice may require.

DISCUSSION AND FINDINGS

The Board, having thoroughly reviewed the record in this matter, **HEREBY FINDS** that the NOPV issued by Staff was reasonable and in the public interest. The Board **FURTHER FINDS** that the Respondent was advised that failure to appear at the May 25, 2023 settlement conference would result in a default as provided in N.J.A.C. 14:2-6.6(a), and the allegations provided in the NOPV would be deemed uncontested.

Black Rock failed to appear on May 25, 2023, and to date, Staff has no record of a response from Respondent concerning the Notice to Appear. As such, the Board **HEREBY FINDS** that the Respondent is in default pursuant to N.J.A.C. 14:2-6.6(a). As Respondent is deemed in default, the Board is not bound by the initial Offer of Settlement. After consideration of the penalty factors listed in N.J.A.C. 14:2-6.2(c), specifically 1) the nature of the violation was a causal factor directly related to the damage, and 2) the damage involved a high consequence natural gas facility struck by mechanized equipment, the Board **HEREBY FINDS** that the appropriate penalty for this matter is \$10,000.

As such, the Board **HEREBY ISSUES** this FOPA and **HEREBY ORDERS** that the Respondent shall be assessed a Civil Administrative Penalty of \$10,000. The Board **FURTHER ORDERS** that the Respondent shall pay the Civil Administrative Penalty as set forth in this Order no later than October 14, 2023.

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

Send payment to:
Chief Fiscal Officer
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625
Attn: One-Call Enforcement


Please include a copy of this Order with your payment.

If the Respondent fails to make the required payment by October 14, 2023, the Board **HEREBY DIRECTS** Staff to docket this Order against the Respondent as a Judgment with the New Jersey Superior Court or transfer the unpaid debt to the Department of Treasury for the issuance of a Certificate of Debt pursuant to N.J.S.A. 2A:16-11.1.

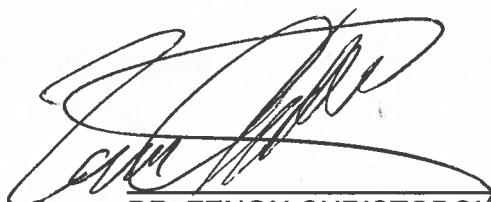
This Order shall be effective on October 4, 2023.

DATED: September 27, 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.

IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY
PROTECTION ACT, N.J.S.A. 48:2-73 TO 91 BY BLACK ROCK ENTERPRISES, LLC

DOCKET NO. GS23080562K

SERVICE LIST

Jacqueline Vale
Black Rock Enterprises, LLC
1316 Englishtown Rd
Old Bridge, NJ 08857

Attorney General's Office

Matko Ilic, DAG
NJ Department of Law and Public Safety
Richard J. Hughes Justice Complex
25 Market Street – P.O. Box 112
Trenton, NJ 08625
matko.ilic@law.njoag.gov

Board of Public Utilities

44 South Clinton Avenue, 1st Floor
PO Box 350
Trenton NJ, 08625-0350

Sherri L. Golden, Board Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
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Heather Weisband, Senior Counsel
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Michael Beck, General Counsel
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Joseph Costa
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Ann Lang
ann.lang@bpu.nj.gov

Lauren Mattox
lauren.mattox@bpu.nj.gov

Attachment 1

Case #: GOC2022-1432


State of New Jersey
BOARD OF PUBLIC UTILITIES
DIVISION OF RELIABILITY & SECURITY
44 South Clinton Avenue, 1st Floor
PO Box 350
Trenton, NJ 08625-0350

12/16/2022

In the Matter of:

Black Rock Enterprises LLC
1360 Englishtown Rd
South Brunswick, NJ 08857-0000

NOTICE OF PROBABLE VIOLATION AND OFFER OF SETTLEMENT

DATE OF PROBABLE VIOLATION: **10/27/2022**

LOCATION: **306 2nd Ave, Bradley Beach, NJ 07720**

OPERATOR OF THE FACILITY: **NJ NATURAL GAS**

BRIEF DESCRIPTION OF POSSIBLE VIOLATION: **FAILURE TO USE REASONABLE CARE**

MARKOUT REQUEST NO.: **222802824**

STATUTE, REGULATION, OR ORDER VIOLATED: **N.J.S.A. 48:2-82(d)(3)**

Case #: **GOC2022-1432**

To Whom it May Concern:

The Board of Public Utilities ("Board") has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act ("Act"), **N.J.S.A. 48:2-73 et seq.** The Act requires excavators to notify the NJ One-Call Center prior to excavating ("One Call Obligation"). Violators of the Act are subject to a civil penalty of not less than \$1,000 and not more than \$2,500 per violation per day. The civil penalty for a related series of violations may not exceed \$25,000. If the violation of the Act involves natural gas facilities, the maximum penalties are \$200,000 per violation per day, with a total maximum of \$2,000,000 for a related series of violations.

Board Staff has reviewed information received in connection with a complaint concerning an Excavation, as defined in **N.J.S.A. 48:2-75**, undertaken by **Black Rock Enterprises LLC** ("Respondent") ("You") without fulfilling the One Call Obligation.

Specifically, the information reviewed included: (1) Operator reports submitted by Utilities pursuant to **N.J.A.C. 14:2-4.4**; and (2) New Jersey One Call ticket records; A Certification by **ANN LANG**, is attached hereto.

