



Agenda Date: 8/24/16
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 ET SEQ.)
)
) ORDER ACCEPTING
) SETTLEMENTS
) DOCKET NOs.GS16060499K
) et al. (see attached appendix)

Parties of Record:

- Nick Depoto**, Elizabethtown Gas
- James Tauriello**, Specialty Contractors
- Bill Tappin**, South Jersey Gas
- Edward Deak**, Deptford Township
- Maria Diaz**, New Jersey Natural Gas
- Timothy O'Brien**, Gold Coast Landscape & Irrigation
- Chester Barnes**, Blenheim Construction
- Frank Coriano**, Public Service Electric and Gas
- William Rankin**, Carl's Fencing
- Kenneth Cernuto**, Kenlor Construction
- Diane Russell**, Jasticon
- Denise Caffero**, By Design Landscapes
- Michael Mulvey**, Mulvey Construction
- Brian Richardson**, L&A Tent Rentals
- Alex Papirnik**, NJPD Plumbing & Heating
- Guy Kohles**, Rockborn Trucking & Excavation
- Ralph Hillmer**, Jersey Central Power and Light

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. 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.

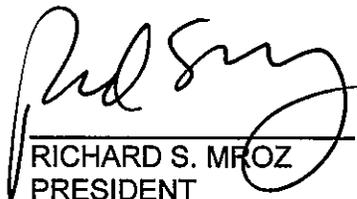
By acceptance of the various Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Underground Facility Protection Act in connection with the above-referenced 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 September 3, 2016.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED

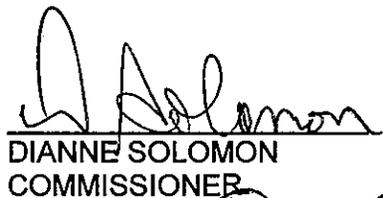
DATED: 8/24/16

BOARD OF PUBLIC UTILITIES
BY:

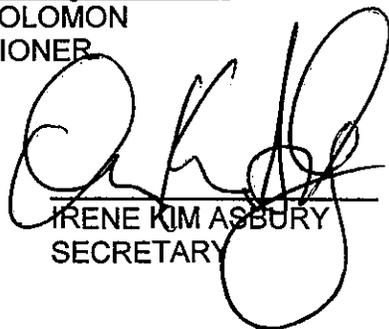

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

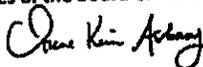

MARY-ANNA HOLDEN
COMMISSIONER


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. GS16060499K et al. (see attached appendix)**

SERVICE LIST

Nick Depoto
Elizabethtown Gas
520 Green Lane
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James Tauriello
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Edward Deak
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Maria Diaz
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Wall, NJ 07719

Timothy O'Brien
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Ocean City, NJ 08226

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Gloucester Twp., NJ 08081

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Carl's Fencing
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Toms River, NJ 08755

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Kenlor Construction
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Bound Brook, NJ 08805

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Lakewood, NJ 08701

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Mulvey Construction
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Flemington, NJ 08822

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200 Whitehead Rd.,
Suite 100
Hamilton, NJ 08619

Alex Papirnik
NJPD Plumbing & Heating
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Unit A2
Lakewood, NJ 08701

Guy Kohles
Rockborn Trucking & Excavation
12 Taylor Rd.,
Wharton, NJ 07855

Ralph Hillmer
Jersey Central Power and Light
300 Madison Ave.,
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Morristown, NJ 07962

