



Agenda Date: 2/24/16
Agenda Item: VIE

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 ET. SEQ. BY John Weithenauer,)
Irrigation Experts)
FINAL ORDER OF PENALTY)
ASSESSMENT)
DOCKET NO. TS16010050K)

Party of Record:

John Weithenauer, Irrigation Experts

BY THE BOARD:

The Board of Public Utilities (“Board”) has jurisdiction to oversee and enforce the provisions of the Underground Facility Protection Act (“the Act”) pursuant to the provisions set forth in N.J.S.A. 48:2-73 et seq. 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 John Weithenauer, Irrigation Experts (“Respondent”).

The primary purpose of the Act is to establish the One-Call Damage Prevention System (the “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).

Board Staff contacted the Respondent and informed him of the date and location of the alleged violations.

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 the Respondent. The NOPV was served via regular and Certified Mail to the Respondent. The NOPV advised the Respondent 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). The Respondent “Unclaimed” the certified mail copy. The regular mail was not returned. 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 21 days of receiving the NOPV. More than 21 days has elapsed since the receipt of the NOPVs that are the subject of this FOPA. To date, the Respondent has not filed the answering certification.

As the Respondent has failed to file an answering certification, he 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 Staff upon issuance of a NOPV and may order the payment of a civil administrative penalty up to the maximum permitted by law. The Board, having had an opportunity to review the record in this matter, **HEREBY FINDS** the Notice of Probable Violation issued by Staff to be reasonable and in the public interest. The Board, having reviewed the NOPV, **HEREBY FINDS** that an appropriate penalty for this matter is \$6,000.00. 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 Tuesday March 15, 2016.

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 Tuesday March 15, 2016, 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 March 5, 2016.

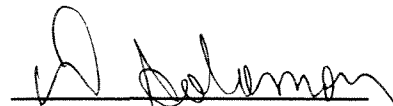
DATED: 2-24-16


BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

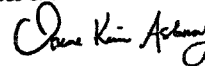

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SPLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
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. FINAL ORDER of PENALTY ASSESMENT
DOCKET NO. TS16010050K**

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