COMMISSIONERS:
TRICIA PRIDEMORE, Chairman
TIM G. ECHOLS, Vice-Chairman
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
JASON SHAW

FILED
MAR 24 2023
EXECUTIVE SECRETARY
G.P.S.C.



REECE McALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
EXECUTIVE SECRETARY

Georgia Public Service Commission

(404) 656-4501
(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341
psc.ga.gov

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

DOCKET# 44577
DOCUMENT# 193772

IN THE MATTER OF:

GUFPA CASE NO. PSC 22-24250 and 22-24251

DOCKET NO. 44577

Whitsell, L.L.C.,
Respondent

MAILED
3-29-2023

NOTICE OF HEARING AND PROCEDURAL AND SCHEDULING ORDER

To: **Whitsell, L.L.C.**
Attn: Bailey Whitsell
6421 Mountain Ridge Circle
Sugar Hill, GA 30518

You are hereby notified that the Georgia Public Service Commission ("Commission") will hold a hearing in the Hearing Room of the Commission, located at 244 Washington Street, S.W., Atlanta, Georgia 30334-5701, ***commencing at 10:00 o'clock a.m. on May 17, 2023*** and continuing on such further days as the Commission deems necessary until completed, for the purpose of hearing evidence regarding alleged violations of O.C.G.A. T. 25, Ch. 9, as set forth herein under the heading titled "Matters Asserted" that, if proven, may result in the imposition of a penalty against Whitsell, L.L.C. (also referred to herein as "Respondents") in an amount not to exceed $10,000.00 per violation. Notification of the following matters is hereby given:

LEGAL AUTHORITY FOR HEARING

This hearing will be held under the authority and jurisdiction conferred upon the Commission by O.C.G.A. §25-9-13 and §46-2-91; and in accordance with the Georgia Administrative Procedure Act, O.C.G.A. §50-13, and the Rules and Regulations of the Commission.

PROCEDURES

The following are the procedures to which any party to this hearing should adhere with respect to this docket:

1. **Intervention:**

   (a) Any person or party upon whom a statute does not confer an unconditional right to intervene must file an application to intervene within thirty (30) days following the first published notice of the proceedings.

   (b) Applications must clearly specify the docket in which the applicant seeks to intervene. In addition to the requirements prescribed in O.C.G.A. §46-2-59 for applications for leave to intervene, the applicant must: (1) identify other intervening parties or intervening party applicants whose interest is similar to that of the applicant along with an explanation of why the identified intervening parties or intervening party applicant will not adequately represent the applicant's interest: and (2) state the applicant's present intention to submit direct testimony and by whom and on what subject. The requirements identified herein shall constitute a continuing obligation of the applicant or intervening party. Any objections to applications must be filed in accordance with O.C.G.A §46-2-59(d).

   (c) Any application for leave to intervene that is filed late must state the reason why such application was not filed within thirty (30) days of the first published notice. Objections to later intervention application must be filed in conformity with the requirements of O.C.G.A. §46-2-59(d).

   (d) The Commission will take up and rule on applications for leave to intervene at the first hearing date scheduled in this docket.

2. **Service:**

   In addition to filing an original and eight (8) copies of documents, with a 3.5" disk containing the electronic version of the document in either Microsoft Word for text documents or Microsoft Excel format for spreadsheets, with the Commission's Executive Secretary, copies of all pleadings, filings, correspondence, and any other documents related to, and submitted in, the course of this docketed matter should be served upon all other interveners recognized by the Commission in this docket.

3. **Hearing Exhibits:**

   It shall be the responsibility of the party sponsoring any hearing exhibits to see that the court reporter and all parties of record, in addition to the individual Commissioners or hearing officer, receive copies of all exhibits at the time of their introduction at the hearing.

RIGHTS OF RESPONDENT

Respondent have the following rights in connection with this hearing:

(1) To respond to the matters asserted in this document and to present evidence on any relevant issue;

(2) To be represented by counsel at its expense;

(3) To subpoena witnesses and documentary evidence through the Commission by filing requests with the Executive Secretary of the Commission; and

(4) Such other rights as are conferred by law and the rules and regulations of the Commission.

MATTERS ASSERTED

1.

The Commission has the power and authority to enforce the provisions of O.C.G.A. T, 25, Ch 9.

2.

The Commission Staff received reports of multiple probable violation of GUFPA alleging that on or about July 06, 2022, Respondent violated O.C.G.A. T. 25, Ch. 9. A copy of this report is attached hereto as Attachment A. The allegations contained in the report constitute violations of O.C.G.A. T. 25, Ch. 9.

STATUTES INVOLVED

25-9-8(a) Striking, damaging, injuring or loosening any utility facility which has been staked or marked.

25-9-8(b) Failure to exercise reasonable care when excavating or blasting is to take place within the tolerance zone.

