



Agenda Date: 3/26/18
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 ET SEQ.)

ORDER ACCEPTING)
SETTLEMENTS)

DOCKET Nos.)
GS18030197K, et al.)
(see attached appendix))

Parties of Record:

- Stacy A. Mitchell**, South Jersey Gas
- Michael Donohue**, PSE&G
- John Mazure**, Skydive Cross Keys
- Michael P. Kelly**, Kelly Builders
- M. P. Scacifero**, Elizabethtown Gas.
- Stuart A. Hartnett**, Gray Supply Corp.
- Thomas Eckel**, NJ American Water
- Sylvia Del Vecchio**, Verizon
- Richard D. McLaughlin**, J. Fletcher Creamer & Sons, Inc.

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.

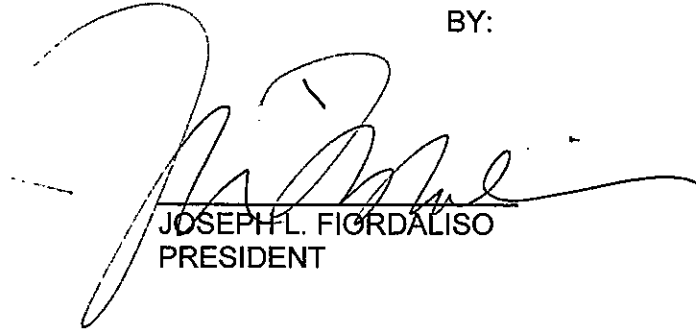
By acceptance of the various Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Underground Facility Protection Act in connection with the above-referenced 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 April 5, 2018.

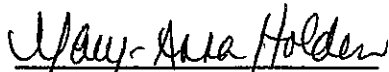
NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

DATED: 3/26/18

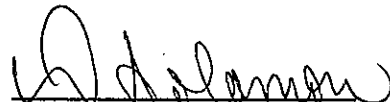
BOARD OF PUBLIC UTILITIES
BY:




JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



RICHARD S. MROZ
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 ET. SEQ. ORDER ACCEPTING SETTLEMENTS
DOCKET NO. GS18030197K et. al. (see attached appendix)

SERVICE LIST

Stacy A. Mitchell
South Jersey Gas
One South Jersey Plaza
Folsom, NJ 08037

Michael Donohue
PSE&G
240 Kuller Road
Clifton, NJ 07011

John Mazure
Skydive Cross Keys
300 Dahlia Avenue – Bldg. #4
Williamstown, NJ 08094

Michael P. Kelly
Kelly Builders & Developers
14 Bridgewaters Drive
Oceanport, NJ 07757

M. P. Scacifero
Elizabethtown Gas
520 Green Lane
Union, NJ 07083

Stuart A. Hartnett
Gray Supply Corp.
199 Franklin Road
Randolph, NJ 07869

Thomas Eckel
NJ American Water
167 JFK PKWY
Short Hills, NJ 07078

Sylvia Del Vecchio
Verizon
9 Gates Avenue, 2nd Floor
Montclair, NJ 07042-3399

Richard D. McLaughlin
J. Fletcher Creamer & Sons, Inc.
101 East Broadway
Hackensack, NJ 07601

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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- MARCH 26 VIA 2018

