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DOCKET# 55308
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NOTICE OF PROPOSED RULEMAKING

TO: (a) Legislative Counsel – State of Georgia
(2) Affected Commission Staff
(3) All Parties on the Commission's Rulemaking Mailing Lists

FROM: Georgia Public Service Commission
244 Washington St., S.W.
Atlanta, Georgia 30334

Docket No. 55308: Notice of Proposed Rulemaking to Amend Rule 515-9-4 "Enforcement Procedures under the Georgia Utility Facility Protection Act" and 515-9-5 "Procedures Required under the Georgia Utility Facility Protection Act"

All interested parties are hereby notified pursuant to Ga. Laws 1964, pp. 338, 342, as amended (Official Code of Georgia Annotated ("O.C.G.A.") § 50-13-4) that the Georgia Public Service Commission ("Commission") intends to consider adopting amendments to 515-9-4 and 515-9-5.

BY THE COMMISSION:

At its regularly scheduled October 3, 2023, Administrative Session, the Commission issued this Notice of Proposed Rulemaking ("NOPR"). This proposed Commission Rule 515-9-4 and 515-9-5 shall be considered for adoption at the Commission's regularly scheduled **Administrative Session on November 21, 2023, at 9:30 a.m.,** which will be held either virtually or at the Commission's offices located at 244 Washington Street, S.W., Atlanta, Georgia 30334.

If adopted, these rules shall become effective as provided for by law twenty (20) days after their adoption by the Commission and subsequent filing with the Secretary of State.

I. NOTICE OF PROPOSED RULEMAKING

A. Introduction and Jurisdiction

The Commission is governed by the Administrative Procedure Act, O.C.G.A. § 50-13-1 *et seq.* The Commission is authorized to promulgate rules for procedure and for taking evidence in all matters that come before it. O.C.G.A. § 46-2-30.

B. Synopsis and Explanation of Proposed Rules

The purpose of the proposed rule is to align with the amendments made to Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, to revise the provisions and short title of Chapter 9, the "Georgia Utility Facility Protection Act" (Act). The proposed rule amends the Act from the 'Georgia Utility Facility Protection Act' to the 'Georgia Underground Facility Protection Act,' updating all uses of 'utility facility' to 'underground facility.' Additionally, the rules update the underground marking standards, including standards for traffic control devices and traffic management devices.

II. PROPOSED RULE

Pursuant to the requirements of the Georgia Administrative Procedures Act at O.C.G.A. § 50-13-4(a)(1), the Commission intends to consider the proposed amendments to rule 515-9-4 and 515-9-5. The full text of the proposed Rule 515-9-4 and 515-9-5 of the Commission Rules of the Commission is set forth below.

RULES OF GEORGIA PUBLIC SERVICE COMMISSION

Subject 515-9-4 ENFORCEMENT PROCEDURES UNDER THE GEORGIA ~~UTILITY~~ UNDERGROUND FACILITY PROTECTION ACT

Rule 515-9-4-.01 Purpose of Procedures

The purpose and scope of these rules is to describe the enforcement authority and sanctions exercised by the Georgia Public Service Commission in carrying out its duty to enforce the provisions of the Georgia ~~Utility~~ Underground Facility Protection Act (O.C.G.A. § 25-9-1 et

seq.). These rules also prescribe the procedures governing the exercise of that authority and imposition of those sanctions.

Rule 515-9-4-.02 Definitions

Terms used in these rules have the following meaning:

(a) "Act" means the Georgia ~~Utility~~ Underground Facility Protection Act (O.C.G.A. § 25-9-1et seq.).

(b) "Advisory committee" means the committee appointed by the Governor pursuant to O.C.G.A. 25-9-13(g)(1).

(c) "Business days" means Monday through Friday, excluding the following holidays: New Year's Day, Birthday of Dr. Martin Luther King, Jr., Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the following Friday, Christmas Eve, and Christmas Day. Any such holiday that falls on a Saturday shall be observed on the preceding Friday. Any such holiday that falls on a Sunday shall be observed on the following Monday. If Christmas Eve falls on a Friday, it shall be observed on the preceding Thursday. If Christmas Eve falls on a Sunday, it shall be observed on the following Tuesday.

(d) "Business hours" means the time from 7:00 A.M. to 4:30 P.M. local time on business days.

(e) "Commission" means the Georgia Public Service Commission.

(f) "Effective date" means the calendar day on which blasting or excavating is anticipated to begin as indicated by the excavator in the locate request.

~~(f)~~(g) "Facility owner or operator" means any person or entity ~~who~~ that owns, operates or controls the operation of an ~~utility~~ underground facility.