WHEREFORE, THE COMMISSION ORDERS that:

A. This Notice of Hearing and Procedural and Scheduling Order shall be served upon the Respondent by certified mail and shall constitute notice to the Respondent of the matters asserted pursuant to O.C.G.A. §50-13-13(a). A copy of this Order shall be served upon the Consumers' Utility Counsel pursuant to Commission Rule 515-2-1-.09; and public notice of this investigation and hearing shall be given by the Commission.

B. The Commission hereby adopts the schedule, procedures, and statements regarding the issues and matters asserted set forth within this Order.

C. A motion for reconsideration, rehearing, oral argument, or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

D. Jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

E. The Commission hereby assigns this matter for hearing before its hearing officer, Nancy Gibson.

NOTICE: If Commission Staff determines to its satisfaction that the Respondent has satisfied the obligations of the prior Consent Order, Staff shall be authorized to *nolle prosequi* the Rule Nisi. No continuance or postponement of the above-scheduled hearing will be granted, except upon 72 hours' written notice and except for good cause shown. All requests for continuance should be addressed to Mr. Will Culbreath at Georgia Public Service Commission, 244 Washington Street, SW, Atlanta, Georgia 30334-5701 [facsimile # 404-463-6532] or via e-mail to wculbreath@psc.state.ga.us. Please include documentation in support of your request for continuance. If your presence is required in court or before a government agency on the hearing date scheduled in this Notice, you must provide a copy of the court or agency calendar or subpoena showing the date and time of the conflicting hearing. Only upon receipt of written response from the Commission excusing your appearance are you excused from your duty to appear at the hearing noticed hereby.

The above by action of the Commission in Administrative Session on February 07, 2023.

Sallie Tanner
Executive Secretary

3-24-23
Date

Tricia Pridemore
Chairman

3-24-23
Date

COMMISSIONERS:

TRICIA PRIDEMORE, Chairman
TIM G. ECHOLS, Vice-Chairman
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
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REECE McALISTER
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BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
Whitsell, L.L.C.,	)	DOCKET NO. 44577
RESPONDENTS	)	(PSC Case No. 22-24250 and
	)	22-24251)

CERTIFICATE OF SERVICE

I hereby certify that this Notice of Hearing was filed with the Commission's Executive Secretary and a copy of same was served upon all parties and persons listed below via hand delivery as indicated by an asterisk, or by depositing same in the United States mail.

*Sallie Tanner, Executive Secretary
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

Whitsell, L.L.C.
Attn: Bailey Whitsell
6421 Mountain Ridge Circle
Sugar Hill, GA 30518

Respectfully Submitted this 29th day of March, 2023:

Rivera

Maritza Rivera, Admin. Assistant
Facilities Protection Unit
Georgia Public Service Commission
244 Washington St. Ste. 112
Atlanta, GA 30334

COMMISSIONERS:
TRICIA PRIDEMORE, Chairman
TIM G. ECHOLS, Vice-Chairman
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JASON SHAW

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

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8/18/2022

Whitsell, L.L.C.
Attn: Bailey Whitsell
6421 Mountain Ridge Circle
Sugar Hill, GA 30518

Date of Incident: 7/6/2022 and 11/20/2020
Docket #: 44577
Case #: PSC 22-24250 and 22-24251
Incident Location: 6664 Dawson Boulevard, Norcross and 3235 Founders Way, Douglasville

To Whom It May Concern:

A Notice of Probable Violation(s) ("NOPV") of the Georgia Utility Facility Protection Act ("GUFPA" or the "Act") has been filed with the Georgia Public Service Commission Pipeline/Facilities Safety Office ("Staff") naming you as the probable violator ("Respondent"). A copy of the Act can be found at www.lexisnexis.com/hottopics/gacode (Title 25, Chapter 9). The probable violations alleged are as follows:

O.C.G.A. Violations

25-9-6(g) Failure of the locate ticket holder to maintain the integrity of the locate marks when subcontractor is performing the actual work.

25-9-8(a) Striking, damaging, injuring or loosening any utility facility which has been staked or marked.

25-9-8(b) Failure to exercise reasonable care when excavating or blasting is to take place within the tolerance zone.

Violations of the Act are punishable by civil penalties of up to $10,000.00 (ten thousand dollars) *per violation*. **Staff recommends a civil penalty of $7,500.00. Respondent may choose from one of several options regarding the alleged probable violations. Staff recommends mitigation of $6,000.00 of the above-recommended civil penalty by attendance of five or more employees at a Commission approved damage prevention class. The respondent will be responsible for completing the training class and submitting the remaining $1,500.00 penalty in certified funds or cashier's check to the Georgia Public Service Commission.**

Specific information about the above probable violation(s) is provided in this packet so please read all documentation **completely** and **carefully**. In this packet, you will find the **Response Options**, **NOPV/Incident Report**, **Consent Agreement**, **GUFPA Questionnaire**, additional information on **Requests for GUFPAAC**, and a list of **Commission Approved Damage Prevention Trainers.**

YOUR AFFIRMATIVE WRITTEN RESPONSE IS REQUIRED WITHIN 30 DAYS OF THE DATE OF THIS NOPV (See "Response Options" page for more information). Failure to respond either by executing the consent agreement or requesting a hearing before the Advisory Committee will result in the issuance of a Rule NISI to be heard before the Georgia Public Service Commission.

