



Agenda Date: 10/29/18
Agenda Item: VIA

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)

ORDER ACCEPTING)
SETTLEMENTS)

DOCKET NOS. WS18080877K, et al.)
(see attached appendix))

Parties of Record:

- Joseph Mingle**, Aqua New Jersey, Inc.
- Stacy A. Mitchell, Esq.**, South Jersey Gas Company
- Michael P. Scacifero**, Elizabethtown Gas Company
- Victor Daidone**, Daidone Electric
- Robert J. Moore**, Henkels & McCoy
- Paula M. James**, Atlantic City Electric
- James P. McFarlane**, McFarlane Paving
- Richard M. Risoldi**, Middlesex Water Company
- Scott Dan**, Service Electric Cable TV
- Michael Lucas**, Level 3 Communications
- Craig Lynch**, New Jersey Natural Gas Company
- Donald Richards**, Jersey Central Power & Light
- Joseph B. Hale**, Voorhees Township
- Dennis Haney**, Cablevision of Monmouth, LLC
- Jeff Picinich**, Suez Water New Jersey
- Thomas Rillo**, Tom Rillo Landscape Construction & Paving
- Jeffrey Johnson**, Aerial Electric
- William Lay**, PA Contractors
- Sylvia DelVecchio**, Verizon
- Richard D. McLaughlin**, J. Fletcher Creamer & Son,

BY THE BOARD:¹

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

¹ Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

N.J.S.A. 48:2-73 to -91. 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).

Following reports of failure to call the System prior to commencing excavation or demolition activities, failure to hand dig and locate facilities, failure to use reasonable care, or reports of failure to mark out underground facilities or properly mark them, Board Staff contacted the entities listed on the attached Appendix and informed them of the date and location of the alleged violations, also listed on the Appendix.

In an attempt to resolve these matters, each excavator or operator listed on the Appendix has submitted an Offer of Settlement to the Board for its consideration. Each such Offer of Settlement is summarized in the Appendix. The Offers of Settlement were made available to the Board for its review. After consideration of the matters, the Board **HEREBY FINDS** these Offers of Settlement to be reasonable and in the public interest, and **HEREBY ACCEPTS** these Offers of Settlement in full satisfaction of the above referenced alleged violations of the Act.

By acceptance of the various 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 are for settlement purposes only, and apply 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.

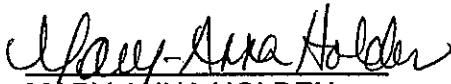
This Order shall be effective on November 8, 2018.

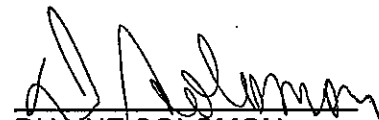
NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

DATED: 10/29/18

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


AIDA CAMACHO-WELCH
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
ORDER ACCEPTING SETTLEMENTS**

DOCKET NOS. WS18080877K, et al. (see attached appendix)

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Richard D. McLaughlin
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IN THE MATTER OF:
 ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT,
 N.J.S.A. 48:2-73 to -91 ORDER ACCEPTING SETTLEMENTS
 Bureau of One Call - Settlements - APPENDIX- October 29, 2018