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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- AUGUST 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 | GS16060499K | GOC2015-0073 | Did not properly mark out | \$3,000 | Elizabethtown Gas | | 11/22/2015 | Oregon St., Vauxhall | 5/17/2016 |
| Damage Gas | GS16060498K | GOC2015-1664 | Did not properly mark out | \$3,000 | Elizabethtown Gas | | 11/18/2015 | S. Park St., Elizabeth | 5/17/2016 |
| Damage Gas | GS16070697K | GOC2015-1788 | Did not properly mark out | \$3,000 | Elizabethtown Gas | | 12/3/2015 | Highland Cir., Clinton | 5/17/2016 |
| Damage Gas | GS16060496K | GOC2015-1796 | Did not properly mark out | \$3,000 | Elizabethtown Gas | | 12/8/2015 | Lindegard St., Linden | 5/17/2016 |
| Damage Gas | GS16060495K | GOC2015-0687 | Did not properly mark out | \$3,000 | Elizabethtown Gas | | 6/15/2015 | John St., Carteret | 5/17/2016 |
| Damage Gas | GS16060494K | GOC2015-0572 | Did not properly mark out | \$3,000 | Elizabethtown Gas | | 5/29/2015 | Amity St., Elizabeth | 5/17/2016 |
| Damage Gas | GS16060493K | GOC2015-1281 | Did not properly mark out | \$3,000 | Elizabethtown Gas | | 9/11/2015 | Leesville Ave., Rahway | 5/17/2016 |
| Damage Cable | GS16020161K | GOC2014-0200 | Did not have a valid markout | \$3,000 | | Specialty Contractors | 6/1/2014 | Prince Rd., Parsippany | 5/22/2016 |
| Damage Gas | GS16050422K | GOC2015-1027 | Did not properly mark out | \$3,000 | South Jersey Gas | | 7/16/2015 | Tilton Rd., Egg Harbor | 2/10/2016 |
| Non-Damage | WS16010025K | WOC2015-0047 | Did not properly mark out, Non-Damage | \$1,000 | Deptford Twp., | | 8/15/2015 | Cooper St., Deptford | 12/15/2015 |
| Damage Gas | GS16060515K | GOC2015-1245 | Did not properly mark out | \$3,000 | NJ Natural Gas | | 8/26/2015 | Kenilworth Rd., Parsippany | 6/1/2016 |
| Damage Gas | GS16060516K | GOC2015-1700 | Did not properly mark out | \$3,000 | NJ Natural Gas | | 11/5/2015 | Miller Rd., Lakewood | 5/16/2016 |
| Damage Gas | GS16060517K | GOC2015-1777 | Did not properly mark out | \$3,000 | NJ Natural Gas | | 11/29/2015 | Captain Dr., Little Egg Harbor | 5/13/2016 |
| Damage Gas | GS160560518K | GOC2015-1614 | Did not have a valid markout | \$3,000 | | Gold Coast, Landscape & Irrigation | 10/16/2015 | Caroline Ln., Ocean City | 5/21/2016 |
| Damage Gas | GS16060519K | GOC2015-1826 | Did not properly mark out | \$3,000 | NJ Natural Gas | | 12/3/2015 | Bay Plaza, Wall Twp. | 5/13/2016 |
| Damage Gas | GS16060520K | GOC2015-1680 | Did not have a valid markout | \$3,000 | | Blenheim Construction | 11/4/2015 | Columbus Ct., Berlin | 5/24/2016 |
| Damage Gas | GS16070665K | GOC2015-1803 | Did not properly mark out | \$3,000 | PSE&G | | 12/4/2015 | Biltmore St., N. Arlington | 6/28/2016 |
| Damage Gas | GS16070666K | GOC2015-1804 | Did not properly mark out | \$3,000 | PSE&G | | 12/4/2015 | Main St., Chatham | 6/28/2016 |
| Damage Gas | GS16060521K | GOC2014-0779 | Did not have a valid markout | \$3,000 | | Carl's Fencing | 9/12/2014 | Center St., Lacey Township | 5/24/2016 |
| Damage Gas | GS16060552K | GOC2014-0127 | Did not have a valid markout | \$3,000 | | Kenor Construction | 4/17/2014 | Somerville Rd., Bridgewater | 5/28/2016 |
| Damage Gas | GS16060551K | GOC2015-1340 | Did not properly mark out | \$3,000 | South Jersey Gas | | 9/8/2015 | Monroeville Rd., & Buck Rd., Franklin Twp. | 5/26/2016 |
| Damage Electric | GS16060550K | GOC2015-1232 | Did not properly mark out | \$3,000 | NJ Natural Gas | | 8/19/2015 | Maple St., Waretown | 5/13/2016 |
| Damage Gas | GS16060549K | GOC2015-1328 | Did not have a valid markout | \$3,000 | | Jasticon | 9/1/2015 | Rt 168, Blackwood | 5/13/2016 |
| Damage Telephone | TS16060548K | TOC2015-0118 | Did not have a valid markout, Non-Gas | \$2,000 | | By Design Landscapes | 8/25/2015 | Governors Crossing, Wall Twp. | 5/15/2016 |
| Damage Gas | GS16060547K | GOC2015-1843 | Did not have a valid markout | \$3,000 | | Mulvey Construction | 12/8/2015 | Olive Ct., Flemington | 5/14/2016 |
| Damage Gas | GS16060546K | GOC2015-1516 | Did not have a valid markout | \$3,000 | | L&A Tent Rentals | 10/9/2015 | Hwy. 202, Flemington | 6/14/2016 |
| Damage Gas | GS16060545K | GOC2015-1239 | Did not have a valid markout | \$3,000 | | NJPD Plumbing & Heating | 8/24/2015 | Morris Blvd., Berkeley | 6/15/2016 |
| Damage Gas | GS16060544K | GOC2015-1544 | Did not have a valid markout | \$3,000 | | Rockborn Trucking & Excavation | 10/22/2015 | Oakwood Dr., Wayne | 6/14/2016 |