If you have any questions, please call me at (404) 463-6526.

Sincerely,

Onterio Johnson
ojohnson@psc.state.ga.us
GPSC GUFPA Investigator

RESPONSE OPTIONS

(Please check only one)

Respondent: Whitsell, L.L.C.
Docket #: 44577
Case #: PSC 22-24250 and 22-24251

Respondent may choose from **ONE** of the following **OPTIONS** to dispose of this case:

☐ **OPTION 1 – I Disagree and want to attend GUFPAAC**: If you *disagree* with the probable violation(s) alleged you may request to appear and have your case heard before the Georgia Utility Facility Act Advisory Committee ("GUFPAAC"), a committee of industry stakeholders and peers. Please dispute same by submitting a detailed written response and return it along with all supporting evidence (pictures, diagrams, maps, witness statements and any other documentation to be used in support of your position) and sign/return the below statement within **thirty (30) days** of this NOPV:

I hereby request the opportunity to present my case to the GUFPAAC and I certify under the penalty of perjury that the response(s) and information provided regarding the afore-mentioned probable violation(s) are true and correct to the best of my knowledge.

_____ _____

Authorized Representative of Respondent Date

***Upon receipt of your signature above, your detailed written response and all supporting evidence, your case will be scheduled to be heard by the GUFPAAC and you will be notified by mail of the date of this GUFPAAC meeting.**

☐ **OPTION 2 – I Disagree and want a Hearing before the Hearing Officer:** If you disagree with the probable violation(s) alleged, please dispute by submitting a detailed, written response along with all supporting evidence (pictures, diagrams, maps, witness statements and any other documentation) to be used in support of your position **within 30 days of receipt of this letter.** If you need more time to gather your information, **you must contact the GUFPA staff to request additional time. Note: The information you provide will not close the case, it will assist the investigator in his/her investigation to arrive at a more informed conclusion. If at the point you still disagree with the findings of the investigator, your case will be heard by a Commission hearing officer.**

** **Sign below only if you are choosing Option 2** **

I certify under the penalty of perjury that the response(s) and information provided regarding the afore-mentioned probable violation(s) are true and correct to the best of my knowledge.

_____ _____

Authorized Representative of Respondent Date

☐ **OPTION 3 – I Agree and Wish to Pay the Mitigated Civil Penalty and attend Training:** If you agree with the alleged probable violation(s) please complete, sign and return the **Consent Agreement** provided for in this package. A **minimum of five (5) employees** of your company shall attend Commission approved damage prevention training. You must pay the recommended **mitigated** civil penalty of **$1,500.00**. Staff must receive the **signed Consent Agreement** and **this "Response" page** indicating your decision, and the mitigated penalty amount by certified check or money order within 30 days of receipt of this letter.

PLEASE NOTE: Georgia Law requires that ALL information requested in OPTION 1 and OPTION 2 be provided upon Staff's request. (O.C.G.A. §§ 24-10-26, 46-2-20 and 25-9-1 *et. seq.*). Failure to respond and/or comply with these requests for information in the 30 days provided for shall result in the loss of one or more of the **OPTIONS** presented.

☐ **OPTION 4 – I Agree and Wish to Pay the Full Civil Penalty**: If you agree with the alleged probable violation(s) please complete, sign and return the **Consent Agreement** provided for in this package and pay the full recommended civil penalty of **$7,500.00**. Staff must receive the **signed Consent Agreement** within **thirty (30) days** of this NOPV. THIS OPTION DOES NOT REQUIRE TRAINING.

COMMISSIONERS:
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TIM G. ECHOLS, Vice-Chairman
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
JASON SHAW

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

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FAX: (404) 463-6532
psc.ga.gov

DAMAGE REPORT (PROBABLE VIOLATION) – PSC 22-24250

INCIDENT INFORMATION

INCIDENT DATE:	7/6/2022	MATERIAL TYPE:	Steel
FACILITY TYPE:	Gas	SIZE:	1/2-inch
INCIDENT ADDRESS:	6664 Dawson Boulevard, Norcross		
UTILITY LINE FUNCTION:	Service		
MECHANZIED EQPT.:	Backhoe/Trackhoe		

LOCATE INFORMATION

LOCATE COMPANY NAME:	USIC
LOCATE NUMBER:	220607-006456
WAS FACILITY LOCATED?	Yes
LOCATE MARKS WITHIN 18 INCHES?	No

REPORTING INFORMATION

REPORTING COMPANY:	Atlanta Gas Light
CONTACT NAME:	Christy Rainwater
CONTACT NUMBER:	404-584-3135
MAILING ADDRESS:	Ten Peachtree Place N.E.
CITY, STATE, ZIP:	Atlanta, GA 30309
CUSTOMERS AFFECTED:	1
REPAIR COST:	$10,312.00

PROBABLE VIOLATOR INFORMATION

VIOLATOR COMPANY NAME:	Whitsell, L.L.C.
CONTACT NAME:	Jim Whitsell
CONTACT NUMBER:	404-918-6649
MAILING ADDRESS:	Attn: Bailey Whitsell 6421 Mountain Ridge Circle
CITY, STATE, ZIP:	Sugar Hill, GA 30518

FACILITY OWNER INFORMATION

FACILITY OWNER:	Atlanta Gas Light
CONTACT NUMBER:	404-584-3135

PROBABLE VIOLATION(s)

O.C.G.A Violations

25-9-8(a) Striking, damaging, injuring or loosening any utility facility which has been staked or marked.

