

Agenda Date: 7/22/15 Agenda Item: VIA

RELIABILITY & SECURITY

STATE OF NEW JERSEY

Board of Public Utilities 44 South Clinton Avenue, 9th 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 ET SEQ.))))	ORDER ACCEPTING SETTLEMENTS DOCKET NOs.GS15060715K et al. (see attached appendix)

Parties of Record:

Vincent Fumero, On-Site Construction Francisco Coria, Landscape Design Robert Noel, Pinelands Water Craig Lynch, NJ Natural Gas Sergio Leiria, Leiria Brothers Antonio Pereira, Pax Construction George Scelso, GPS PLumbing Jim Roberts, Century Link

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. The primary purpose of the Act is to establish the One-Call Damage Prevention 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 \$100,000 per violation per day and not to exceed \$1,000,000 for any related series of violations. 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 <u>HEREBY FINDS</u> these Offers of Settlement to be reasonable and in the public interest, and <u>HEREBY ACCEPTS</u> 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 Underground Facility Protection Act in connection with the above-referenced alleged violations of the Act. 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 August 1, 2015.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED

DATED: 23,2015 **BOARD OF PUBLIC UTILITIES**

BY:

RICHARD S. MROZ PRESIDENT

JOSEPH L. FIORDALISO

COMMISSIONER

COMMISSIONER

COMMISSIONER

DIANNE'SOLOMON 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

BPU DOCKET NOs. GS15060715K et al.

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IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT, N.J.S.A. 48:2-73 ET SEQ. ORDER ACCEPTING SETTLEMENTS DOCKET NO. GS15060715K et al. (see attached appendix)

SERVICE LIST

Vincent Fumero On-site Construction 231 North Ave. Westfield, NJ 07090

Francisco Coria Lar. Jscape Design Post Office Box 2218 Perth Amboy, NJ 08862

Robert Noel Pinelands Water Post Office Box 400 Iselin, NJ 08830

Craig Lynch
NJ Natural Gas
1415 Wyckoff Rd.
Post Office Box 1464
Wall, NJ 07719

Sergio Leiria Leiria Brothers 944 Kenneth Ave. Elizabeth, NJ 07202

Antonio Pereira Pax Construction 67 Highway 36 West Long Branch, NJ 07764

George Scelso GPS Plumbing 133 addon Ave. Berlin, NJ 08091

Jim Roberts Century Link 240 North 3rd St., Suite 300 Harrisburg, PA 17101 James P. Giuliano, Director Division of Reliability & Security Board of Public Utilities 44 South Clinton Avenue, 9th Floor-Post Office Box 350 Trenton, NJ 08625-0350

James P. Kane, Esq. Counsel's Office Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350

Geoffrey Gersten, DAG Division of Law and Public Safety 124 Halsey Street Post Office Box 45029 Newark, NJ 07101-45029

IN THE MATTER OF: ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT, N.J.S.A. 48:2-73 ET.SEQ. ORDER ACCEPTING SETTLEMENTS

Bureau of One Call - Settlements - APPENDIX-July VIA 2015

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