~~(g)~~(h) "Person" means an individual, firm, joint venture, partnership, association, municipality, state or other governmental unit, authority, department, agency, or a corporation and shall include any trustee, receiver, assignees, employee, agent or personal representative thereof.

(i) "Underground facility" means an underground or submerged fiber, conductor, pipe, 199 or structure used or installed for use in providing traffic control, traffic management, 200 electric service, or communications service, or in carrying, providing, or gathering gas, 201 oil or oil products, sewage, waste water, storm

drainage, or water or other liquids. All 202 underground facilities shall be considered to extend up to the connection to the customer's 203 facilities. Such term shall not include sewer laterals or publicly or privately owned 204 railroad facilities.

~~(h)~~(j) "Utilities Protection Center" or ~~"Center"~~ "UPC" means the corporation or other organization formed by facility owners or operators to provide a joint telephone number notification service for the purpose of receiving advance notification from persons planning to blast or excavate and distributing such notifications to its affected facility owner or operator members.

~~(i) "Utility facility" means an underground or submerged conductor, pipe, or structure used in providing electric or communications service, or an underground or submerged pipe used in carrying, providing or gathering gas, oil, or oil products, sewage, wastewater, storm drainage, water or other liquids, and appurtenances thereto. This does not include utility facilities owned by a homeowner for service at the homeowner's residence.~~

~~(j)~~(k) O.C.G.A. § 25-9-3(21) defines "Large Project" as an excavation that involves more work to locate ~~utility~~ underground facilities than can reasonably be completed within the requirements of subsection (a) of O.C.G.A. Section 25-9-7. This requires a facility owner or operator to locate and mark its facilities ~~within 48 hours beginning the next business day after receipt of a locate request by the Utilities Protection Center ("UPC")~~ prior to 7:00 A.M. on the effective date. For simplicity of administration by the Commission, a "large project" shall include at a minimum, any single mechanized excavation or blasting, as those terms are defined by O.C.G.A. § 25-9-3(15) and § 25-9-3(4), at a contiguous geographical site or area that exceeds or will exceed one linear mile or that reasonably requires or will require more than ninety (90) days to complete. Nothing in this rule shall prohibit any person from requesting a large project ticket for any other project.

Rule 515-9-4-.03 Commission Jurisdiction

The Georgia Legislature has empowered the Commission to enforce the provisions of the Act, and to promulgate any rules and regulations necessary to implement the Commission's authority to enforce the provisions of the Act.

Rule 515-9-4-.04 Advisory Committee

(1) The Governor shall appoint an advisory committee to assist the Commission in the enforcement of the Act. The advisory committee shall perform such duties as may be assigned by the Commission from time to time.

(2) The advisory committee shall develop and implement operating procedures to delineate the advisory committee's practices and procedures relative to the performance of

the duties assigned by the Commission. The operating procedures developed by the advisory committee shall include, but not be limited to, procedures for review of probable violations of the Act. Such procedures, and any amendments or modifications thereto, shall not become effective until they have been approved by the Commission. (3) If deemed necessary, the advisory committee shall establish one or more subcommittees of experts in the operations covered by the Act. These subcommittees shall assist the advisory committee in performing its assigned duties.

Rule 515-9-4-.05 Notification of Probable Violations of the Act

(1) Any person may report a probable violation of the Act by filing a written or an electronic report in a form as may be designated by the Commission from time to time; provided that all such reports shall be filed electronically whenever and wherever possible, but a written report may be filed by any person lacking computer reporting or communication capability. All written or electronic reports shall include the information requested on an approved Commission form, if available. All probable violations shall be reported to the Commission within thirty (30) days of a person becoming aware of the circumstances constituting the probable violation.

(2) A person shall file such written report directly with the Commission. The Commission shall maintain, or cause to be maintained, a database of all written reports filed with the Commission.

(3) Any person who files a written or electronic report shall conduct an investigation to examine the relevant facts regarding the reported probable violation of the Act. The results of such investigation shall be filed together with the report in accordance with these rules.

(4) Each facility owner or operator whose ~~utility~~ underground facilities have been damaged as a result of a probable violation of the Act shall conduct an investigation to examine the relevant facts regarding such probable violation, and provide the Commission or its designee with the results of such investigation. The results of such investigation shall be submitted to the Commission on a form designated by the Commission.

Rule 515-9-4-.06 Repealed

Rule 515-9-4-.07 Commission Staff Investigation of Probable Violation

Whenever the Commission Staff ("Staff") becomes aware of a probable violation of the Act by means of a written or an electronic report or otherwise, the Staff shall conduct an investigation to examine all the relevant facts regarding the probable violation. The investigation may include, among other factors, records verification, informal

meetings, teleconferences, and photo documentation. Responses to reports of probable violations may be provided to the Commission in writing, by phone, fax, e-mail, or in person.