25-9-8(b) Failure to exercise reasonable care when excavating or blasting is to take place within the tolerance zone.

DESCRIPTION OF DAMAGES:

Whitsell LLC hit and damaged a 1/2-inch steel service with a backhoe while installing a storm pipe and manholes.

GEORGIA PUBLIC SERVICE COMMISSION
GEORGIA UTILITY FACILITY PROTECTION ACT

NOPV / INCIDENT REPORT – PSC 22-24250

Mail, Fax or e-mail to:	Georgia Public Service Commission Facilities Protection Unit 244 Washington Street, SW Atlanta, Georgia 30334
Investigator:	Onterio Johnson
Work Number:	(404) 463-6526
Website:	www.psc.state.ga.us
Docket Number:	44577
Case Number:	PSC 22-24250
Report Date:	7/13/2022
Incident Date:	7/6/2022
Facility Owner:	Atlanta Gas Light
Facility Owner Phone:	404-584-3135
Locator:	USIC
Locator Phone:	317-575-7800
Excavator:	Whitsell LLC
Excavator Phone:	404-918-6649
Violator:	Whitsell, L.L.C.
Contact:	Jim Whitsell
Address:	Attn: Bailey Whitsell 6421 Mountain Ridge Circle
City, State, Zip	Sugar Hill, GA 30518
Incident Location:	6664 Dawson Boulevard
Incident City:	Norcross
Incident County:	Gwinnett
Jurisdiction:	NOT REPORTED

UTILITY LINE IMPACT

Facility Type:	Gas
Material Type:	Steel
Size (Diameter/Voltage/Pairs/etc.):	1/2-inch
Pressure (PSIG/Inches):	HP >60
Utility Line Function:	Service
Number of Customers Affected:	1
Repair Cost:	$10,312.00

INCIDENT IMPACT

Injury (# of outpatient care):	0
Injury (# of inpatient care):	0
Fatalities:	0
Fire Department Response:	Unknown
Police Department Response:	Unknown

EXCAVATION ACTIVITIES

Utility Ticket Number(s):	220607-006456
Equipment Involved:	Backhoe/Trackhoe
Nature of Excavation:	Storm Drain/Culvert
Direction of Excavation Relative to Damaged Utility Line:	

SYNOPSIS

According to a submitted report of probable violation, Whitsell, L.L.C. was excavating at 6664 Dawson Boulevard, Norcross, Georgia on July 6, 2022. Atlanta Gas Light reported this incident because Whitsell, L.L.C. struck and damaged a marked gas service facility and failed to exercise reasonable care while excavating within tolerance zone.

INVESTIGATION:

Staff from the Facilities Protection Unit of the Georgia Public Service Commission received a notification of probable violation from Atlanta Gas Light regarding the damage that occurred at 6664 Dawson Boulevard, Norcross, Georgia on July 6, 2022. The submitted Atlanta Gas Light damage report indicates Whitsell, L.L.C. caused damage to a ½-inch steel gas service facility. According to the report, the contractor was installing a storm pipe and while excavating with mechanized equipment, the contractor struck and damaged a marked buried gas service facility. This incident was reported as a violation of OCGA 25-9-8(a) Striking, damaging, injuring or loosening any utility facility which has been staked or marked. OCGA 25-9-8(b) Failure to exercise reasonable care when excavating or blasting is to take place within the tolerance zone.

Staff conducted a search of the Georgia (811) locate request database and was able to find the contactors locate ticket. According to the (811) positive response database, Atlanta Gas Light responded to the locate request and the gas service was marked prior to the incident. Thus far, based on the initial information submitted by Atlanta Gas Light: It appears that Whitsell, L.L.C. may be in violation, pending a response to this Notice of Probable Violation.

CONCLUSION:

The Pipeline/Facilities Safety Staff found **Whitsell, L.L.C.** in violation of:

O.C.G.A. Violations

25-9-8(a) Striking, damaging, injuring or loosening any utility facility which has been staked or marked.

25-9-8(b) Failure to exercise reasonable care when excavating or blasting is to take place within the tolerance zone.

This investigation is pending the excavator's (your) response. If no response is submitted, staff will proceed to hearing based solely on the information submitted by the facility owner.

Note: The information you provide will not close the case, it will assist the investigator in his/her investigation to arrive at a more informed conclusion.