In this case, it has been determined that you failed to use reasonable care during excavation or demolition to avoid damage to or interference with underground facilities in violation of **N.J.S.A. 48:2-82(d)(3)** and **N.J.A.C. 14:2-3.3(a)(3)**.

Attachment 2

Case #: GOC2022-1432

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
 ENVELOPE SOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. <p>1. Article Addressed to:</p> <p style="font-size: large; font-family: cursive;">Block Rock Enterprise LLC 1360 Englishtown Rd South Brunswick NJ 08857</p> <div style="text-align: center;">  9590 9402 3824 8032 4432 09 </div> <p style="font-size: small; margin-top: 5px;">018 2290 0001 8034 9503 <small>from service label</small></p>	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p style="font-size: large; font-family: cursive; text-align: center;">Daniella</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input checked="" type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) </p> <p style="text-align: right; font-size: small;"> <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p>
PS Form 3811, July 2015 PSN 7530-02-000-9053	Domestic Return Receipt

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 January 3, 2023, 2:19 pm

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Feedback

Attachment 3

Case #s: GOC2022-0037, GOC2022-1325, GOC2022-1432

JOSEPH L. FIORDALISO
 PRESIDENT

 MARY-ANNA HOLDEN
 COMMISSIONER

 DIANNE SOLOMON
 COMMISSIONER

 DR. ZENON CHRISTODOULOU
 COMMISSIONER



State of New Jersey
 BOARD OF PUBLIC UTILITIES
 44 SOUTH CLINTON AVENUE, 1ST FLOOR
 POST OFFICE BOX 350
 TRENTON, NEW JERSEY 08625-0350
 May 9, 2023

DIVISION OF RELIABILITY
 & SECURITY

 BUREAU OF ONE-CALL
 & METER TESTING
BPU.ONECALL@BPU.NJ.GOV

Attn: Jacqueline Vale
 Black Rock Enterprises, LLC
 1316 Englishtown Rd
 Old Bridge, NJ 08857

NOTICE OF SETTLEMENT CONFERENCE

Re: Probable Violation of the Underground Facility Protection Act
Location of Probable Violation: 103 Woodbine Ave, Little Silver, NJ
Date of Probable Violation: 1/18/2022
OC Case Number: GOC2022-0037

Jacqueline Vale:

PLEASE TAKE NOTICE that the New Jersey Board of Public Utilities ("Board") oversees and enforces the provisions of the Underground Facility Protection Act, N.J.S.A. 48:2-73, et seq ("Act"). Pursuant thereto, the Board is the State agency that oversees the One-Call Damage Prevention System ("One-Call System"), and enforces the rules and regulations promulgated pursuant to the Act.

PLEASE TAKE FURTHER NOTICE that on 3/23/2022 the Board issued you (or your company) a Notice of Probable Violation ("NOPV") citing alleged violation(s) of the Act at the above-referenced location. The Board is in receipt of your Answering Certification. Pursuant to N.J.A.C. 14:2-6.5(b), an informal settlement conference to discuss the 3/23/2022 NOPV, as well as the other alleged probable violations listed in Attachment A, is scheduled for the following date and time:

Date: 5/25/2023
Time: 9:30:00 AM
Location: Zoom Virtual Meeting

<https://us06web.zoom.us/j/83957231085?pwd=Zml1bFo3OEI4U04vMVNKWmVMV1RFUT09>

Representatives from the Board's Staff and the Office of the Attorney General will participate in the conference. In order to encourage full participation, please submit any requests for needed accommodations, such as interpreters or listening devices, 48 hours prior to the scheduled date and time, to the Board's Secretary at board.secretary@bpu.nj.gov.

PLEASE BE ADVISED that failure to appear at the above date and time may result in the following:

1. A default as provided in N.J.A.C. 14:2-6.6(a);
2. The allegations provided in the NOPV will be deemed uncontested; and
3. The Board issuing a Final Order of Penalty Assessment assessing the maximum penalty authorized by law without further notice and without further opportunity to contest the penalty.

PLEASE CONFIRM ATTENDANCE WITHIN SEVEN (7) DAYS OF RECEIPT OF THIS NOTICE VIA EMAIL AT: bpu.onecall@bpu.nj.gov

ATTACHMENT A

OC Case Number	Date of Damage	Location of Damage	Date of Notice of Probable Violation	Violation Cited	Answering Certification Received
GOC2022-0037	1/18/2022	103 Woodbine Ave, Little Silver, NJ	3/23/2022	N.J.S.A. 48:2-82(a)	Yes
GOC2016-0380	4/18/2016	Farrington Ave, East Brunswick Township, NJ	3/8/2019	N.J.S.A. 48:2-82(d)(3)	Yes
GOC2022-1432	10/27/2022	306 2nd Ave, Bradley Beach, NJ	12/16/2022	N.J.S.A. 48:2-82(d)(3)	No
GOC2022-1325	10/13/2022	1 Brookside Circle, Marlboro, NJ	12/21/2022	N.J.S.A. 48:2-82(d)(3)	No

Attachment 4

Case #s: GOC2022-0037, GOC2022-1325, GOC2022-1432

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May 12, 2023, 12:15 pm

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KEARNY NJ DISTRIBUTION CENTER
May 11, 2023, 7:03 pm

Arrived at USPS Regional Facility
KEARNY NJ DISTRIBUTION CENTER
May 11, 2023, 7:03 am

Feedback