Rule 515-9-4-.08 Advisory Committee Review of Probable Violations of the Act

The Advisory Committee shall meet on a periodic basis to review contested probable violations of the Act and the Staff's findings and recommendations relative to such probable violations. Following such review, the Advisory Committee shall make its recommendations for review by the Commission, together with any recommendations of the Staff, regarding resolution of such contested probable violations.

Rule 515-9-4-.09 Commission Staff Action

Upon a determination that a violation of the Act may have occurred, the Commission Staff shall take one or more of the following actions:

(1) Enter settlement negotiations with the Respondent. Upon reaching agreement on settlement terms, the Commission Staff shall present the proposed settlement to the Commission for acceptance or rejection. If the Commission Staff and the Respondent are unable to reach agreement on settlement terms, the Respondent may present additional facts to the Advisory Committee;

(2) Request that the Commission issue a Rule Nisi pursuant to Commission Rules.

Rule 515-9-4-.10 Commission Action

(1) The Commission may accept or reject a proposed settlement to resolve probable violations of the Act. If the Commission rejects a proposed settlement, a hearing may be scheduled to receive evidence and take appropriate enforcement action as provided by Commission Rule.

(2) If the Commission finds, after a hearing, that a violation of the Act has occurred, it may impose a civil penalty as provided by O.C.G.A. § 25-9-13.

Rule 515-9-4-.11 Civil Penalties

(1) In determining the amount of any civil penalty to be assessed, the Commission may consider the nature, circumstances and gravity of the violation of the Act; the degree of the Respondent's culpability; the Respondent's history of prior violations of the Act; and such other factors as may be appropriate.

(2) A Respondent shall pay any civil penalty that has been assessed by submitting to the Commission, in care of Case Manager, ~~Utility~~ Underground Facility Protection Section, a certified check payable to the Georgia Public Service Commission for ultimate forwarding to the State of Georgia general fund.

Rule 515-9-4-.11.1 Civil Penalties for Local Governing Authorities (Tiered Penalty Structure)

(1) Definitions:

For the purpose of this rule and the assessment and enforcement of civil penalties under this Chapter 515-9-4 of the Commission's Utility Rules, the following definitions apply:

(a) "Local governing authority" means a county, municipality or local authority created by or pursuant to general, local or special Act of the General Assembly or by the Constitution of the State of Georgia, and ~~also includes~~ any local authority that is created or activated by an appropriate ordinance or resolution of the governing body of a county or municipality individually or jointly with other political subdivisions of this state that provide service that includes but not limited to road and street construction and maintenance, water supply and distribution, waste-water, sewage, and storm-water collection and disposal.

(b) "Willful noncompliance" means intentional or knowing refusal or failure to perform, or comply with, a duty created or imposed by statute or by this Commission's Utility Rules. "Willful noncompliance" also includes bad faith or a conscious indifference to the consequences of failure to comply with GUFPA or this Commission's rules issued thereunder. A local governing authority's failure to file a timely response to a notice of probable violation of the Act or the Commission's Utility Rules shall constitute a presumption of willful noncompliance by a local governing authority receiving such notice, which presumption may be rebutted by evidence demonstrating that the local governing authority did not receive actual or constructive notice of its alleged violation of the Act.

(c) "Refusal to comply" means that an ~~utility~~ underground facility owner or operator does not respond in the Positive Response Information System ("PRIS") to a locate request, does not respond to a direct telephone call to locate their facilities, or other such direct refusal. "Refusal to comply" does not mean a case where the volume of requests or some other mitigating circumstance prevents the ~~utility~~ underground facility owner or operator from locating in accordance with O.C.G.A. § 25-9-7. "Refusal to comply" also means a refusal or failure to file a timely response to a notice of probable violation of the Act or of the

Commission's Utility Rules; and such refusal or failure shall constitute a presumption of a local governing authority's "willful refusal to comply," which presumption may be rebutted by evidence demonstrating that the local governing authority did not receive actual or constructive notice of its alleged violation of the Act.

(2) Enforcement Procedures for Violations of the Act by Local Governing Authorities.

(a) Notice of Probable Violation and Request for Information. Upon receipt of a complaint or other information concerning a probable violation of the Act by a local governing authority, the Commission Staff shall conduct a preliminary investigation of such complaint or information; and as part of such preliminary investigation, the Commission's investigator may send notice of a probable violation and a request for information to the local governing authority. The authority receiving such notice and request for information shall respond within thirty (30) days to such notice and request. The Commission's request for information may request any or all of the following information:

(i) Submission of written explanations, information or other materials in response to the allegations;

(ii) Information concerning the size, annual budget, and gross receipts of the authority;

(iii) Where applicable and available, the total number of ~~utility~~ underground facility connections and types of utilities within the territory of the local governing authority;

(iv) Total number of locate tickets received annually by the local governing authority;

(v) The number of locate codes and calls made annually to the local governing authority from the UPC; and

(vi) When applicable, the number of ~~utility~~ customers whose service may have been interrupted as a result of the violations and the duration of such interruption.