COMMISSIONERS:
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TIM G. ECHOLS, Vice-Chairman
FITZ JOHNSON
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JASON SHAW

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

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FAX: (404) 463-6532
psc.ga.gov

DAMAGE REPORT (PROBABLE VIOLATION) – PSC 22-24251

INCIDENT INFORMATION

INCIDENT DATE:	11/20/2020	MATERIAL TYPE:	Cable
FACILITY TYPE:	CATV	SIZE:	.625
INCIDENT ADDRESS:	3235 Founders Way, Douglasville		
UTILITY LINE FUNCTION:	Main		
MECHANZIED EQPT.:	Unknown/Other		

LOCATE INFORMATION

LOCATE COMPANY NAME:	USIC
LOCATE NUMBER:	201022-006640
WAS FACILITY LOCATED?	Yes
LOCATE MARKS WITHIN 18 INCHES?	Yes

REPORTING INFORMATION

REPORTING COMPANY:	Comcast Cable Communications, Inc.
CONTACT NAME:	Jennifer Cahoon Harris
CONTACT NUMBER:	770-559-8502
MAILING ADDRESS:	415 Veterans Memorial Boulevard
CITY, STATE, ZIP:	Cumming, GA 30040
CUSTOMERS AFFECTED:	2
REPAIR COST:	$1,137.00

PROBABLE VIOLATOR INFORMATION

VIOLATOR COMPANY NAME:	Whitsell, L.L.C.
CONTACT NAME:	NOT REPORTED
CONTACT NUMBER:	404-918-6649
MAILING ADDRESS:	6421 Mountain Ridge Circle
CITY, STATE, ZIP:	Sugar Hill, GA 30518

FACILITY OWNER INFORMATION

FACILITY OWNER:	Comcast Cable
CONTACT NUMBER:	NOT REPORTED

PROBABLE VIOLATION(s)

O.C.G.A Violations

25-9-6(g) Failure of the locate ticket holder to maintain the integrity of the locate marks when subcontractor is performing the actual work.

DESCRIPTION OF DAMAGES:

The damage was conducting site development for a new construction build. The damager had a valid locate ticket and the locates were completed. The damager struck the underground cable during the excavation. The investigation found no locate marks at the site. It was determined the damager failed to maintain the locate marks.

GEORGIA PUBLIC SERVICE COMMISSION
GEORGIA UTILITY FACILITY PROTECTION ACT

NOPV / INCIDENT REPORT – PSC 22-24251

Mail, Fax or e-mail to:	Georgia Public Service Commission Facilities Protection Unit 244 Washington Street, SW Atlanta, Georgia 30334
Investigator:	Onterio Johnson
Work Number:	(404) 463-6526
Website:	www.psc.state.ga.us
Docket Number:	44577
Case Number:	PSC 22-24251
Report Date:	12/16/2020
Incident Date:	11/20/2020
Facility Owner:	Comcast Cable
Facility Owner Phone:	NOT REPORTED
Locator:	USIC
Locator Phone:	NOT REPORTED
Excavator:	Whitsell LLC
Excavator Phone:	NOT REPORTED
Violator:	Whitsell, L.L.C.
Contact:	NOT REPORTED
Address:	6421 Mountain Ridge Circle
City, State, Zip	Sugar Hill, GA 30518
Incident Location:	3235 Founders Way
Incident City:	Douglasville
Incident County:	Douglas
Jurisdiction:	NOT REPORTED

UTILITY LINE IMPACT

Facility Type:	CATV
Material Type:	Cable
Size (Diameter/Voltage/Pairs/etc.):	.625
Pressure (PSIG/Inches):	NOT REPORTED
Utility Line Function:	Main
Number of Customers Affected:	2
Repair Cost:	$1,137.00

INCIDENT IMPACT

Injury (# of outpatient care):	0
Injury (# of inpatient care):	0
Fatalities:	0
Fire Department Response:	Unknown
Police Department Response:	Unknown

EXCAVATION ACTIVITIES

Utility Ticket Number(s):	201022-006640
Equipment Involved:	Unknown/Other
Nature of Excavation:	Building Construction
Direction of Excavation Relative to Damaged Utility Line:	

SYNOPSIS

According to a submitted report of probable violation, Whitsell, L.L.C. was excavating at 3235 Founders Way, Douglasville, Georgia on November 20, 2020. Comcast Cable reported this incident because Whitsell, L.L.C. struck and damaged a marked CATV service line after they failed to maintain the integrity of the locate marks.

INVESTIGATION:

Staff from the Facilities Protection Unit of the Georgia Public Service Commission received a notification of probable violation from Comcast Cable regarding the damage that occurred at 3235 Founders Way, Douglasville, Georgia on November 20, 2020. The submitted Comcast Cable damage report indicates that Whitsell, L.L.C. caused damage to a CATV service line. The contractor was installing/repairing a sewer service line and while excavating with mechanized equipment, the contractor struck and damaged a buried CATV service facility. According to Comcast Cable, the damage occurred because the contractor failed to maintain the locate marks. This incident was reported as a violation of OCGA 25-9-6(g) Failure of the locate ticket holder to maintain the integrity of the locate marks when subcontractor is performing the actual work.

