



Agenda Date: 11/30/16
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. GS16100959K, et. al.
) (see attached appendix)

Parties of Record:

- Eugene Dente, Fences by Dente**
- R. Thomas Musgrave, RTM Environmental Services**
- Vincent Porta, Tri County Irrigation**
- James Skiles, Skiles Excavating**
- Bart Bielecki, Bielecki Construction**
- Paul Lancha, Lancha Construction**
- Kevin McAndrew, Landscape Maintenance Services**
- Kenneth B. Fitzsimmons, Township of Toms River**
- Michael Donohue, Public Service Electric and Gas**
- Michael Zusack, Manasquan River Golf Club**
- George V. Seif, East Coast Lawn Sprinklers**
- Christine Imbarrato, Wetlands Inc.**
- Nick Depoto, Elizabethtown Gas**
- William Tappin, South Jersey Gas**
- Steve Rogers, American Lawn Sprinkler Company**
- Mark DiMedici, Rising Sun Construction**
- Tom Rillo, Tom Rillo Landscape and Sealcoat**
- Medo Durakovic, pro se**
- David Melms, William J. Guarini, Inc.**
- David Pape, Old Forge Builders**
- Thomas Mecouch Sr., Crown Pipeline**
- John Friel, Friel Brothers Paving Co.**
- William Schemel, FWH Associates, PA**
- Phillip Black, Assured Property Solutions**
- Katie Milliman, R.E. Pierson Construction Co.**
- Lou Pacheco, Assuncao Bros. Inc.**
- Steven Tamburro, D&S Tamburro**
- Charels Tobar, Abraham General Construction**
- John McLaughlin, O'Connor Landscaping**

Ralph Hillmer, Jersey Central Power & Light
Michael A. Frabizzio, Advanced Infrastructure Design
Robert Lee, Louis Lee & Son Inc.
Maria Diaz, New Jersey Natural Gas
Chris Cummins, Pioneer Pipe
Fernando Messercola, Messercola Excavating
William Rankin, Pizzo Contracting
Edward Panuska, George Harms Construction

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.

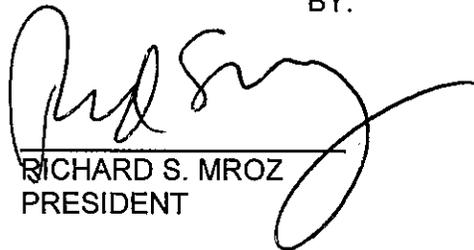
By acceptance of the various Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Underground Facility Protection Act in connection with the above-referenced 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 December 10, 2016.

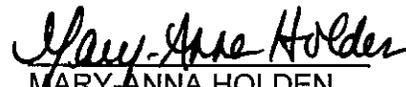
NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

DATED: 11/30/16

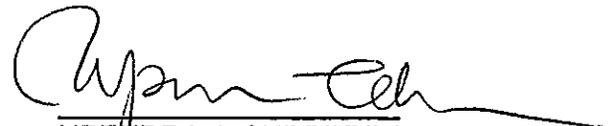
BOARD OF PUBLIC UTILITIES
BY:

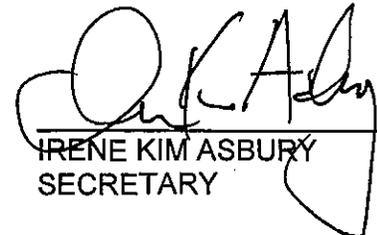

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

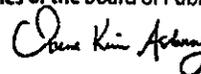

MARY-ANNA HOLDEN
COMMISSIONER


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. GS16090829K et. al. (see attached appendix)**