| Damage Type | BPU Dkt No. | One Call Case No. | Type of Violation | Penalty | Operator | Excavator | Violation Date | Description/Location | Payment Received |
|-------------------|-------------|-------------------|--------------------------------|---------|-------------------|--------------------|----------------|-------------------------------------|------------------|
| Damage, Telephone | GS18030197K | GOC2017-0029 | Did not properly mark out | \$3,000 | South Jersey Gas | | 1/05/2017 | Delsea Drive, Millville | 1/10/2018 |
| Damage, Gas | GS18030198K | GOC2017-0039 | Did not properly mark out | \$3,000 | PSE&G | | 1/19/2017 | Grove Street, Haledon | 11/6/2017 |
| Damage, Gas | GS18030199K | GOC2017-0047 | Did not properly mark out | \$3,000 | PSE&G | | 1/25/2017 | Hockenbury Rd, Hillsborough | 11/20/2017 |
| Damage, Gas | GS18030200K | GOC2017-0045 | Did not properly mark out | \$3,000 | PSE&G | | 1/14/2017 | E. Cedar Ln, Teaneck | 11/20/2017 |
| Damage, Gas | GS18030201K | GOC2017-0066 | Did not properly mark out | \$3,000 | PSE&G | | 1/25/2017 | Somerset St, Franklin Township | 11/21/2017 |
| Damage, Gas | GS18030202K | GOC2017-0083 | Did not have a valid markout | \$3,000 | | Skydive Cross/Keys | 1/21/2017 | Dahlia Ave., Monroe Twntshp | 1/4/2018 |
| Damage, Gas | GS18030203K | GOC2017-0073 | Did not properly mark out | \$3,000 | PSE&G | | 1/30/2017 | Elmwynd Drive, Orange | 11/20/2017 |
| Damage, Gas | GS18030204K | GOC2017-0099 | Failure to use reasonable care | \$3,000 | PSE&G | | 2/06/2017 | Cleary Ave., Butler | 11/16/2017 |
| Damage, Gas | GS18030205K | GOC2017-0115 | Did not properly mark out | \$3,000 | South Jersey Gas | | 12/08/2017 | Asbury Ave., Ocean City | 12/13/2017 |
| Damage, Gas | GS18030206K | GOC2017-0124 | Did not properly markout | \$3,000 | PSE&G | | 2/08/2017 | Harrison Place, Irvington | 11/20/2017 |
| Damage, Gas | GS18030207K | GOC2017-0145 | Did not properly markout | \$3,000 | PSE&G | | 2/15/2017 | Byron Ave., Morristown | 11/27/2017 |
| Damage, Gas | GS18030208K | GOC2017-0146 | Did not properly mark out | \$3,000 | PSE&G | | 2/18/2017 | Lafayette Ave., Chatham | 11/16/2017 |
| Damage, Gas | GS18030209K | GOC2017-0153 | Did not properly mark out | \$3,000 | PSE&G | | 2/28/2017 | W 3rd Street, Newark | 11/17/2017 |
| Damage, Gas | GS18030210K | GOC2017-0230 | Did not call for valid markout | \$3,000 | | Kelly Builders | 3/16/2017 | Bridgewater Dr., Ocean Port | 1/2/2018 |
| Damage, Gas | GS18030211K | GOC2017-0367 | Did not properly mark out | \$3,000 | South Jersey Gas | | 4/11/2017 | Old Indian Mills Rd., Shamong | 1/10/2018 |
| Damage, Gas | GS18030212K | GOC2017-0453 | Did not properly mark out | \$3,000 | E'Town Gas | | 5/12/2017 | Columbia Ave., Cranford | 12/01/2017 |
| Damage, Gas | GS18030213K | GOC2017-0456 | Did not properly mark out | \$3,000 | South Jersey Gas | | 5/2/2017 | Atsion Rd., Medford | 1/10/2018 |
| Damage, Gas | GS18030214K | GOC2017-0509 | Did not properly markout | \$3,000 | South Jersey Gas | | 5/17/2017 | Black Horse Pike, Williamtown | 1/10/2018 |
| Damage, Gas | GS18030215K | GOC2017-0527 | Did not properly markout | \$3,000 | South Jersey Gas | | 5/19/2017 | Hale Ave., Egg Harbor Twp | 1/10/2018 |
| Damage, Gas | GS18030216K | GOC2017-0589 | Did not properly markout | \$3,000 | PSE&G | | 5/15/2017 | NJ-440, Jersey City | 11/27/2017 |
| Damage, Gas | GS1803017K | GOC2017-0763 | Did not properly mark out | \$3,000 | South Jersey Gas | | 6/26/2017 | N. Laurel St., Bridgeton | 1/10/18 |
| Damage, Gas | GS18030218K | GOC2017-0794 | Did not properly markout | \$3,000 | PSE&G | | 6/28/2017 | Bender Pl., Clifton | 11/21/2017 |
| Damage, Gas | ES18030219K | EOC2017-0253 | Did not properly mark out | \$3,000 | PSE&G | | 10/27/2017 | Lenox Drive, Lawrenceville | 12/01/2017 |
| Damage, Gas | ES1803220K | NOC2017-0026 | Did not properly mark out | \$3,000 | PSE&G | | 10/13/2017 | E. Canal St, Trenton | 12/01/2017 |
| Damage, Telephone | GS18030221K | GOC2017-0052 | Failure to use reasonable care | \$3,000 | | Gray Supply Corp. | 1/25/2017 | Randolph Ave. & Lawrence St., Dover | 10/06/2017 |
| Damage, Gas | WS18030222K | WOC2016-0041 | Did not properly mark out | \$1,000 | NJ American Water | | 8/31/16 | Copley Road, Barrington | 1/10/2018 |
| Damage, Gas | TS18030223K | NOC2017-0027 | Did not properly mark out | \$3,000 | Verizon | | 10/23/2017 | Tyrpak Road, Howell Twsp. | 12/06/2017 |

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- MARCH VIA 2018

| Damage Type | BPU Dkt No. | One Call Case No. | Type of Violation | Penalty | Operator | Excavator | Violation Date | Description/Location | Payment Received |
|---------------|-------------|-------------------|--------------------------------|---------|----------|----------------------------|----------------|----------------------------|------------------|
| Damage, Water | ES18030244K | EOC2017-0062 | Failure to use reasonable care | \$3,000 | | J. Fletcher Creamer & Sons | 1/26/2017 | Glenwood Ave., Jersey City | 2/6/2018 |
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| Total | 28 | \$82,000.00 | | | | | | | |