| Damage Type | BPU Dkt. No. | One Call Case No. | Type of Violation | Penalty | Operator | Excavator | Violation Date | Description/Location | Payment Received |
|-----------------|--------------|-------------------|------------------------------------|------------------|------------------|-----------|----------------|---------------------------------|------------------|
| Damage Electric | ES16070623K | EOC2015-0189 | Did not properly mark out, Non-Gas | \$2,000 | JCP&L | | 8/23/2015 | Morning Glory Ln., Manchester | 5/27/2016 |
| Damage Gas | GS16070624K | GOC2015-1268 | Did not properly mark out | \$3,000 | PSE&G | | 9/2/2015 | U.S. Hwy., 206, Montgomery | 5/17/2016 |
| Damage Gas | GS16070625K | GOC2015-1325 | Did not properly mark out | \$3,000 | South Jersey Gas | | 9/1/2015 | Erial Rd., Blackwood | 5/23/2016 |
| Damage Gas | GS16070626K | GOC2015-1900 | Did not properly mark out | \$3,000 | South Jersey Gas | | 12/28/2015 | Country Club Dr., Pomona | 5/23/2016 |
| Damage Gas | GS16070627K | GOC2015-1899 | Did not properly mark out | \$3,000 | South Jersey Gas | | 12/23/2015 | Kilburn Dr., Monroe Twp. | 5/23/2016 |
| Damage Gas | GS16070628K | GOC2015-1897 | Did not properly mark out | \$3,000 | South Jersey Gas | | 12/21/2015 | 84th St., Stone Harbor | 5/23/2016 |
| Damage Gas | GS16070629K | GOC2015-1739 | Did not properly mark out | \$3,000 | South Jersey Gas | | 11/20/2015 | Black Horse Pike, Washington | 5/23/2016 |
| Damage Gas | GS16070630K | GOC2015-1329 | Did not properly mark out | \$3,000 | South Jersey Gas | | 9/2/2015 | N. Poplar & W. Broad, Greenwich | 5/23/2016 |
| Damage Gas | GS16070631K | GOC2015-1554 | Did not properly mark out | \$3,000 | PSE&G | | 10/20/2015 | Aino Ave., Morristown | 5/17/2016 |
| Damage Gas | GS16070596K | GOC2014-0561 | Did not properly mark out | \$3,000 | PSE&G | | 8/11/2014 | Karen Way, Summit | 5/12/2016 |
| Damage Gas | GS16060597K | GOC2013-0009 | Did not properly mark out | \$3,000 | PSE&G | | 9/19/2013 | Union St., Burlington | 5/12/2016 |
| Damage Gas | GS16060598K | GOC2015-1651 | Did not properly mark out | \$3,000 | PSE&G | | 11/6/2015 | Disbrow Hall Rd., Monroe | 5/17/2016 |
| Damage Gas | GS16060599K | GOC2015-1548 | Did not properly mark out | \$3,000 | PSE&G | | 10/27/2015 | Jersey Ave., Cliffside Park | 5/25/2016 |
| Damage Gas | GS16060600K | GOC2015-1267 | Did not have a valid markout | \$3,000 | PSE&G | | 9/2/2015 | 4th St., Palisades Park | 5/25/2016 |
| Damage Gas | GS16060601K | GOC2015-1288 | Did not properly mark out | \$3,000 | PSE&G | | 9/8/2015 | Washington Ave., Dumont | 5/16/2016 |
| Damage Gas | GS16060602K | GOC2015-1282 | Did not properly mark out | \$3,000 | PSE&G | | 9/2/2015 | James St., Bloomfield | 5/16/2016 |
| Damage Gas | GS16060603K | GOC2015-1182 | Did not properly mark out | \$3,000 | PSE&G | | 8/24/2015 | Woodmere Ct., Old Bridge | 5/16/2016 |
| Damage Electric | ES16060604K | EOC2015-0163 | Did not properly mark out, Non-Gas | \$2,000 | PSE&G | | 8/24/2015 | Bergen Ct., Newark | 5/16/2016 |
| Total | 46 | | | \$133,000 | | | | | |