Staff conducted a search of the Georgia (811) locate request database and was able to find a valid locate ticket present. According to the Positive Response database, the CATV service was marked prior to the incident. Locate marks destroyed or faded at the time of incident, contractor did not call in a restake on the suggested date. Thus far, based on the initial information submitted by Comcast Cable; It appears Whitsell, L.L.C. may be in violation, pending a response to this Notice of Probable Violation.

CONCLUSION:

The Pipeline/Facilities Safety Staff found **Whitsell, L.L.C.** in violation of:

O.C.G.A. Violations

25-9-6(g) Failure of the locate ticket holder to maintain the integrity of the locate marks when subcontractor is performing the actual work.

This investigation is pending the excavator's (your) response. If no response is submitted, staff will proceed to hearing based solely on the information submitted by the facility owner.

Note: The information you provide will not close the case, it will assist the investigator in his/her investigation to arrive at a more informed conclusion.

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JASON SHAW

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

Georgia Public Service Commission

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FAX: (404) 463-6532
psc.ga.gov

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

IN THE MATTER OF:

Whitsell, L.L.C.,
RESPONDENTS

CASE NUMBER: PSC 22-24250 and 22-24251

CONSENT AGREEMENT

Whitsell, L.L.C., ("Respondent(s)"), hereby agrees to presentation of the following proposed disposition of the above named matter to the Georgia Public Service Commission ("Commission"):

FINDINGS AND CONCLUSIONS:

1.

The Commission has the power and authority to enforce the provisions of the Georgia Utility Facility Protection Act, ("Act"), O.C.G.A. T. 25, Ch. 9.

2.

The Commission received a Notice of Probable Violation ("NOPV"), alleging that on 7/6/2022 and 11/20/2020, Respondent(s) violated O.C.G.A. T. 25, Ch. 9. The Staff has recommended to the Commission that the NOPV be resolved pursuant to the terms set forth in this Consent Agreement.

AGREEMENT

By signing below, Respondent(s) hereby agree that this matter should be resolved as follows:

1.

This Consent Agreement, if approved by the Commission, shall constitute a final resolution of this proceeding. Respondent(s) agree that each will abide by the terms of this Consent Agreement.

2.

Respondent(s) agree that each will comply with all applicable provisions of the Act.

3.

Respondent(s) agree to pay to the Commission a penalty of $7,500.00 within thirty (30) days after the date of an Order issued by the Commission approving of this Consent Agreement. Payment must be forwarded to:

Georgia Public Service Commission
Facilities Protection Unit
244 Washington Street, S.W.
Atlanta, Georgia 30334-5701

All payment of penalties must be remitted in certified funds: money order, cashier's check, or official check.

Personal/Company checks will not be accepted.

4.

If Respondent(s) choose training in lieu of paying $6,000.00 of the penalty described above, Respondent(s) agree to promptly complete a training program acceptable to the Commission, ***minimum of five (5) employees required to attend training***. **The respondent will be responsible for completing the training class and submitting the remaining $1,500.00 penalty in certified funds or cashier's check to the Georgia Public Service Commission.**

5.

Respondent(s) understands that all payments will be processed upon receipt. However, this does not release the Respondent of the terms of this agreement.

6.

Respondent(s) understands that failure to comply with the terms of this Consent Agreement could subject each to additional penalties.

7.

This Consent Agreement shall not become effective until and unless approved by the Commission. Respondent(s) enter into this Consent Agreement without admission of fault or liability.

8.

The undersigned authorized representative of the Respondent(s) acknowledges that he/she has read this Consent Agreement and understands its contents. The undersigned representative acknowledges that the undersigned party freely, knowingly and voluntarily enters into this agreement. The undersigned representative hereby consents to the resolution of this proceeding as provided herein.

This _____ day of _____, 20__.

Consented to:
(***Sign, date, and mail, email, or fax***)

_____

On behalf of: Whitsell, L.L.C.

PSC 22-24250 and 22-24251

"GUFPA" Questionnaire

PSC 22-24250 and 22-24251, Docket No. 44577

Please answer all questions in a written statement and include your case number on each page.

1. Name of entity (company, corporation, municipality, etc.) submitting this information?

2. Name of person submitting this information and title or position in the company or corporation?

3. Is this business incorporated? If incorporated, how so (corporation or limited liability)? In what state? Name and full address of the corporation's Registered Agent? If not incorporated, how is the business organized (i.e. partnership, sole proprietor, "D/B/A" or other)? Name and full address of the businesses highest ranking official (i.e. president or chief executive officer)?

4. Was a locate request made with **Georgia 811/Utilities Protection Center** prior to beginning excavation? If so, when and by whom? Provide the ticket number and the name of the company/party requesting the locate? Legal date of ticket? Expiration date of ticket? Provide name of party performing the excavation if different from ticket holder? Please provide a copy of all locate tickets associated with this excavation.

