

Agenda Date: 5/21/14 Agenda Item: 6A

STATE OF NEW JERSEY Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, New Jersey 08625-0350 www.nj.gov/bpu/

IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT, N.J.S.A. 48:2-73 ET SEQ.

RELIABILITY & SECURITY

ORDER ACCEPTING SETTLEMENTS

DOCKET NO. GS14020128K et. al. (see attached appendix)

Parties of Record:

Phil Salvatore, Compliance Engineer, Elizabethtown Gas Company. Craig Lynch, Vice President, New Jersey Natural Gas Company John Stanziola, Director, South Jersey Gas Company Craig Hotchkiss, Director, Operations Services, Jersey Central Power and Light Bernard Rutowski, Regulatory Compliance/Safety Officer, Toms River MUA Stan Sperlak, Owner, Cape Shore Gardens Philip Hayes, Owner, Evergreen Lawn Sprinklers Michael Newman, President, Offshore Pools Louis Damelio, Treasurer, Con-Electric Robert Cherry, General Manager, Quality First Contracting Carla Hielm, Senior Corporate Attorney, United Water John Wegele, Operations Manager, Pompton Lakes Water Dept Arif Malick, Principal, Malick & Scherer P.C. Anna Cifelli, Cifelli & Son Gen Cont Earle Collins, President, Dennisville Fence Co. Robert Finnigan, Perna Finnigan 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 <u>N.J.S.A.</u> 48:2-73, <u>et seq</u>. 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..." <u>N.J.S.A.</u> 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 for any related series of violations. <u>N.J.S.A.</u> 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. 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. <u>N.J.S.A.</u> 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 <u>HEREBY FINDS</u> these Offers of Settlement to be reasonable and in the public interest, and <u>HEREBY ACCEPTS</u> 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.

NO FURTHER ACTION BY THE RESPONDENTS IS REQUIRED.

DATED: 5/21/14

BOARD OF PUBLIC UTILITIES BY:

DIANNE SOLOMON PRESIDENT

Fix M. FOX

COMMISSIONER

١. JOSEPH L. FIORDALISO

COMMISSIONER

COMMISSIONER

ATTEST:

KRIST SECRETARY

I HEREBY CERTIFY that the within docume. It is a true copy of the original in the files of the Board of Public Unlittee

IN THE MATTER OF ALLEGED VIOLATIONS OF THE UNDERGROUND FACILITY PROTECTION ACT, <u>N.J.S.A.</u> 48:2-73 <u>ET SEQ</u>. ORDER ACCEPTING SETTLEMENTS DOCKET NO. GS14020128K et. al. (see attached appendix)

SERVICE LIST

Phil Salvatore Elizabethtown Gas Company 300 Connell Drive, suite 3000 Berkeley Heights, NJ 07922

Craig Hotchkiss JCP&L, GPU Energy 300 Madison Ave. Morristown, NJ, 07962

Craig Lynch New Jersey Natural Gas Company 1415 Wyckoff Rd, P.O. Box 1464 Wall, NJ, 07719

John Stanziola South Jersey Gas 1 South Jersey Plaza Folsom NJ 08037

Bernard Rutkowski Toms River MUA 340 West Water Street Toms River, NJ, 08753

Stan Sperlak Cape Shore Gardens 1028 RT 9 South Cape May Court House, NJ, 08210 James Guiliano, Director Division of Reliability & Security Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350

Douglas Ziemba, Chief Engineer Division of Reliability & Security Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350

James P Kane Esq. Counsel's Office Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, NJ 08625-0350

Geoffrey Gersten, DAG Division of Law 124 Halsey Street Post Office Box 45029 Newark NJ 07101-45029

SERVICE LIST

Philip Hayes Evergreen Lawn Sprinklers PO Box 436 Oakhurst NJ 07755

Michael Newman Offshore Pools 260 Brick Blvd Brick NJ 08723

Louis Damelio Con-Electric 1416 North Broad St. PO Box 5829 Hillside NJ 07205

Robert Cherry Quality First Contracting 1160 State St Perth Amboy NJ 08861

Carla Hjelm United Water 200 Old Hook Rd. Harrington Park NJ 07640

John Wegele Pompton Lakes Water Dept 2000 Lincoln Ave Pompton Lakes NJ 07442

Arif Malick Malick & Scherer P.C. 53 Frontage Rd Suite 260 Hampton NJ 08827 Anna Cifelli Cifelli & Son Gen Cont 4 Coppola St. Nutley NJ 07110