Such list is not meant to be exhaustive, and the Commission's investigator may request additional information during his or her investigation. Responses shall be due within thirty (30) days after receipt of such notice and request from the local governing authority, unless such time is extended by the Commission or its investigator pursuant to a written request from the local governing authority before the expiration of such thirty (30) day period.

As noted in Paragraph (1) of this Rule, failure of the alleged violator to respond in a timely manner to the Commission investigator's notice of probable violation(s) and provide to the Commission the information requested shall constitute a presumption of willful noncompliance with the Act or applicable Commission rules on the part of the non-responding recipient of such notice and request, but such presumption may be rebutted by evidence demonstrating that the local governing authority did not receive actual or constructive notice of its alleged violation of the Act.

(b) Proposed Compliance Order. At any time during the investigation, the Commission's investigator may submit a written compliance order to the local governing authority, and the local governing authority may respond during the investigation or proceedings as follows:

(i) The authority may agree to the Commission's proposed compliance order, if such proposed order has not been withdrawn by the Commission;

(ii) The authority may object to the proposed compliance order and submit written explanations, information or other materials in response to the allegations in the notice of probable violation; and the authority can request:

(A) review before the GUFPA Advisory Committee; or

(B) an informal conference with the Commission Staff; or

(C) a full evidentiary hearing before the Commission or its duly appointed hearing officer.

(c) Commission Staff Action. After investigation, the Commission's investigator may take appropriate action to enforce the Act and the Commission's rules issued thereunder, including any or all of the following:

(i) Recommend no action and terminate the investigation;

(ii) Recommend that a warning letter be issued to the person alleged to have committed the violation ("the respondent");

(iii) Enter settlement negotiations with the respondent; and upon reaching agreement on settlement terms, the Commission Staff shall present such proposed settlement agreement to the Commission for its acceptance or rejection;

(iv) Recommend training be required (in lieu of or in addition to any otherwise recommended civil penalties, or any portion thereof) for violations of the Act;

(v) Recommend that the Commission assess civil penalties for violations of the Act in accordance with O.C.G.A. § 25-9-13 and in accordance with the tiered penalty structure set forth below in Paragraph (3) of this Rule.

(d) Notices. All notices under the Act from the Commission to any local governing authority shall be sent by certified mail (return receipt requested). A signed delivery receipt or post office return marked refused or unclaimed shall constitute a presumption of notice to and legal service upon the local governing authority to whom it is addressed; however, such presumption may be rebutted by evidence demonstrating that the local governing authority did not receive actual or constructive notice of its alleged violation of the Act.

(3) Tiered Structure To Be Utilized in Assessing Civil Penalties against Local Governing Authorities for Violations of the Act.

(a) Factors To Be Considered. When determining to recommend assessment of a civil penalty, the Commission's investigators shall consider the following factors in applying the tiered penalty structure established in Subparagraph (3) (b) of this Rule:

(i) The nature, circumstances and gravity of the violation, (including, but not limited to, adverse impact on the area, the general public and ~~utility~~ customers);

(ii) The degree of the respondent's culpability;

(iii) The respondent's history of prior offenses;

(iv) The respondent's ability to pay;

(v) Any good faith effort by the Authority respondent in attempting to achieve compliance;

(vi) The effect on the respondent's ability to continue in business;

(vii) The number of locate tickets and locate call and codes received annually by the local governing authority;

(viii) The cost of the local government's compliance with the statute or rule violated;

(ix) The number of ~~utility~~ customers whose services may have been interrupted by the local governing authority's violation and the duration of such interruption; and

(x) The size, annual budget, gross receipts, number of ~~utility~~ underground facility connections and types of connections and types of utilities within the territory of the local governing authority and whether owned or operated by such authority.

