



Agenda Date: 1/25/2017  
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. GS16111071K, et. al.  
) (see attached appendix)

**Parties of Record:**

- L. Dean Barnard, Barnard Construction
- Michael Donohue, PSE&G
- David E. Hitchner, C & H Disposal Services
- Ralph Torres, Torres Plumbing & Heating
- Glen Newman, Newman Building LLC
- Gary E. Smith, GE Smith Electric Inc.
- Jennifer Alexander, Esposito Construction Company
- Cynthia Houser, Brickman
- Stephen Foggia, Stephens Landscaping
- Sylvia Del Vecchio, Verizon
- Kerry Green, Four Star Developers
- Adrian Fernandez, A & D Construction
- Nick Depoto, Elizabethtown Gas
- Jeff Schafer, Schafer Mechanical Services
- William Tappin, South Jersey Gas
- Gary Koifman, Evergreen Creation

**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

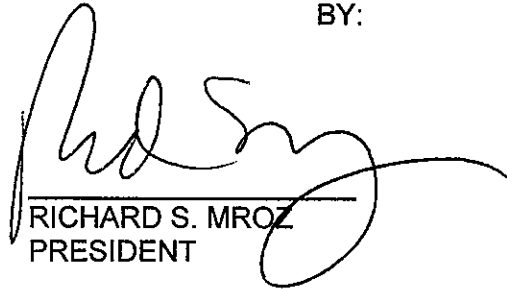
the specific incidents described in the Appendix. This acceptance is without prejudice as to the position of the State of New Jersey or any agency or subdivision thereof if other violations are present, now or in the future.

This Order shall be effective on February 4, 2017.

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

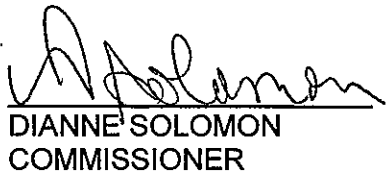
DATED: 1/25/17

BOARD OF PUBLIC UTILITIES  
BY:

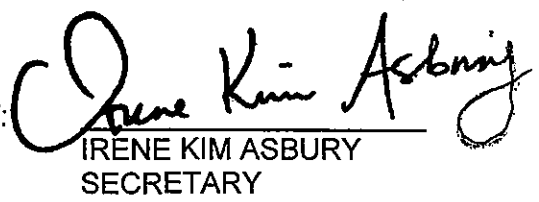
  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

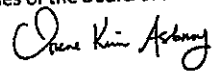
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
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. GS16111071K et. al. (see attached appendix)**

**SERVICE LIST**

L. Dean Barnard  
Barnard Construction  
630 Newark Pompton Turnpike  
Pompton Plains, NJ 07444

Sylvia Del Vecchio  
Verizon  
540 Broad Street  
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PSE&G  
240 Kuller Rd.  
Clifton, NJ 07011

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Four Star Developers  
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47 Griers Lane  
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170 Davis Ave.  
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Torres Plumbing & Heating  
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520 Green Lane  
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Newman Building LLC  
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Forked River, NJ 08731

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Folsom, NJ 08037

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Evergreen Creation  
9 Brookside Dr.  
Martinsville, NJ 08836

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Brickman  
1350 Liberty Ave, Unit C. Bldg. 22  
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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 2017