Earle Collins Dennisville Fence Co 200 Bayshore Rd Villas NJ 08251

Robert Finnigan Perna Finnigan Inc. 1921 Sherman Ave Vineland NJ 08361

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-May 2014

Damage, Gas C Non Damage A Damage, Gas C Non Damage, Gas C Damage, Gas C Damage, C D C Damage, C D C D C D C C D C C D C C C C C C C	GS14020128K AS14040308K GS14040307K AS14040310K WS14040305k GS14040305k GS14040303K GS14040303K WS14040311k GS14040306K	GOC2009-0027 OC28-13 GOC2013-0004 OC25-13 OC31-13 GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001	Type of Violation Did not properly mark out Did not have valid markout Failure to hand dig, Disruption of major Traffic Hub Careless violation 48:2-82 b.(4) Did not obtain a proper markout Did not brain a proper markout Did not properly mark out Did not have valid markout Did not have a	\$1,000 \$6,000 \$3,000 \$1,000 \$3,000 \$3,000 \$3,000	Operator Elizabethtown Gas Co Elizibethtown Gas Co South Jersey Gas Co United Water	Excavator Quality 1st Contracting Inc Con-Electric Malick & Scherer P.C. Offshore Pools Pompton Lakes Water Dept	06/21/13 07/30/13 02/20/13 11/06/13 10/05/11 09/10/13 09/28/11	Description/Location Bertram Terr, Union Normandy Ct, Flemmington Newark Airport, Brewster Rd, Newark Rt 22. Bridgewater, Readington, Branchburg Rambling Brook dr. Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	Payment Received 12/12/13 03/14/14 02/20/14 03/14/14 03/20/14 03/25/14 03/25/14
Damage, Gas C Non Damage A Damage, Gas C Non Damage, Gas C Damage, Gas C Damage, C D C Damage, C D C D C D C C D C C D C C C C C C C	GS14020128K AS14040308K GS14040307K AS14040307K WS14040305k GS14040305k GS14040305k GS14040303K WS14040303K WS14040306K GS14020129K	GOC2009-0027 OC28-13 GOC2013-0004 OC25-13 OC31-13 GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	Did not properly mark out Did not have valid markout Failure to hand dig, Disruption of major Traffic Hub Careless violation 48:2-82 b.(4) Did not obtain a proper markout Did not obtain a proper markout Did not properly mark out Did not have valid markout	\$3,000 \$1,000 \$6,000 \$3,000 \$3,000 \$3,000 \$3,000 \$3,000	Elizabethtown Gas Co Elizibethtown Gas Co South Jersey Gas Co United Water	Quality 1st Contracting Inc Con-Electric Malick & Scherer P.C. Offshore Pools Pompton Lakes Water Dept	07/15/09 06/21/13 07/30/13 02/20/13 11/06/13 10/05/11 09/10/13 09/28/11	Bertram Terr, Union Normandy Ct, Flemmington Newark Airport, Brewster Rd, Newark Rt 22. Bridgewater, Readington, Branchburg Rambling Brook dr. Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	12/12/13 03/14/14 02/20/14 03/14/14 03/20/14 02/24/14 03/25/14 03/25/14
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Damage A Damage, Gas C Non Damage A Non Damage A Damage, Gas C Damage, G Damage, G D	GS14040307K AS14040310K WS14040305k GS14040312K GS14040303k GS14040303k WS14040311k GS14040306k GS14020129K	GOC2013-0004 OC25-13 OC31-13 GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	markout Failure to hand dig, Disruption of major Traffic Hub Careless violation 48:2-82 b.(4) Did not obtain a proper markout Did not obtain a proper markout Did not properly mark out Did not properly mark out Did not properly mark out Did not properly mark out Did not have valid markout	\$6,000 \$3,000 \$1,000 \$3,000 \$3,000 \$3,000 \$3,000	Gas Co South Jersey Gas Co United Water	Contracting Inc Con-Electric Malick & Scherer P.C. Offshore Pools Pompton Lakes Water Dept	07/30/13 02/20/13 11/06/13 10/05/11 09/10/13 09/28/11	Flemmington Newark Airport, Brewster Rd, Newark Rt 22. Bridgewater, Readington, Branchburg Rambling Brook dr. Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	02/20/14 03/14/14 03/20/14 02/24/14 03/25/14 03/25/14