(b) Tiered Penalty Structure. The tiered penalty structure set forth below takes into account many of the above-mentioned factors by focusing on the number of employees employed by the local governing authority, or the number of ~~utility~~ underground facility, water and sewer connections a local governing authority has, which are functions and indicators of such authority's population, gross revenues, customer base, service area and annual budget. In determining the tier classification for a local governing authority, the Commission's investigators shall look to the number of ~~utility~~ underground facility, water and sewer connections such local governing authority has in making such determination. In cases where the local governing authority has no connections, the Commission's investigator shall determine the tier by the number of employees employed by such local governing authority in ~~utility~~ underground facility, road maintenance, water and sewer or public works functions (including contract personnel who perform work for the authority). Along with the considerations delineated in Subparagraph (a) of this Subsection (3), such tier classifications shall be made as follows:

Tiered Penalty Structure:

(i) Tier One

Authorities that have 25,000 or less total ~~utility~~ underground facility, water and sewer connections or that employ 1 through 25 people in ~~utility~~ underground facility, road maintenance, water, sewer or public works functions (including contractor personnel), may be assessed a penalty of up to $500 per violation for the first three and up to $1,000 per violation thereafter not to exceed $10,000 total per rolling 12-month period.

(ii) Tier Two

Authorities that have more than 25,000 but less than 50,000 total ~~utility~~ underground facility, water and sewer connections or that employ 26 through 50 people in ~~utility~~ underground facility, road maintenance, water, sewer or public works functions

(including contractor personnel), may be assessed a penalty of up to $750 per violation for the first three and up to $1,250 per violation thereafter not to exceed $20,000 total per rolling 12-month period.

(iii) Tier Three

Authorities that have 50,000 or more, but less than 100,000 total ~~utility~~ underground facility, water and sewer connections, or that employ 51 through 75 people in ~~utility~~ underground facility, road maintenance, water, sewer or public works functions (including contractor personnel), may be assessed a penalty of up to $1,000 per violation for the first three and up to $1,500 per violation thereafter not to exceed $30,000 total per rolling 12-month period.

(iv) Tier Four

Authorities that have 100,000 or more, but less than 200,000 total ~~utility~~ underground facility, water and sewer connections or that employ 76 through 100 people in ~~utility~~ underground facility, road maintenance, water, sewer or public works functions (including contractor personnel), may be assessed a penalty of up to $1500 per violation for the first three and up to $2,500 per violation thereafter not to exceed $40,000 total per rolling 12-month period.

(v) Tier Five

Authorities that have 200,000 or more total ~~utility~~ underground facility, water and sewer connections or that employs 101 or more people in ~~utility~~ underground facility, road maintenance, water, sewer or public works functions (including contractor personnel), may be assessed a penalty of up to $2,000 per violation for the first three and up to $5,000 per violation thereafter not to exceed $50,000 total per rolling 12-month period.

The tiered penalty structure shall be established as a maximum. No minimum penalty is specified.

(4) Commission Discretion in Assessing Civil Penalties against Local Governing Authorities.

Nothing set forth elsewhere in this Rule shall require the Commission or its investigators to assess civil penalties against a local governing for violations of the Act or the Commission's Utility Rules. Under each penalty tier, the investigator may recommend training. If the investigator finds that a probable violation has occurred, the investigator may recommend training in lieu of all or any portion of any otherwise recommended civil penalties for any local governing authority's violation. The investigator shall provide suggestions for corrective action to any person requesting such assistance on behalf of a local governing Upon determination after investigation, the Commission's investigator may, subject to Commission review and approval, make recommended offers of settlement to the respondent or make recommended findings for assessment of civil penalties or other corrective action, subject to respondent's right to hearing thereon before the Advisory Committee and/or the Commission.

Rule 515-9-4-.12 Appeals Generally

Any person subject to an order from the Commission may petition the Commission for reconsideration of the order under Rule 515-2-1-.08 of the Commission's Rules of Practice and Procedure. Moreover, any person aggrieved by an order of the Commission may seek relief pursuant to O.C.G.A. Chapter 50-13.

Rule 515-9-4-.13 Procedures for Large Projects

(1) Purpose and Scope:

(a) The purpose of this rule is to set forth procedures that provide for the waiver in writing, of the 48 hour notice and the 21-calendar day expiration for any projects that cannot be located pursuant to O.C.G.A. § 25-9-7. This Rule is necessary in order to allow proper planning and scheduling of the locating of ~~utility~~ underground facilities within the geographical area of a designated "Large Project." Because most large projects require multiple re-stakes, it has proven difficult and cumbersome for facility owner/operators to respond to locate requests within the 48-hour notice time frame normally required by the Georgia ~~Utility~~ Underground Facility Protection Act ("GUFPA"). Excavators on such large projects lasting for months and even years have similarly found it cumbersome and oppressive to have a locate ticket expire after 21 calendar days and have to reapply for renewal or refreshing of such locate ticket repeatedly over the life of a large project.

(b) This Rule allows for parameters to be set for all parties involved in a large project so that such parties may enjoy more flexibility and less rigidity in reporting without any loss or sacrifice in the record-keeping, locating of ~~utility~~ underground facilities,

prevention of damage to such facilities, and public safety protections which GUFPA was designed and intended to implement.