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, Water	WS18080877K	NOC2018-0019	Did not respond to mark out	\$3,000	Aqua New Jersey, Inc.		05/30/2018	Hamilton Twmsp., NJ	06/07/2018
Damage, Gas	GS18080865K	GOC2016-1648	Did not properly mark out	\$3,000	SJ Gas		11/02/16	Ocean City, NJ	06/18/2018
Damage, Gas	GS18080488K	GOC2015-1484	Did not properly mark out	\$3,000	SJ Gas		10/05/2015	Gloucester Twmsp., NJ	06/18/2018
Damage, Gas	GS18080867K	GOC2015-1618	Did not properly mark out	\$3,000	SJ Gas		10/10/2015	Gloucester, NJ	06/18/2018
Damage, Gas	GS18080868K	GOC2015-1621	Did not properly mark out	\$3,000	SJ Gas		10/20/2015	Absecon, NJ	06/18/2018
Damage, Gas	GS18080869K	GOC2015-1117	Did not properly mark out	\$3,000	SJ Gas		08/13/2015	Vineland, NJ	05/23/2018
Damage, Gas	GS18080870K	GOC2015-0181	Did not properly mark out	\$3,000	Elizabethtown Gas		03/23/2015	Flemington, NJ	06/19/2018
Damage, Gas	GS18080871K	GOC2017-0401	Did not have valid mark out	\$3,000		Daidone Electric	04/21/2017	Wall, NJ	07/18/2018
Damage, Gas	GS18080872K	GOC2017-0400	Did not have valid mark out	\$3,000		Daidone Electric	04/21/2017	Wall, NJ	07/18/2017
Damage, Gas	GS18080873K	GOC2018-0553	Did not have valid mark out	\$3,000		Henkels & McCoy	05/08/2018	Kearney, NJ	07/19/2018
Damage, Electric	ES18080874K	EOC2017-0122	Did not properly mark out	\$3,000	AC Electric		04/27/2017	Logan Twnshp., NJ	06/27/2018
Damage, Electric	ES18080875K	EOC2017-0129	Did not properly mark out	\$3,000	AC Electric		05/09/2017	Vineland, NJ	06/27/2018
Damage, Gas	GS18080876K	GOC2017-0269	Did not properly mark out	\$3,000	SJ Gas		06/04/2017	Cape May, NJ	06/22/2018
Damage, Gas	GS18080907K	Goc2017-0728	Did not have valid mark out	\$3,000		McFartane Paving	06/22/2017	Mahwah, NJ	07/31/2018
Damage, Water	WS18080908K	NOC2018-0049	Didn't respond to mark out	\$3,000	Middlesex Water		07/12/2018	Carteret, NJ	07/12/2018
Damage, None	CS18080909K	NOC2018-0051	Didn't respond to mark out r	\$3,000	Service Ellectric		05/30/2018	Kingwood, NJ	07/12/2018
Damage, None	CS18080910K	NOC2018-0050	Did not respond to mark out request	\$3,000	Service Electric Cable TV of NJ		06/07/2018	Kingwood, NJ	07/12/2018
Damage, Tel	TS18080911K	NOC2018-0052	Did not respond to mark out request	\$3,000	Level 3 Communications		05/31/2018	Jersey City, NJ	07/17/2018
Damage, Gas	GS18080912K	NOC2018-0053	Did not respond to mark out request	\$3,000	NJ Natural Gas		06/08/2018	Tuckerton, NJ	07/18/2018
Damage, Gas	GS18080913K	NOC2016-0054	Did not respond to mark out request	\$3,000	NJ Natural Gas		06/11/2018	Jefferson, NJ	07/18/2018
Damage, Electric	ES18080914K	NOC2018-0055	Did not respond to mark out request	\$3,000	JCP&L		05/26/2018	Mansfield, NJ	07/06/2018
Damage, Electric	ES18080915K	NOC2018-0056	Did not respond to mark out request	\$3,000	JCP&L		07/06/2018	Wall, NJ	07/06/2018
Damage, Electric	ES18080916K	NOC2018-0057	Did not respond to mark out request	\$3,000	JCP&L		06/08/2018	Chester Twnshp.r, NJ	07/06/2018
Damage, None	AS18080917K	NOC2018-0058	Did not respond to mark out request	\$3,000	Voorhees Twp		06/14/2018	Voorhees, NJ	07/09/2018
Damage, None	CS18080918K	NOC2018-0059	Did not respond to mark out request	\$3,000	Cablevision of Monmouth		02/14/2018	Lakewood, NJ	05/06/2018
Damage, None	WS18080919k	NOC2018-0060	Did not respond to mark out request	\$3,000	Middlesex Water		06/11/2018	Milltown, NJ	07/12/2018
Damage, None	WS18080951K	NOC2018-0039	Did not respond to mark out request	\$3,000	Suez Water		06/12/2018	Fort Lee, NJ	07/25/2018

IN THE MATTER OF:
 ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT,
 N.J.S.A. 48:2-73 to -91 ORDER ACCEPTING SETTLEMENTS
 Bureau of One Call - Settlements - APPENDIX- October 29, 2018