Damage Type	BPU Dkt.No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage, Gas	GS16111071K	GOC2015-1716	Did not have a valid markout	\$3,000		Barnard Construction	11/11/2015	Palmer Terrace, Carlstadt	10/28/2016
Damage, Gas	GS16111072K	GOC2015-0341	Did not properly mark	\$3,000	PSE&G		4/11/2015	Rte. 38, Mount Holly	10/24/2016
Damage, Gas	GS16111073K	GOC2015-0170	Did not properly mark	\$3,000	PSE&G		3/11/2015	W. Broad St., Burlington	10/24/2016
Damage, Gas	GS16111074K	GOC2015-0305	Did not properly mark	\$3,000	PSE&G		3/23/2015	North Dr., East Brunswick	10/24/2016
Damage, Gas	GS16111075K	GOC2015-0873	Did not properly mark	\$3,000	PSE&G		6/22/2015	Prospect St., West Caldwell	10/24/2016
Damage, Gas	GS16111076K	GOC2015-0355	Did not properly mark	\$3,000	PSE&G		4/2/2015	Marion Ave., Franklin	10/24/2016
Damage, Gas	GS16111077K	GOC2014-1006	Did not properly mark	\$3,000	PSE&G		10/7/2014	Pine St., West Orange	10/24/2016
Damage, Gas	GS16111108K	GOC2015-0138	Did not properly mark	\$3,000	PSE&G		2/27/2015	Valley St., West Orange	10/24/2016
Damage, Gas	GS16111109K	GOC2015-0357	Did not properly mark	\$3,000	PSE&G		4/8/2015	Bishop St., New Brunswick	10/24/2016
Damage, Gas	GS16111110K	GOC2014-1005	Did not properly mark	\$3,000	PSE&G		10/2/2014	Challenger Rd., Franklin	10/24/2016
Damage, Gas	GS16111111K	GOC2015-0551	Did not properly mark	\$3,000	PSE&G		5/12/2015	Poe Ave., Somerset	10/24/2016
Damage, Gas	GS16111112K	GOC2014-0238	Did not properly mark	\$3,000	PSE&G		6/4/2014	W. Park Blvd., Haddon	10/27/2016
Damage, Gas	GS16111113K	GOC2016-0560	Did not have a valid markout	\$3,000		C & H Disposal Services	5/18/2016	Shadowbrook Dr., Upper Deerfield	10/28/2016
Damage, Gas	GS16111114K	GOC2016-0279	Did not have a valid markout	\$3,000		Torres Plumbing & Heating	3/22/2016	White Horse Pike, Chesilhurst	10/28/2016
Damage, Gas	GS16111091K	GOC2016-0433	Did not have a valid markout	\$3,000		Newman Building LLC	4/19/2016	Princeton Ave., Brick	10/24/2016
Damage, Gas	GS16111092K	GOC2015-1854	Did not have a valid markout	\$3,000		GE Smith Electric Inc.	12/9/2015	S. Church St., Mt Laurel	10/25/2016
Damage, Gas	GS16111093K	GOC2015-0770	Did not properly mark	\$3,000	PSE&G		6/24/2015	Park Ave., North Arlington	10/21/2016
Damage, Gas	GS16111094K	GOC2016-0170	Did not have a valid markout	\$3,000		Esposito Construction Company	3/10/2016	Petti Ln., Edison	10/21/2016
Damage, Gas	GS16111095K	GOC2016-0053	Did not properly mark	\$3,000	PSE&G		1/16/2016	Oxford Rd., East Brunswick	10/17/2016
Damage, Gas	GS16111096K	GOC2016-0055	Did not properly mark	\$3,000	PSE&G		1/27/2016	Dexter Rd., East Brunswick	10/17/2016
Non-Damage	AS16111097K	NOC2016-0043	Did not have a valid markout, non-damage	\$3,000		Brickman	6/15/2016-6/16/2016	Route 202, Raritan	7/5/2016
Damage, Gas	GS16111117K	GOC2016-0146	Did not properly mark	\$3,000	PSE&G		2/25/2016	Evergreen Dr., Bridgewater	11/3/2016
Damage, Gas	GS16111118K	GOC2015-1076	Did not properly mark	\$3,000	PSE&G		8/5/2015	S. Plainfield Ave., South Plainfield	11/3/2016
Damage, Gas	GS16111119K	GOC2016-0140	Did not properly mark	\$3,000	PSE&G		2/19/2016	S. Munn Ave., East Orange	11/7/2016
Damage, Gas	GS16111120K	GOC2016-0431	Did not have a valid markout	\$3,000		Stephen's Landscaping	4/18/2016	Dr. James Parker Blvd., Red Bank	11/11/2016
Damage, Telephone	TS16111121K	TOC2016-0017	Did not properly mark, telephone damage	\$3,000	Verizon		3/14/2016	Old Hook Rd., Emerson	11/11/2016
Damage, Gas	GS16111122K	GOC2015-0082	Did not have a valid markout	\$3,000		Four Star Developers	1/23/2015	W. Shore St., Keansburg	11/5/2016
Damage, Gas	GS16111123K	GOC2015-1853	Did not have a valid markout	\$3,000		A&D Construction	12/14/2015	Lewandowski St., Lyndhurst	11/1/2016
Damage, Gas	GS16111128K	GOC2016-0164	Did not properly mark	\$3,000	Elizabethtown Gas		3/1/2016	Willow Ave., Garwood	10/10/2016

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Damage Type	BPU Dkt No.	One Call Case No.	Type of Violation	Penalty	Operator	Excavator	Violation Date	Description/Location	Payment Received
Damage Gas	GS16111129K	GOC2014-1048	Did not properly mark	\$3,000	Elizabethtown Gas		10/22/2014	Woodland Dr., Vernon	10/20/2016
Damage Gas	GS16111130K	GOC2016-0784	Did not have a valid markout	\$3,000		Schafer Mechanical Services	6/30/2016	E. Eldredge Ave., Lower Twp.	11/4/2016
Damage Gas	GS16111131K	GOC2016-0196	Did not properly mark	\$3,000	South Jersey Gas		3/2/2016	Loft Mountain Dr., Gloucester	11/4/2016
Damage Gas	GS16111132K	GOC2016-0203	Did not properly mark	\$3,000	South Jersey Gas		3/7/2016	3rd Ave., Stone Harbor	11/4/2016
Damage Gas	GS16111133K	GOC2015-1692	Did not properly mark	\$3,000	South Jersey Gas		11/13/2015	Menon Ave., Pleasantville	11/4/2016
Damage Gas	GS16111134K	GOC2014-0368	Did not have a valid markout	\$3,000		Evergreen Creation	7/2/2014	Wadams Ct., West Orange	7/22/2016
<b>Total</b>	<b>35</b>			<b>\$105,000</b>					