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Gas	AS14040310K WS14040305k GS14040312K GS14040304K GS14040303K WS14040311k GS14040306K GS14020129K	OC25-13 OC31-13 GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	Disruption of major Traffic Hub Careless violation 48:2-82 b.(4) Did not obtain a proper markout Did not obtain a proper markout Did not properly mark out Did not properly mark out Did not properly mark out Did not properly mark out Did not have valid markout	\$3,000 \$1,000 \$3,000 \$3,000 \$3,000 \$3,000	Gas Co South Jersey Gas Co United Water	Malick & Scherer P.C. Offshore Pools Pompton Lakes Water Dept	02/20/13 11/06/13 10/05/11 09/10/13 09/28/11	Rd, Newark Rt 22. Bridgewater, Readington, Branchburg Rambling Brook dr. Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	03/14/14 03/20/14 02/24/14 03/25/14 03/25/14
Gas	AS14040310K WS14040305k GS14040312K GS14040304K GS14040303K WS14040311k GS14040306K GS14020129K	OC25-13 OC31-13 GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	Traffic Hub Careless violation 48:2-82 b.(4) Did not obtain a proper markout Did not obtain a proper markout Did not properly mark out Did not properly mark out Did not properly mark out Did not have valid markout	\$3,000 \$1,000 \$3,000 \$3,000 \$3,000 \$3,000	Gas Co South Jersey Gas Co United Water	Malick & Scherer P.C. Offshore Pools Pompton Lakes Water Dept	02/20/13 11/06/13 10/05/11 09/10/13 09/28/11	Rd, Newark Rt 22. Bridgewater, Readington, Branchburg Rambling Brook dr. Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	03/14/14 03/20/14 02/24/14 03/25/14 03/25/14
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Damage A Non Damage, Gas C Damage, Gas C	WS14040305k GS14040312K GS14040304K GS14040303K WS14040311k GS14040306K GS14020129K	OC31-13 GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	48:2-82 b.(4) Did not obtain a proper markout Did not obtain a proper markout Did not properly mark out Did not properly mark out Did not properly mark out Did not have valid markout	\$1,000 \$3,000 \$3,000 \$3,000 \$3,000	Gas Co South Jersey Gas Co United Water	P.C. Offshore Pools Pompton Lakes Water Dept	11/06/13 10/05/11 09/10/13 09/28/11	Readington, Branchburg Rambling Brook dr. Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	03/20/14 02/24/14 03/25/14 03/25/14
Non Damage Damage, Gas Damage, Gas Damage, Gas Damage, Gas Damage, Gas Damage, Gas Damage, Gas Damage, Gas Damage, Gas Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, C Damage, Gas C Damage, C Damage, C C Damage, C C Damage, C C Damage, C C C C C C C C C C C C C C C C C C C	WS14040305k GS14040312K GS14040304K GS14040303K WS14040311k GS14040306K GS14020129K	OC31-13 GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	Did not obtain a proper markout Did not obtain a proper markout Did not properly mark out Did not properly mark out Did not properly mark out Did not have valid markout	\$1,000 \$3,000 \$3,000 \$3,000 \$3,000	Gas Co South Jersey Gas Co United Water	Offshore Pools Pompton Lakes Water Dept	11/06/13 10/05/11 09/10/13 09/28/11	Rambling Brook dr. Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	03/20/14 02/24/14 03/25/14 03/25/14
Damage V Damage, Gas C Damage, Gas C C Damage, Gas C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C Damage, C C C C C C C C C C C C C C C C C C C	GS14040312K GS14040304K GS14040303K WS14040311H GS14040306K GS14020129K	GOC2011-0048 GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	proper markout Did not obtain a proper markout Did not properly mark out Did not properly mark out Did not properly mark out Did not have valid markout	\$3,000 \$3,000 \$3,000 \$3,000	Gas Co South Jersey Gas Co United Water	Pompton Lakes Water Dept	10/05/11 09/10/13 09/28/11	Holmdel Walnut Ave, Passaic Frontage Rd, Hampton County House Rd, Gloucester	02/24/14 03/25/14 03/25/14
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Damage, Gas C Damage, Gas C Damage, Water V Damage, Gas C Damage, Gas C D	GS14040304K GS14040303K WS14040311H GS14040306K GS14020129K	GOC2013-0006 GOC2011-0086 WOC2013-0001 GOC2012-0025	Did not properly mark out Did not properly mark out Did not properly mark out Did not have valid markout	\$3,000 \$3,000 \$3,000	Gas Co South Jersey Gas Co United Water		09/10/13	Frontage Rd, Hampton County House Rd, Gloucester	03/25/14
