

Agenda Date: 11/17/21 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/

IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT, N.J.S.A. 48:2-73 to -91

RELIABILITY & SECURITY

ORDER ACCEPTING SETTLEMENTS

DOCKET NOS. GS21101196K et al. (see attached Appendix)

Parties of Record:

Ray Bayard, Commissioner, Township of Long Beach Alison Sbriscia, New Jersey Natural Gas Company Nick Depoto, Elizabethtown Gas Company Caroline Jacobs, South Jersey Gas Company Alex O. Gherardi, Lexa Concrete Miquel Seixeiro, S&G Paving Laura Pedrick, JR Land Inc. David McBride, Star Home Builders Vicente Mendoza, Mendoza Fence LLC

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 ("Act") pursuant to the provisions set forth in N.J.S.A. 48:2-73 to -91. The Act establishes 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, and/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.

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 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 contacted the alleged entities and informed them of the date and location of the alleged violations. A complete list of entities and violations is provided in the Appendix attached hereto and made a part hereof.

II. DECISION AND FINDINGS

In an attempt to resolve these matters, the entities described in the Appendix submitted an Offer of Settlement to the Board for its review and consideration. Said Offers of Settlement are also provided in the attached Appendix. Each such Offer of Settlement is summarized in the Appendix.

After consideration of the matters provided in the Appendix, including the alleged violations and the Offers of Settlement, the Board <u>HEREBY</u> <u>FINDS</u> the Offers of Settlement to be reasonable and in the public interest, and <u>HEREBY</u> <u>ACCEPTS</u> the Offers of Settlement in full satisfaction of the alleged violations of the Act as provided in the Appendix 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 the Appendix. 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 November 24, 2021.

DATED: November 17, 2021

BOARD OF PUBLIC UTILITIES BY:

FIORDALISO

PRESIDENT

ur Aara Holde

MARÝ-ANNA HOLDEN COMMISSIONER

6

UPENDRA J. CHIVUKULA COMMISSIONER

DIANNE SOLOMON 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

DOCKET NOS. GS21101196K et al. (see attached Appendix)

SERVICE LIST

Palph Royard, Commissioner Dublie Works	David McBride			
Ralph Bayard, Commissioner Public Works				
Long Beach Township MUA	Star Home Builders			
6505 Long Beach Blvd.	710 Haven Ave.			
Brant Beach, NJ 08008	Ocean City, NJ 08266			
rbayard@longbeachtownship.com				
	Vicente Mendoza			
Caroline Jacobs	Mendoza Fencing LLC			
South Jersey Gas Company	519 14 th Ave, Floor 2B			
One South Jersey Plaza	Belmar, NJ 07719			
Folsom, NJ 08037	Mendozafencellc87@gmail.com			
cjacobs@sjindustries.com				
	Matko Ilic, DAG			
Nick Depoto	NJ Department of Law and Public Safety			
Elizabethtown Gas Company	Richard J. Hughes Justice Complex			
520 Green Ln.	Public Utilities Section			
Union, NJ 07083	25 Market Street, P.O. Box 112			
CDepoto@sjindustries.com	Trenton, NJ 08625			
	matko.Ilic@law.njoag.gov			
Alison Sbriscia	<u>Inditemeteriologiannijedgi ger</u>			
New Jersey Natural Gas Company	Board of Public Utilities			
1415 Wyckoff Rd.	44 South Clinton Avenue, 1 st Floor			
Wall, NJ 07719	Post Office Box 350			
asbriscia@njng.com	Trenton, NJ 08625-0350			
aspriscial@rijrig.com	Trenton, NS 00020-0000			
Alex O. Gherardi	Heather Weisband, Esq., Senior Counsel			
Lexa Concrete	heather.weisband@bpu.nj.gov			
11 Commerce Way	Teatrici.weisband@bpd.nj.gov			
Hammonton, NJ 08037	Division of Reliability and Security			
lexaconcrete@aol.com	Division of Reliability and Security			
	JB Cuartas, Director			
Miguel Seiveiro				
Miquel Seixeiro	Jesus.Cuartas@bpu.nj.gov			
S&G Paving	Thomasing Opherma Analyst			
224C Forsgate Dr.	Thomasine Osborne, Analyst			
Jamesburg, NJ 08831	thomasine.osborne@bpu.nj.gov			
<u>sgpstan@yahoo.com</u>				
	Lauren Mattox, Executive Assistant			
Laura Pedrick	lauren.mattox@bpu.nj.gov			
JR Land Inc.				
19A Minneakoning Rd.				
Flemington, NJ 08822				
info@jrland.com				

321101194K (321101195K (321101197K (321101198K (GOC2021-0964 GOC2021-0809 GOC2021-0993 GOC2021-0998 GOC2021-0985	valid mark-out Failed to hand- dig Did not properly mark-out Failure to use reasonable care Did not have valid mark-out	\$3000.00 \$3000.00	Gas NJ Natural Gas	Lexa Concrete Star Home Builders	07/02/2021	Ocean City, NJ Point Pleasant	09/28/2021 09/22/2021 10/04/2021 09/28/2021
221101195K (221101197K (321101198K (GOC2021-0809 GOC2021-0993 GOC2021-0998 GOC2021-0985	dig Did not properly mark-out Failure to use reasonable care Did not have valid mark-out	\$3000.00 \$3000.00	Gas South Jersey Gas NJ Natural Gas	Star Home Builders	07/02/2021	Ocean City, NJ Point Pleasant	10/04/2021
21101197K (21101198K (GOC2021-0993 GOC2021-0998 GOC2021-0985	mark-out Failure to use reasonable care Did not have valid mark-out	\$3000.00	Gas NJ Natural Gas			Point Pleasant	
21101198K (GOC2021-0998 GOC2021-0985	reasonable care Did not have valid mark-out			S&G Paving	08/10/2021		09/28/2021
	GOC2021-0985	valid mark-out	\$3000.00				Beach, NJ	
321101193K	GOC2021-0985				Mendoza Fence LLC	08/14/2021	Belmar, NJ	09/24/2021
		Did not have valid mark-out	\$3000.00	NJ Natural Gas	Long Beach Township UA	08/03/2021	Long Beach, NJ	09/22/2021
			\$18,000.00					
	565							Image: set in the set in