



Agenda Date: 12/17/14  
Agenda Item: VIA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
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. GS14111300K et  
) al. (see attached appendix)

**Parties of Record:**

- Craig Lynch, Vice President, New Jersey Natural Gas Company**
- Brian Barbiche, President, Barbiche Brothers Construction Inc.**
- Jose Camargo, Camargo Lawn Service**
- Raymond Miller, Shamrock Inc.**
- Thomas McNally, Lambert's Cable Splicing**
- Frank Semeraro, Supervisor, Frank Semeraro Construction Co. Inc.**
- Lazaro Ebanks, Ebanks Enterprises LLC.**
- Frederick Engel, Meco Construction, Inc.**
- John Hudak, Municipal Attorney, City of Linden**
- Austin Midure, President, Austin Midure Plumbing**
- Mike Gray, Owner, JB Electric, Inc.**
- David Ern, President, Gordon's Corner Water Company**

**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..."

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. 48:2-86(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 **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.

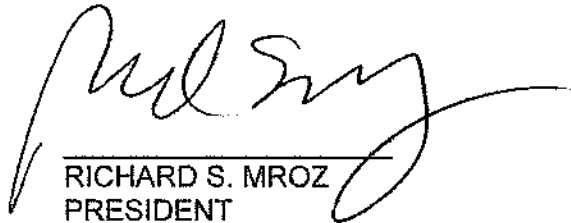
By acceptance of the various Offers of Settlement and the timely payment thereof, the excavator or operator has waived any rights to a hearing, and the Board has waived any rights to bring an action for civil penalties as permitted by the Underground Facility Protection Act in connection with the above-referenced 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 30, 2014.

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

DATED: 12/17/14

BOARD OF PUBLIC UTILITIES  
BY:



RICHARD S. MROZ  
PRESIDENT



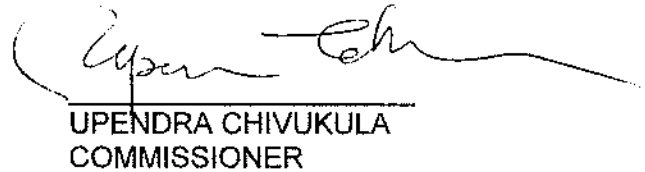
JOSEPH L. FIORDALISO  
COMMISSIONER



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER



UPENDRA CHIVUKULA  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
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.  
DOCKET NO. GS14111300K et al. (see attached appendix)**

SERVICE LIST

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City of Linden  
301 N. Wood Ave  
Linden, NJ 07036

Austin Midure, President  
Austin Midure Plumbing  
16 Grasmur Ct.  
Berlin, NJ 08009

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-December VIA 2014

Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, Gas	GS14111300K	GOC2014-0153	Did not properly mark out	\$3,000	NJ Natural Gas		5/13/2014	Magpie Ct, Jackson	10/8/2014
Non Damage	GS14111301K	NOC2014-0038	Did not properly mark out	\$1,000	NJ Natural Gas		8/19/2014	W Main, Holmdel	10/8/2014
Damage, Gas	GS14111302K	GOC2014-0184	Did not have a valid markout	\$3,000		Barbiche Bros.	6/2/2014	Us Hwy 202, Raritan	10/20/2014
Damage, Gas	GS14111303K	GOC2014-0319	Did not have a valid markout	\$3,000		Camargo Lawn Srvc	6/17/2014	Catherine St, Red Bank	10/15/2014
Damage, Gas	GS14111304K	GOC2014-0487	Did not have a valid markout	\$3,000		Shamrock Heating	7/18/2014	Chestnut Ave, Vineland	10/14/2014
Non Damage	AS14111305K	NOC2014-0048	Did not have a valid markout	\$1,000		Lamberts Cable Splicing	9/3/2014	Davis Rd, Franklin	10/15/2014
Damage, Gas	GS14111306K	GOC2014-0132	Did not have a valid markout	\$3,000		Frank Semeraro Const.	4/21/2014	Wayne Towne Center, Wayne	10/10/2014
Damage, Gas	GS14111298K	GOC2014-0373	Did not have a valid markout	\$3,000		Ebanks Enterprises LLC	7/2/2014	Thomas Ave, North Brunswick	10/28/2014
Damage, Gas	GS14111307K	GOC2014-0324	Did not have a valid markout	\$3,000		Meco Const.	6/5/2014	Newman Springs Rd, Marlboro	10/23/2014
Damage, Gas	GS14111308K	GOC2014-0074	Did not have a valid markout	\$3,000		City of Linden	2/8/2014	Cleveland Ave, Linden	10/23/2014
Damage, Gas	GS14111293K	GOC2014-0338	Did not properly mark out	\$3,000	NJ Natural Gas		6/26/2014	Cable Ave, Beachwood	10/22/2014
Damage, Gas	GS14111297K	GOC2014-0570	Did not have a valid markout	\$3,000		Austin Midure Plumbing	8/11/2014	Tucketron Rd, Shamong	10/29/2014
Damage, Gas	GS14111294K	GOC2014-0341	Did not properly mark out	\$3,000	NJ Natural Gas		6/27/2014	Fletcher Lake Ave & 3rd Ave, Bradley Beach	10/22/2014
Damage, Gas	GS14111296K	GOC2014-0563	Did not have a valid markout	\$3,000		JB Electric	8/12/2014	McKinley St, Edison	10/31/2014
Damage, Telephone	TS14111299K	TOC2014-0006	Did not have a valid markout	\$2,000		Gordons Comer Water	1/14/2014	Gettysburg Dr, Manalapan	10/27/2014
Damage, Gas	GS14111295K	GOC2014-0214	Did not properly mark out	\$3,000	NJ Natural Gas		6/3/2014	Jefferson Ave, Avon	10/22/2014
<b>Total</b>		16		\$43,000					