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, None	WS18080952K	NOC2018-0040	Did not respond to mark out request	\$3,000	Suez Water		06/12/2018	Fort Lee, NJ	07/25/2018
Damage, None	WS18080953K	NOC2018-0041	Did not respond to mark out request	\$3,000	Suez Water		06/19/2018	Bay Head, NJ	07/25/2018
Damage, None	WS18080954K	NOC2018-0042	Did not respond to mark out request	\$3,000	Suez Water		06/12/2018	Fort Lee, NJ	07/25/2018
Damage, None	WS18080955K	NOC2018-0043	Did not respond to mark out request	\$3,000	Suez Water		06/12/2018	Fort Lee, NJ	07/25/2018
Damage, None	WS18080956K	NOC2018-0044	Did not respond to mark out request	\$3,000	Suez Water		06/12/2018	Fort Lee, NJ	07/25/2018
Damage, None	WS18080957K	NOC2018-0045	Did not respond to mark out request	\$3,000	Suez Water		06/12/2018	Fort Lee, NJ	07/25/2018
Damage, None	WS18080958K	NOC2018-0046	Did not respond to mark out	\$3,000	Suez Water		05/25/2018	Tenafly, NJ	07/25/2018
Damage, None	WS18080959K	NOC2018-0047	Did not respond to mark out	\$3,000	Suez Water		06/12/2018	Fort Lee, NJ	07/25/2018
Damage, None	WS18080960K	NOC2018-0048	Did not respond to mark out request	\$3,000	Suez Water		06/12/2018	Ridgefield Park, NJ	07/25/2018
Damage, Gas	GS18080961K	GOC2016-1728	Did not have valid mark out	\$3,000		Tom Rillo Landscape & Construction	11/21/2016	Warren, NJ	08/02/2018
Damage, Gas	GS18080962K	GOC2016-0239	Did not use reasonable care	\$3,000		Aerial Electric	03/29/2016	Westampton, NJ	07/30/2018
Damage, Gas	GS18080963K	GOC2016-0226	Did not have valid mark out	\$3,000		PA Contractors	03/15/2016	Piscataway, NJ	07/20/2018
Damage, Gas	GS18080886K	GOC2017-0981	Did not properly mark out	\$3,000	SJ Gas		07/26/2017	Middle, NJ	06/22/2018
Damage, Gas	GS18080887K	GOC2016-0910	Did not properly mark out	\$3,000	SJ Gas		07/05/2016	Cherry Hill, NJ	06/22/2018
Damage, Gas	GS18080888K	GOC2016-0908	Did not properly mark out	\$3,000	SJ Gas		07/05/2016	Cherry Hill, NJ	06/22/2018
Damage, Gas	GS18080889K	GOC2016-0727	Did not properly mark out	\$3,000	SJ Gas		06/16/2016	Pleasantville, NJ	06/22/2018
Damage, Gas	GS18080890K	GOC2015-1486	Did not properly mark out	\$3,000	SJ Gas		10/07/2015	Margate City, NJ	06/22/2018
Damage, Gas	GS18080891K	GOC2015-1422	Did not properly mark out	\$3,000	SJ Gas		09/06/2015	Gloucester, NJ	06/22/2018
Damage, Gas	GS18080892K	GOC2016-0837	Did not properly mark out	\$3,000	Elizabethtown Gas		07/15/2016	Vauxhall, NJ	06/21/2018
Damage, Gas	GS18080893K	GOC2016-0893	Did not properly mark out	\$3,000	Elizabethtown Gas		07/19/2016	Scotch Plains, NJ	06/21/2018
Damage, Telephone	TS18080894K	GOC2016-0060	Did not properly mark out	\$3,000		J. Fletcher Creamer & Son	08/06/2016	Elizabeth, NJ	07/25/2018
Damage, None	ES18080895K	NOC2018-0038	Didn't respond to mark out request	\$3,000	JCP&L		06/19/2018	Raritan, NJ	07/13/2018
Total	49	\$147,000.00							