(c) Unless hereinafter specifically excepted, all other provisions of O.C.G.A. § 25-9-1et seq., shall apply to large projects.

(2) Procedures:

(a) Upon an excavator's contacting the Utilities Protection Center (UPC) to procure a locate ticket and upon the UPC's concluding that the proposed excavation qualifies as a large project ticket under Commission Utility Rule 515-9-4-.02(j) (through the process of handling such request(s) for one or more locates), the UPC shall provide instructions for excavator(s) that the involved excavation project shall be treated as a large project under Commission rules and that the excavator has a duty to submit to the UPC a Large Project Planning Meeting Notification.

(b) Upon the UPCs concluding that a particular locate request or requests qualify as a Large Project as defined by Commission Rule 515-9-4-.02(j), a mandatory Large Project Planning Meeting Notification shall be issued by the excavator, no less than 10 business days prior to beginning excavation or blasting activities, to the UPC, for immediate forwarding to all facility owner/operators having facilities in the area. Such notification shall include the excavator's suggested date, time, location, and contact person for the proposed meeting. The date of the mandatory meeting shall be a minimum of 48 hours after the notification is submitted to the UPC, starting at 7:00 a.m. the next business day and excluding non-business days. This mandatory large project meeting notification requirement shall not apply to re-activated large projects that have continued in full force and effect, and without deactivation. Notwithstanding the above, nothing in this rule shall prevent the excavator and the ~~utility~~ underground facility owner/operators from choosing to meet otherwise.

(c) After receiving the Large Project request, the UPC shall notify all affected facility owners or operators of the mandatory Large Project Planning Meeting. The mandatory Large Project Planning Meeting shall be scheduled no less than 5 business days prior to beginning excavation or blasting activities. Each facility owner/operator shall provide an automated response to the UPC indicating agreement to the date and time of the mandatory Large Project Planning Meeting within 2 business days of such notice, through the use of the Positive Response Information System (PRIS).

(d) All provisions of this "Large Project" rule shall apply to the ~~utility~~ underground facility owner/operator and all locates shall be conducted pursuant to these rules and the negotiated marking agreement arising here from.

(e) No later than two business days following the mandatory Large Project Planning Meeting, whichever comes first, the UPC shall update the status of the ticket from a "Large Project Planning Meeting Notification" to a "Large Project Excavation Notification." At that point, the "Large Project Excavation Notification" will become an active ticket and will be transmitted by the UPC to all affected ~~utility~~ underground facility owner/operators.

(f) During the life of the large project ticket, all requests for locates and notices of marking performed that deviate from the marking agreement shall be documented through the UPC. Once all excavation activities have been completed by a particular excavator, such excavator will notify the UPC to close or de-activate the notification.

(g) Unless renewed beforehand by the excavator, all Large Project Excavation Notifications will be automatically closed/de-activated once ninety (90) days have elapsed from the date of activation. The excavator may re-new the notification as necessary so long as excavation on the project continues. The notification will be automatically closed/deactivated ninety (90) days following the most recent renewal.

(3) The excavator and facility owner(s)/operator(s) or LOCATOR(S)/UTILITY(S) shall enter into a negotiated written agreement setting out the schedule for marking the project (see attached example form) at the Large Project planning meeting. Steps shall be taken to work together, including the Large Project Planning Meeting, so that a negotiated marking plan may be agreed upon allowing the facility owner(s)/operator(s) to locate the ~~utility~~ underground facilities at a time reasonably in advance of the actual start of excavation or blasting for each phase of the work. A working relationship shall be established between the excavator and the facility owner/operator representatives to reduce confusion at the work site. Emergency phone numbers and contact people shall be identified for notification of problems, delays or changes in the marking plan. In addition to the Large Project Planning Meeting, the excavator shall conduct periodic ~~utility~~ underground facility coordination meetings to enhance the communication and progress of the planned schedule and markings. IF FOR ANY REASON A FACILITY OWNER/OPERATOR CANNOT ATTEND SUCH MEETING, THE FACILITY OWNER/OPERATOR'S REPRESENTATIVE MAY CONTACT THE EXCAVATOR AND MAKE OTHER ARRANGEMENTS IF THE EXCAVATOR IS AGREEABLE, OR HAVE THE LINES MARKED WITHIN THE 48 HOURS REQUIRED BY LAW (O.C.G.A. § 25-9-1ET SEQ.).

