



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

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://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. GS23080564K

**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 February 7, 2022, New Jersey Natural Gas Company (“NJNG”) filed a report regarding damage to a natural gas facility on January 18, 2022. Based upon a review of the damage report and information provided pertaining thereto, Board Staff (“Staff”) found that Black Rock Enterprises, LLC: 1) engaged in excavation as defined by the Act; 2) excavated outside the scope of work described in the markout request in violation of N.J.S.A. 48:2-82(a) and (b); and 3) on January 18, 2022, damaged an underground natural gas facility operated by NJNG at 103 Woodbine Ave, Little Silver, New Jersey.

### **Notice of Probable Violation**

On March 23, 2022, pursuant to N.J.A.C. 14:2-6.4 and N.J.A.C. 14:7-2.2, Staff issued a Notice of Probable Violation (“NOPV”) to Black Rock. The NOPV was served via regular and certified mail, and included an Answering Certification. See Attachment 1. The NOPV advised Black Rock that failure to file an Answering Certification within 21 days 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). By letter dated April 13, 2022, Black Rock submitted a signed Answering Certification asking the Board to consider mitigating circumstances.

### **Notice of Settlement Conference**

On May 9, 2023, Black Rock was served with a Notice of Settlement Conference (“Notice”). See Attachment 2. The Notice was issued pursuant to N.J.A.C. 14:2-6.5(b) in response to Black Rock’s Answering Certification requesting the Board to consider mitigating circumstances related the underground facility damage. According to United States Postal Service tracking, the certified mail was delivered on May 12, 2023 to Respondent’s address of record. See Attachment 3. An informal settlement conference was scheduled for May 25, 2023 to discuss the January 18, 2022 damage.

### **Failure to Appear**

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). Once deemed in default, the Board is 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). After consideration of the penalty factors provided 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 \$6,000.

As such, the Board **HEREBY ISSUES** this FOPA and **HEREBY ORDERS** that the Respondent be assessed a Civil Administrative Penalty of \$6,000. 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.

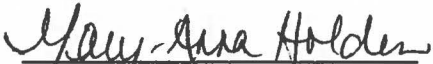
If the Respondent fails to make the required payment by October 14, 2023, the Board **HEREBY DIRECTS** Staff to docket this Order against the Respondent as a Judgment with the New Jersey Superior Court or transfer the unpaid debt to the Department of Treasury for the issuance of a Certificate of Debt 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:   
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 BY BLACK ROCK ENTERPRISES, LLC

DOCKET NO. GS23080564K

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](mailto:matko.ilic@law.njoag.gov)

**Board of Public Utilities**

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

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[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Stacy Peterson, Deputy Executive Director  
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**Division of Reliability & Security**

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[francis.gaffney@bpu.nj.gov](mailto:francis.gaffney@bpu.nj.gov)

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Lauren Mattox  
[lauren.mattox@bpu.nj.gov](mailto:lauren.mattox@bpu.nj.gov)

**Attachment 1**

Case #: **GOC2022-0037**



**03/23/2022**

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: **01/18/2022**

LOCATION: **103 Woodbine Ave, Little Silver, NJ 07739**

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

BRIEF DESCRIPTION OF POSSIBLE VIOLATION: **DID NOT HAVE A VALID MARKOUT AT TIME OF EXCAVATION**

MARKOUT REQUEST NO.:

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

Case #: **GOC2022-0037**

**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 \$1,000,000 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 , is attached hereto.

In this case, it has been determined that you failed to contact the One Call Center prior to commencing excavation in violation of **N.J.S.A. 48:2-82** and **N.J.A.C. 14:2-3.1** and **3.2**.

**Attachment 2**

**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, 1<sup>ST</sup> 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](mailto: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](mailto: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](mailto: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 3**

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

5/24/23, 6:48 PM USPS.com® - USPS Tracking® Results

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**Delivered**  
Delivered, Left with Individual  
OLD BRIDGE, NJ 08857  
May 12, 2023, 12:15 pm

**Departed USPS Regional Facility**  
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