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Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C	GS14020129K		markout	\$3,000				14th & Grand St. Hoboken	02/18/14
Damage, Gas (C) Damage, Gas (C) Damage, Gas (C) Damage, Gas (C) Damage, Gas (C) Damage, Gas (C) Damage, Gas (C) Damage, Gas (C)	GS14020129K			\$3,000		Evergreen Lawn	1000000000	22 77 5227	
Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C		GOC2010-0012	Did not have a			Sprinklers	07/05/12	Ocean Ave, Elberon	03/19/14
Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C		GOC2010-0012						Middletown Lincroft rd,	
Damage, Gas (Damage, Gas (Damage, Gas (Damage, Gas (Damage, Gas (Damage, Gas (Damage,			proper mark out	\$3,000		JCP&L	01/03/10	Middletown	12/10/13
Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C	GS14020132K		Did not properly						
Damage, Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage,	00140201021	GOC2010-0100	mark out	\$3,000	NJ Natural Gas		08/11/10	N Sussex St, Dover	12/11/13
Gas C Damage, Gas C Damage, Gas C Damage, Gas C Damage,		0002010 0100	Did not properly	00,000	no natora ouo		00/11/10		12/11/10
Damage, Gas (Damage, Gas (Damage, Gas (Damage,	GS14020133K	GOC2010-0054	mark out	\$3,000	NJ Natural Gas		05/12/10	Bechstein Dr, Aberdeen	12/11/13
Gas C Damage, Gas C Damage, Gas C Damage,	00110201001	0000000000	Did not properly	10,000					12.11.10
Damage, Gas C Damage, Gas C Damage,	GS14010077K	GOC2010-0102		\$3,000	NJ Natural Gas		08/13/10	7th St, West Keansburg	12/11/13
Gas C Damage, Gas C Damage,	00140100111	0002010 0102	Did not properly	0,000	no nutural cao		00/10/10	16th & Maplewood,	1211010
Damage, Gas C Damage,	GS14020127K	GOC2008-0100		\$3.000	NJ Natural Gas		09/30/08		12/11/13
Gas C Damage,	00140201211	0002000-0100	Did not obtain a	\$0,000	No Natara Gao		00/00/00	Morning Glory Dr, Toms	12/10/10
Damage,	GS14010074K	GOC2010-0010		\$3,000		Toms River MUA	12/29/09		12/17/13
	00110100111	0002010 0010	Did not properly	1 0,000	Elizabethtown				
000	GS14010073K	GOC2010-0004	mark out	\$3.000	Gas Co		02/18/10	Palisade Rd, Elizabeth	12/12/13
Damage,	00140100701	0002010 0001	Did not properly	0,000	00000		02/10/10	International Dr, Mount	12/12/10
	ES14010072K	EOC2008-0005	mark out	\$3.000	JCP&L		09/15/08		12/10/13
Damage,	E314010072K	E002008-0005	Did not obtain a	\$3,000	JOFAL	Cape Shore	09/15/08	New England Rd, Cape	12/10/13
	CS14010071K	GOC2011-0082		\$3,000		Gardens	10/25/11		12/12/13
and the second se	G314010071N	6002011-0082	Did not properly	\$3,000		Gardens	10/23/11	Iviay	12/12/13
Non	ES14040349K	0012 10	mark out	\$2.000	JCP&L		08/19/10	Malibu Ct. Old Bridge	03/27/14
the second se	E314040349K	0012-10		\$3,000	JUFAL		00/10/10	Malibu Ct. Old Bridge	03/2//14
Damage,			Failure to maintain			Cifelli & Son Gen	0511		00.00
Gas (GS14040301K	GOC2012-0005	markout	\$3,000		Con	03/14/12	Cedar Ave, Madison	03/27/14
Damage,	004 /01/00	00000000 00000	Did not properly	00.000	ALL MALEN		044044	Inde Del 144 Alle	0410414
	GS14040355K	GOC2011-0002		\$3,000	NJ Natural Gas		01/10/11	Joda Rd. W. Allenhurst	04/01/14
Damage,			Did not properly						
Gas	GS14040354K	GOC2011-0005	mark out	\$3,000	NJ Natural Gas		01/04/11	Renfew, Middletown	04/01/14
Non			Did not properly					River Rd & Lake Ave,	
Damage	GS14040353K	OC14-08	mark out	\$3,000	NJ Natural Gas		06/07/08	Redbank	04/01/14
Non			Did not properly						
and the second se	GS14040351K	OC15-08	mark out	\$3.000	NJ Natural Gas		06/07/08	River Rd, Redbank	04/01/14
Non			Did not properly		1				
CALL STREET, ST	GS14040350K	OC16-08	mark out	\$3,000	NJ Natural Gas		06/07/08	Beekman Place, Redbank	04/01/14
Damage,			Did not obtain a	40,000	in the statut of the	Dennisville		- Sentrative average aver	
		GOC2012-0016		\$3,000		Fence Co	07/10/12	68th st. Cape May	04/01/14
Damage,	GS14040356K		Did not obtain a	1 10,000		Perna Finnigan		W. 16th & Maryland Ave.	
	GS14040356K	0002012 0012		\$3,000		Inc.	07/02/12	Wildwood	04/01/14
			IP. sport manyour	40,000	1				2.2.1.1
Total	GS14040356K GS14040357K	0002012-0012		\$83,000					