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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- NOVEMBER 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	GS16100959K	GOC2015-0851	Did not have a valid markout	\$3,000		Fences by Dente	6/24/2015	River Rd., Red Bank	9/30/2016
Damage Gas	GS16100960K	GOC2015-0624	Did not have a valid markout	\$3,000		RTM Environmental Services	5/26/2015	Schock Ave., Neptune	10/4/2016
Damage Gas	GS16100961K	GOC2014-0872	Did not have a valid markout	\$3,000		Tri County Irrigation	9/29/2014	Colonial Rd., Franklin Lakes	9/30/2016
Damage Gas	GS16100962K	GOC2016-0060	Did not have a valid markout	\$3,000		Skiles Excavating	1/21/2016	River Rd., Burlington	10/3/2016
Damage Gas	GS16100963K	GOC2016-0165	Did not have a valid markout	\$3,000		Bielecki Construction	3/7/2016	Thayer Ave., Avenel	9/28/2016
Damage Gas	GS16100964K	GOC2015-0392	Did not have a valid markout	\$3,000		Lancha Construction	4/29/2015	Essex Rd., Summit	9/24/2016
Damage Gas	GS16100965K	GOC2015-0472	Did not have a valid markout	\$3,000		Landscape Maintenance Services	5/11/2015	Karrich Ct., Old Bridge	9/28/2016
Damage Gas	GS16100966K	GOC2015-1518	Did not have a valid markout	\$3,000		Township of Toms River	10/1/2015	2nd Ave., Ortley Beach	9/19/2016
Damage Gas	GS16111055K	GOC2015-1745	Did not properly mark	\$3,000	PSE&G		11/23/2015	Bellevue Ave., Montclair	9/20/2016
Damage Gas	GS16111056K	GOC2016-0101	Did not have a valid markout	\$3,000		Manasquan River Golf Club	2/11/2016	Riverview Dr., Bielle	9/24/2016
Damage Gas	GS16111057K	GOC2015-0358	Did not have a valid markout	\$3,000		East Coast Lawn Sprinklers	4/8/2015	Baist Dr., Sayerville	9/24/2016
Damage Gas	GS16111058K	GOC2015-1746	Did not have a valid markout	\$3,000		Wellands Inc.	1/24/2015	Mall Dr., East Jersey City	8/30/2016
Damage Gas	GS16111059K	GOC2016-0119	Did not properly mark	\$3,000	PSE&G		2/17/2016	Crosswicks-Hamilton Square Rd., Hamilton	9/9/2016
Damage Gas	GS16111060K	GOC2016-0194	Did not properly mark	\$3,000	Elizabethtown Gas		3/15/2016	E. Curtis St., Linden	9/13/2016
Damage Gas	GS16111061K	GOC2016-0076	Did not properly mark	\$3,000	South Jersey Gas		1/21/2016	Kresson Rd., Cherry Hill	9/15/2016
Damage Gas	GS16111062K	GOC2016-0289	Did not properly mark	\$3,000	South Jersey Gas		3/30/2016	N. White Horse Pike, Somerdale	9/15/2016
Damage Gas	GS16100981K	GOC2016-0126	Did not properly mark	\$3,000	Elizabethtown Gas		2/29/2016	Lenhome Dr. N., Cranford	9/13/2016
Damage Gas	GS16111063K	GOC2014-0120	Did not have a valid markout	\$3,000		American Lawn Sprinkler Company	4/25/2014	Rt. 79, Morganville	10/14/2016
Damage Gas	GS16090893K	GOC2015-1549	Did not have a valid markout	\$3,000		Rising Sun Construction	10/15/2015	S. Randolphville Rd., Piscataway	6/23/2016
Damage Cable	CS16100988K	COC2015-0278	Did not have a valid markout, non-gas damage	\$2,000		Tom Rillo Landscape & Sealcoat	10/12/2015	Stone Fence Rd., Bernardsville	8/25/2016
Damage Gas	GS16100989K	GOC2015-1290	Did not properly mark	\$3,000	PSE&G		9/9/2015	Whitford Ave., Nutley	8/25/2016
Damage Gas	GS16100990K	GOC2015-1185	Did not properly mark	\$3,000	PSE&G		8/27/2015	Norcross Circle, Trenton	8/22/2016
Damage Gas	GS16100991K	GOC2015-1846	Did not have a valid markout	\$3,000		Medo Durakovic	12/3/2015	Columbus Dr., Tenafly	9/12/2016
Damage Gas	GS16100992K	GOC2015-1256	Did not properly mark	\$3,000	PSE&G		8/27/2015	Innes Rd., Wood-Ridge	9/12/2016
Damage Gas	GS16100994K	GOC2016-0496	Failure to hand dig and locate	\$3,000		William J. Guarini, Inc.	5/11/2016	Powerville Rd., Boonton	10/5/2016
Damage Gas	GS16100973K	GOC2016-0171	Did not properly mark	\$3,000	PSE&G		3/7/2016	Market St., Newark	9/29/2016
Damage Gas	GS16100974K	GOC2014-1194	Did not have a valid markout	\$3,000		Old Forge Builders	11/10/2014	Steiner Ave., Neptune City	10/8/2016
Damage Gas	GS16100975K	GOC2016-0293	Did not properly mark	\$3,000	Elizabethtown Gas		4/8/2016	Bower St., Linden	9/20/2016
Damage Gas	GS16100976K	GOC2015-0063	Failure to hand dig and locate	\$3,000		Crown Pipeline	1/20/2015	Lakeview Ave., Pine Hill	8/22/2016