(4) The terms and conditions of such negotiated marking agreement must be in writing, and executed by the excavator and the facility owner/operator or locate representative (i.e. contract LOCATOR/UTILITY for the facility owner/operator) before excavation commences. If the LOCATOR/UTILITY is going to execute the negotiated marking agreement on behalf of the facility owner/operator, the facility

owner/operator shall have on file with the UPC, written documentation of such grant of authority from the facility owner/operator to the LOCATOR/UTILITY. Such negotiated marking agreement and compliance with the terms thereof, shall constitute an exemption from the requirements of subsections O.C.G.A. §§ 25-9-7(a)(1),(b)(1),(c),(e) and (k)(1) and subsections O.C.G.A. §§ 25-9-6(c),(e) and (h). The excavator and facility owner/operator shall each retain a copy of the executed marking agreement.

(5) If the facility owner/operator fails to respond to the excavator's terms of the negotiated marking agreement or the facility owner/operator notifies the excavator that the facilities cannot be marked within the time frame delineated within the negotiated marking agreement and a mutually agreeable date for marking cannot be reached, the excavator may attempt to locate the facilities in accordance with subsection O.C.G.A. § 25-9-7(f), then proceed with excavation or blasting provided reasonable care is exercised. At the option of the excavator and as an alternative to the excavator's attempting to locate the facilities at issue, such facilities shall revert back to the locate time-frame mandated by O.C.G.A. § 25-9-7.

(6) Failure of any party to abide by the terms of the negotiated marking agreement shall be a violation of the Commission's Large Project Rule delineated herein. Any such violation shall be grounds for and may result in sanctions including but not limited to civil and/or criminal penalties being imposed upon the violating party in accordance with Georgia Law. Moreover, where an excavator fails to abide by the terms of the negotiated marking agreement and causes damage to an ~~utility~~ underground facility as a result, the excavator may be subject to penalties delineated in O.C.G.A. § 25-9-13(7).

(7) Good Faith Negotiation Required. The failure of any party to negotiate in good faith shall constitute a violation of the Commission's Large Project Rules and may result in the imposition of penalties under O.C.G.A. §§ 25-9-13 and/or 46-2-91 as well as any other penalties that may be imposed pursuant to Georgia Law or the Commission's Rules. The failure of any party to negotiate in good faith shall also result in all locates being performed in accordance with the procedures and timelines set forth in O.C.G.A. § 25-9-1et. seq. with the cost for all such locates to be paid for by the party having negotiated in bad faith.

(8) Any person holding an active large project ticket may allow any dually authorized subcontractors to work under such large project ticket provided the provisions of O.C.G.A. § 25-9-6(g) are met. For purposes of this rule, any contractual agreement entered into pursuant to O.C.G.A. § 25-9-6(g) shall be in writing.

(9) Nothing in this Rule exempts any facility owner/operator, excavator, LOCATOR/UTILITY or any other person from the duty he or she would

otherwise have under GUFPA or the Commission's Utility Rules to report damages to ~~buried utility~~ underground facilities.

SAMPLE SAMPLE

Large Project - Sample ~~Utility~~ Underground Facility Locating Agreement

THIS AGREEMENT, made this_____ (month/date/year), by and between_____, hereinafter called the EXCAVATOR, and _____, hereinafter called the LOCATOR/UTILITY: Due to the construction of this large project, it will become necessary to make certain arrangements for the locating of the ~~utility~~ underground facilities in accordance with the Georgia Public Service Commission's Rule 515-9-4.

This Agreement is for the sole purpose of each party working together to minimize or eliminate any damages to ~~utility~~ underground facilities as well as allow the EXCAVATOR to pursue the work more expeditiously.

In consideration of the premises and the mutual covenants of the parties hereinafter set forth, it is agreed:

1. The LOCATOR/UTILITY shall provide the EXCAVATOR with correct contact information, including but not limited to, business address, business phone numbers, business facsimile numbers and any available pager or cellular numbers for all available locate technicians/representatives and their supervisors for this project at the time of executing this Agreement.

2. Attached and made part of this agreement is the negotiated marking plan, which is prepared by the EXCAVATOR. Any modifications or changes to the negotiated marking plan shall be reviewed and agreed to by both parties.

3. It is specifically understood that the EXCAVATOR will notify the LOCATOR/UTILITY by telephone, electronic mail or other means as provided by the LOCATOR/UTILITY prior to commencing any excavation activities to ensure the specific work sites have been marked.

4. If EXCAVATOR needs to move to a project work site involving excavation that has not been marked by the LOCATOR/UTILITY or the LOCATOR/UTILITY has not confirmed the accuracy of the existing marks at such site, the EXCAVATOR shall make contact with the LOCATOR/UTILITY and allow time to respond.

5. The LOCATOR/UTILITY shall be available within 24 hours and shall respond within such time frame in order for the work site to be marked or confirm the accuracy of the existing marks.

6. If for any reason, the negotiated marking agreement is terminated, the Large Project Procedures under the Georgia Public Service Commission's Rule 515-9-4 are hereby waived and the provisions of the Official Code of Georgia, Annotated Section 25-9-1et. seq. shall continue in full force and effect.