5. Was any other contractor (i.e. primary or subcontractor) involved? If subcontractor involved, is there a signed contractor agreement of responsibility? If subcontractor involved, is there a signed contract allowing one party to work under the locate ticket of another? Please provide a copy all contracts associated with this excavation.

6. Were you working under an emergency locate request? If so, please ***describe in detail*** what qualifies this as an emergency situation and describe what actions you took to perform your excavation with reasonable care in order to prevent damage to the underground facilities.

   Please note: An emergency as defined by the Georgia Utility Facility Protection Act means there is an *immediate danger* to life or property or the loss of utility service requiring *immediate action*. Even in an emergency situation, the excavator is held responsible for exercising reasonable care in carrying out its excavation activities and is held responsible for any damage such activities might cause. Furthermore, there is no required show-up time for an emergency locate. The only timeframe required for performing locates by the facility owner/operator is 48 hours beginning the next business day as contained in 25-9-7 of the dig law.

7. Did you physically white-line **OR** "describe with sufficient particularity" (verbal white-lining), the area of excavation, prior to the utility owner/operator marking their facilities? Please provide proof thereof? If not, explain.

"GUFPA" Questionnaire

PSC 22-24250 and 22-24251, Docket No. 44577

8. Did your company utilize the Positive Response Information System through **Georgia 811/Utilities Protection Center** to verify that all utility owner/operators had responded prior to your beginning excavation? Please provide a copy of the Positive Response information for each locate ticket associated with this excavation? If not, explain.

9. Was locate marking done within the allotted time frame? If not, was a second request made to **Georgia 811/Utilities Protection Center**?

10. Were any/all utilities marked? If not, explain.

11. Please provide evidence (signed witness statements which must include name, address and contact number for each witness, pictures, maps, diagrams and any other written documentation) that supports each of the above responses.

12. Were the utilities marked accurately (within 18" of either side of the facility)? Were pictures taken of the utility markings prior to excavation? If so, please provide copies and any other supporting documentation.

13. Were the utilities "potholed" prior to excavation to get a visual of the utilities and exposed with non-mechanized means to prevent damage (i.e. shovel, hand tools, etc.)?

14. What type of work was being performed when the incident occurred (i.e. installing CATV, landscaping, grading, installing irrigation, etc.)?

15. What type of equipment or machinery was being used when the incident occurred (i.e. backhoe, mechanical auger, directional drill, etc.)?

"GUFPA" Questionnaire

PSC 22-24250 and 22-24251, Docket No. 44577

16. Was the direction of excavation parallel or perpendicular to the damaged utility?

17. Did excavation cease after the damage occurred?

18. Was Georgia 811/Utilities Protection Center contacted after the incident occurred? If yes, provide the damage ticket number and a copy of each damage ticket associated with this excavation.

19. Was 911 called for all damages to natural gas facilities?

COMMISSIONERS:
TRICIA PRIDEMORE, Chairman
TIM G. ECHOLS, Vice-Chairman
FITZ JOHNSON
LAUREN "BUBBA" McDONALD
JASON SHAW

MICHELLE THEBERT
FACILITIES PROTECTION
UNIT DIRECTOR

Georgia Public Service Commission

(404) 463-6526
(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

FAX: (404) 463-6532
psc.ga.gov

REQUESTS FOR CASES TO COME BEFORE "GUFPAAC"

THE GEORGIA UTILITY FACILTY PROTECTION ACT ADVISORY COMMITTEE

All requests for cases to come before the Georgia Utility Facility Protection Act Advisory Committee (GUFPAAC) shall be submitted in writing and shall be accompanied by each respondent's written response to each and every allegation listed in the notice of probable violation (NOPV) to which this notice is attached.

To better assist the Advisory Committee's preparation to review your case, the assigned investigator has requested from both the Excavator and Utility any pertinent documentation such as pictures, maps, and/or any other documentation.

Receipt of this documentation is being requested prior to the GUFPAAC meeting in order to insure the investigator and Advisory Committee both have the appropriate time in which to review all details related to your case. The admittance of additional information on the day of this meeting will be at the discretion of the Advisory Committee.

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GUFPA Training

If your company has been assessed a civil penalty for a violation of the ACT with the offer to attend a Commission approved training class in lieu of paying the penalty, you may choose to have your employees attend damage prevention classes presented in English, Spanish or both.

For classes in English, contact one of the following:

Ms. Glenda Harris, Georgia Utility Contractors Association ("GUCA")
(404) 362-9995 or email: glenda@guca.com

Ms. Becky Kinsey, Georgia 811
(404) 375-6209 or email: bkinsey@georgia811.com

Mr. Ryan Boling, HB NEXT
(770) 619-1669 or (877) 442-4282 (Toll Free)

Mr. Diego Alvarado, daBaires Group
(678) 643-8278, 678-237-8192, or email: dsalvador678@gmail.com

Mr. Jimmy Davis, The Georgia Utility Training Academy ("GUTA")
(678) 635-8980 or email: guta@monroega.gov

For classes in Spanish, contact one of the following:

Mr. Diego Alvarado, daBaires Group
(678) 643-8278, 678-237-8192, or dsalvador678@gmail.com

Mr. Ryan Boling, HB NEXT
(770) 619-1669 or (877) 442-4282 (Toll Free)

Ms. Becky Kinsey, Georgia 811
(404) 375-6209 or email: bkinsey@georgia811.com

Ms. Glenda Harris, Georgia Utility Contractors Association ("GUCA")
(404) 362-9995 or email: glenda@guca.com

If you have questions or need additional information, please call (404) 463-6526.

