



Agenda Date: 1/27/16  
Agenda Item: VIA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314**  
**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 ET. SEQ. )

ORDER ACCEPTING )  
SETTLEMENTS )

DOCKET NOs.GS15121392K )  
et. al. (see attached appendix)

**Parties of Record:**

- Craig Lynch**, New Jersey Natural Gas
- Paula M. James**, Atlantic City Electric
- Kenneth George**, KG Marine Contracting
- Dominick Mazza**, Mazza & Sons
- John Lyons**, Neshaminy Electric
- Kerry Frew**, K.C Heildon
- Joseph Acardo**, KMD Excavating
- Paul Kozkiewicz**, Southeast Morris M.U.A
- David Polonio**, D. Polo Plumbing & Heating LLC.

**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 \$1,000.00 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. 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 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.

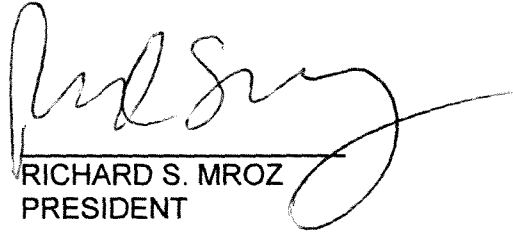
This Order shall be effective on February 6, 2016.


**NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED**

DATED:

*Jan 28, 2016*

BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

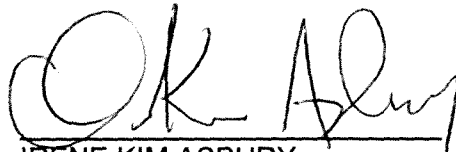
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

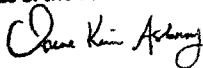
  
DIANNE SOLOMON  
COMMISSIONER

  
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. ORDER ACCEPTING SETTLEMENTS  
DOCKET NO. GS15101172K et. al. (see attached appendix)**

**SERVICE LIST**

Craig Lynch  
NJ Natural Gas  
1415 Wyckoff Rd,  
Wall, NJ 07719

Paula M. James  
Atlantic City Electric  
5100 Harding Hwy.  
Mays Landing, NJ 08330

Kenneth George  
KG Contracting Inc.  
46 Indian Rd.  
Manahawkin, NJ 08050

Dominick Mazza  
D&J Mazza  
PO Box 536  
Oakhurst, NJ 07755

John Lyons  
Neshaminy Electric  
1700 Bayberry Rd.  
Bensalem, PA 19020

Kerry Frew  
K.C Helidon  
3602 Route 35, N, P.O Box 518  
Normandy Beach, NJ 08735

Joseph Arcado  
KMD Excavating  
3 North Alward.  
Benards Twp. NJ 07920

Paul Kozzkiewicz  
Southeast Morris M.U.A  
19 Saddle Road.  
Cedar Knolls, NJ 07927

David Polonio  
D. Polo Plumbing  
14 Charles Street  
Metchun, NJ 08840

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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

Bureau of One Call - Settlements -APPENDIX-January VIA 2016

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, Gas	GS15121392K	GOC2014-0400	Did not properly mark out.	\$3,000	NJ Natural Gas		7/3/2014	Heron Rd., Tuckerton	11/11/2015
Damage, Electric	ES15121389K	EOC2015-0051	Did not properly mark out. Non-Gas Damage.	\$2,000	Atlantic City Electric		3/12/2015	Washington Ave., Atlantic City	11/3/2015
Damage, Gas	GS15121389K	GOC2014-0230	Did not properly mark out.	\$3,000	NJ Natural Gas		6/9/2014	6th Ave., Toms River	11/15/2015
Damage, None	AS15121384K	NOC2015-0011	Did not have valid mark out, non damage.	\$1,000		KG Marine Contracting	4/21/2015	Twin Lakes Blvd, Tuckerton	10/24/2015
Damage, Telephone	TS15121383K	TOC2014-0040	Did not have a valid markout. Non-Gas Damage.	\$2,000		D&J Mazza Demolition	7/9/2014	Weber Ave., Sayerville	10/29/2015
Damage, Electric	ES15121413K	EOC2014-0136	Did not properly mark out. Non-Gas Damage.	\$2,000	Atlantic City Electric		7/30/2015	Queen Anne Court, Palermo	11/29/2015
Damage, Gas	GS15121414K	GOC2015-0419	Did not have a valid markout	\$3,000		Neshaminy Electric	4/28/2015	W. Landis Ave., Vineland	11/30/2015
Damage, Gas	GS15121393K	GOC2015-0146	Did not have a valid markout	\$3,000		K.C Heldon	2/27/2015	Ortley Ave., Lavallette	11/13/2015
Damage, Gas	GS15121394K	GOC2015-0227	Did not have a valid markout	\$3,000		KMD Excavating	11/11/2015	Canoe Brook Rd., Millburn	11/11/2015
Damage, None	AS15121395K	NOC2015-0063	Failure to file annual reports.	\$3,000	Southeast Morris County M.U.A		1/31/2015	Southeast Morris County Municipal Utilities Authority.	11/12/2015
Damage, Gas	GS15121390K	GOC2015-0259	Did not properly mark out.	\$3,000	NJ Natural Gas		4/9/2015	Front St., Scotch Plains	11/11/2015
Damage, Electric	ES15121400K	EOC2014-0119	Did not have a valid markout. Non-Gas Damage.	\$2,000		D.Polo Plumbing & Heating LLC	8/27/2015	Lakewood RD., Toms River	11/10/2015
<b>Total</b>		12		\$30,000					