Damage, Gas	GS16100977K	GOC2016-0213	Did not properly mark	\$3,000	Elizabethtown Gas		3/24/2016	Rosewood Terrace, Linden	9/20/2016
Damage, Gas	GS16100978K	GOC2016-0215	Did not properly mark	\$3,000	Elizabethtown Gas		3/25/2016	Otisco Dr., Westfield	9/20/2016
Damage, Gas	GS16100979K	GOC2015-1598	Did not have a valid markout	\$3,000		Friel Brothers Paving Co.	10/23/2015	Benn Ln., Wayside	4/15/2016
Damage, Gas	GS16100980K	GOC2015-0319	Did not have a valid markout	\$3,000		FWH Associates, PA	4/7/2015	Ship Bottom Ln., Ocean Twp.	10/11/2016
Damage, Gas	GS16101002K	GOC2016-0656	Did not properly mark	\$3,000	South Jersey Gas		6/1/2016	W. Wyoming Ave., Absecon	10/6/2016
Damage, Gas	GS16101003K	GOC2015-1781	Did not have a valid markout	\$3,000		Assured Property Solutions	11/25/2016	Sheridan Ave., Vineland	5/14/2016
Damage, Gas	GS16101004K	GOC2015-0160	Did not have a valid markout	\$3,000		R.E. Pierson Construction Co.	3/12/2015	Crest Haven Rd. & Moore Rd., Cape May Court House	4/21/2016
Damage, Gas	GS16101005K	GOC2014-0975	Did not have a valid markout	\$3,000		Assuncao Bros. Inc.	10/9/2014	Ocean Ave., Mantoloking	3/4/2016
Damage, Gas	GS16090903K	GOC2015-1490	Did not have a valid markout	\$3,000		D&S Tamburro	10/8/2015	Short Ct., Sicklerville	6/15/2016
Damage, Gas	GS16101006K	GOC2013-0085	Did not have a valid markout	\$3,000		Abraham General Construction	10/5/2013	Redmond Rd., South Orange	4/22/2015
Damage, Gas	GS16101007K	GOC2015-1214	Did not properly mark	\$3,000	South Jersey Gas		8/19/2015	Berkley Rd., Paulsboro	7/1/2016
Damage, Gas	GS16101008K	GOC2015-1820	Did not have a valid markout	\$3,000		O'Connor Landscaping	12/8/2015	Landis Ave., Sea Isle City	6/25/2016
Non-damage	ES16101012K	NOC2016-0013	Did not properly mark, non-damage	\$3,000	JCP&L		4/20/2016	Ocean Ave., Neptune	5/27/2016
Non-damage	ES16101013K	NOC2016-0009	Did not properly mark, non-damage	\$3,000	JCP&L		4/4/2016	Norlaine Dr., Cookstown	5/27/2016
Non-damage	ES16101014K	NOC2016-0014	Did not properly mark, non-damage	\$3,000	JCP&L		4/21/2016	Ocean Ave., Neptune	5/27/2016
Non-damage	AS16101015K	NOC2016-0001	Size & shape inconsistent with planned excavation	\$3,000		Advanced Infrastructure Design	1/4/2016	State Rt. 21, Newark	5/27/2016
Non-damage	ES16101016K	NOC2016-0011	Did not properly mark, non-damage	\$3,000	JCP&L		3/19/2016	Jefferson Rd., Whippany	5/27/2016
Non-damage	ES16101017K	NOC2016-0012	Did not properly mark, non-damage	\$3,000	JCP&L		1/29/2016	Ocean Ave., Neptune	5/27/2016
Non-damage	AS16101018K	NOC2016-0018	Did not have a valid markout, non-damage	\$1,000		Louis Lee & Son Inc.	5/19/2016	Ramapo Ter., Fair Lawn	10/11/2016
Damage, Gas	GS16101019K	GOC2016-0098	Did not properly mark	\$3,000	NJNG		2/10/2016	Seaview Rd., Lavallette	10/5/2016
Damage, Gas	GS16101020K	GOC2016-0090	Did not have a valid markout	\$3,000		Pioneer Pipe	2/12/2016	Pleasure Ave., Ocean City	10/7/2016
Damage, Gas	GS16101021K	GOC2016-0120	Did not have a valid markout	\$3,000		Messercola Excavating	2/23/2016	US Highway 206, Hillsborough	10/10/2016
Damage, Gas	GS16101022K	GOC2016-0495	Failure to use reasonable care	\$3,000		Pizzo Contracting	5/10/2016	Sycamore Dr., Brick	10/13/2016
Damage, Gas	GS16101023K	GOC2015-0721	Did not properly mark	\$3,000	NJNG		6/5/2015	Heathcliff Rd., Rumson	10/5/2016
Damage, Gas	GS16101037K	GOC2015-0623	Did not properly mark	\$3,000	NJNG		5/26/2015	E. Shore & Carr Ave., Keansburg	10/5/2016
Damage, Gas	GS16101038K	GOC2015-0617	Did not properly mark	\$3,000	NJNG		5/22/2015	3rd St., Keyport	10/5/2016
Damage, Gas	GS16101039K	GOC2015-0609	Did not properly mark	\$3,000	NJNG		5/21/2015	Monmouth Dr., Deal	10/5/2016
Damage, Gas	GS16101040K	GOC2015-0289	Did not properly mark	\$3,000	South Jersey Gas		4/10/2015	E. 9th St., Ocean City	10/13/2016
Damage, Gas	GS16101041K	GOC2015-0412	Did not properly mark	\$3,000	South Jersey Gas		4/27/2015	1st Ave., Ocean City	10/13/2016
Damage, Gas	GS16101042K	GOC2015-1601	Failure to use reasonable care	\$3,000		George Harms Construction	10/29/2015	Sterling Ave., Lavallette	10/13/2016
Total		59		\$174,000					