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BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
Whitsell, L.L.C.,	)	DOCKET NO. 44577
RESPONDENTS	)	(PSC Case No. 22-24250 and
	)	22-24251)

CERTIFICATE OF SERVICE

I hereby certify that this Consent Agreement was served upon all parties and persons listed below by depositing same in the United States mail.

Whitsell, L.L.C.
Attn: Bailey Whitsell
6421 Mountain Ridge Circle
Sugar Hill, GA 30518

Respectfully Submitted this 18th day of August, 2022:

Morgan Mitchell, Administrative Assistant
Facilities Protection Unit
Georgia Public Service Commission
244 Washington Street, Ste. 112
Atlanta, GA 30334

GEORGIA DIG LAW
NOTICE OF PROBABLE VIOLATION

Why you are receiving this letter?

You are receiving the attached information because our office (The Georgia Public Service Commission/ Facilities Protection Division) has been notified by a utility owner or operator that you have damaged their facility and have been submitted as having possibly violated one or more parts of the GA Dig Law.

What is the GA Dig Law (also known as The Georgia Utility Facility Protection Act (GUFPA))?

The Georgia Utility Facility Protection Act (GUFPA), enacted by the General Assembly in July 2000, provides for the protection of the buried utility facility infrastructure within the State of Georgia. Excavators using mechanized equipment are required to call for a utility facility locate prior to excavating with mechanized equipment or blasting. Upon receipt of a locate request, each affected facility owner/operator must locate their respective utility facilities. Violations of the GUFPA are subject to a civil penalty of up to $10,000 each violations. For the full version of the Act please visit our website at www.psc.state.ga.us.

What is the GA Public Service Commission Facilities Protection Division?

We are responsible for the enforcement of the GUFPA Act.

I have paid for the damages to the utility company, why am I getting something from the PSC?

Damages paid for repairs to utility facilities are separate from the civil penalties assessed for violation(s) of GA's Dig Law. Although you may have paid for the damaged utility facility, you are now being assessed a civil penalty for probable violation(s) of the GA Dig Law.

How has an investigation been completed and I was not contacted before now?"

Utility owner/operators are mandated by Commission Rule to report ALL damages to their facilities. Utility owner/operators are to conduct an investigation of the damage and any resulting probable violation(s) prior to submitting the probable violation to the PSC. PSC Staff Investigators will assign each case a number and send out a Notice of Probable Violation ("NOPV") to the Respondent in order to 1) notify the Respondent of the alleged probable violation(s) and 2) request a written response and supporting documents that show a Respondent's side of the story.

I do NOT agree with the probable violation alleged how do I tell my side?

Once you have reviewed the information included in this package you have 30 days from the date listed on the letter to respond in writing, to each alleged probable violation and to provide all evidence you wish to submit in support thereof.

What are my response options?

There are several ways you can respond to the probable violation:

- Send in a written statement by mail, fax, or email of the events as you recall them. Send in any pictures or other documentation you may have along with witness statements if available. Use the questionnaire attached to the NOPV packet as a guide for your written statement.
- If you agree with the investigation please sign and date the attached consent agreement and mail or fax it back to our office.
- Contact our office and speak with your investigator (you must still submit your statement in writing).

What happens after I submit my response?

Your investigator will review your information along with the information that was submitted by the utility owner/operator and will determine/complete their investigation based upon their findings and will contact you either by mail, email, or phone call of their conclusion.

What happens if the investigator still finds me in violation after I have submitted my response and I still do NOT agree?

You may request to appear before the GUFPAAC (Georgia Utility Facility Protection Act Advisory Committee). The GUFPAAC is comprised of approx 13 members of industry stakeholders and your peers who will hear and make a recommendation on your case.

What happens if I do NOT respond at all?

After the 30 day response time has expired your case will be set for a *Rule NISI* hearing on the Title 25 probable violations of the Dig Law. Your case will be heard by a hearing officer who will issue a recommended order on the merits of your case. If the hearing officer finds that the probable violation(s) is(are) supported by the evidence, an additional one-thousand dollars will be added to the civil penalty initially recommended by Staff. For Title 25 *Rule Nisis*, the civil penalties cannot exceed $10,000.00 per violation.

How do I contact The Georgia Public Service Commission?

Our mailing address:
244 Washington Street, SW
Atlanta, GA 30334
Phone: 404-463-6526
Fax: 404-463-6532