LOCATOR/UTILITY Name (print):_____

LOCATOR/UTILITY Signature:_____

EXCAVATOR Name (print):_____

EXCAVATOR Signature:_____

Date: _____

(insert date on page one of the agreement)

SAMPLE SAMPLE

Rule 515-9-4-.14 Georgia Underground Marking Standards

(1) White Lining.

(a) **Scope**. This Rule shall have statewide application; provided, however, that any municipal or county governing authority in this State may adopt, by resolution or ordinance, more stringent requirements relating to white lining, but no local governing authority may adopt less stringent marking standards requirements.

(b) **Purpose**. The purpose of white lining the area to be located is to allow everyone involved with the dig site to know the exact location of the proposed excavation. White-lining the excavation site is an excellent way to assist the ~~utilities or utility~~ underground facilities or underground facility locators in marking lines in the work area right the first time and in less time. This technique eliminates speculation by the locator about where the excavation will take place and will often enable the ~~utility~~ underground facility or its agent to locate faster and more accurately. In short, pre-marking the area and the extent of the intended excavation can reduce delays and the time it takes to conduct the locate.

(c) **Background**. White lining is a practice that has been widely used in the United States where the National Transportation Board concluded that pre-marking is a practice that helps prevent excavation damage. The procedure simply involves an excavator using white paint to indicate the route or area that is going to be excavated, such that the locator then knows exactly how much marking is required and where. White lining reduces confusion about what ~~utility~~ underground facilities need to be marked or not marked.

(d) **Directive to UPC.** Pursuant to O.C.G.A. §§ 25-9-4(a)(1), 25-9-6(a)(1) and (b), 25-9-7(a)(2), and 25-9-13(f) and pursuant to Commission Utility Rule 515-9-6-.01, the Utilities Protection Center, Inc. ("UPC" or "One-Call Center") is hereby directed to establish policies and procedures which identify when white lining is required. Examples of areas to be white lined are smaller (involving only a portion of a particular address) or linear excavations such as telecommunication drops and lines, service lines (such as for water, gas, electricity and sewer), utility pits, cuts and repairs, curb repairs, bore holes, directional boring pathways, pole and signage placements, etc. Such examples are merely explanatory of the

type of excavation where white lining is appropriate and are not meant to be exclusive.

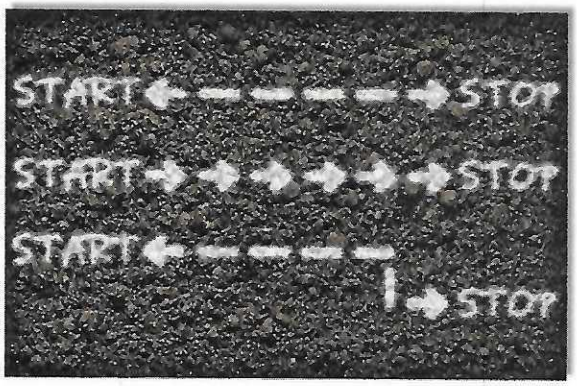
(e) **Exceptions to White Lining**. Unless otherwise required by applicable municipal or county ordinance, white lining will not be required in the following situations:

(i) Any large project so designated in accordance with GPSC Rule 515-9-4-.13;

(ii) Any jobsite that can be described with such particularity as required by O.C.G.A. 25-9-6(b); and

(iii) "Emergencies" and "extraordinary circumstances" as such terms are defined in O.C.G.A. § 25-9-3(10) and O.C.G.A. § 25-9-3(14), respectively, are [pursuant to O.C.G.A. § 25-9-12] statutory exceptions to O.C.G.A. § 25-9-6(a) requirement for obtaining a locate ticket prior to commencing mechanized excavation and, hence, also exceptions to the requirement for white lining under this Rule. However, if a particular emergency notification is later determined not to have been an emergency or an extraordinary circumstance, then the excavator's failure to procure a locate ticket before excavating will be treated as a violation of O.C.G.A. § 25-9-6 and of this Rule as per O.C.G.A. § 25-9-12. Also, pre-excavation emergency locate ticket requests (that is, a requests for a locate ticket on an expedited basis sooner than the prescribed statutory time limit) will not be an exception to white lining as required in this Rule.

(f) **White Lining Symbols as Directions to Locator**. White lining proposed dig sites that will follow a single path or trench shall be marked using white lines and/or arrows and shall be located for twenty (20) feet on either side of the white line and for twenty (20) feet outward beyond the designate "START" and "END" of such linear white line. Therefore, it is important to identify the starting & ending points.



(g) **Identification of White Lining Excavator**. In order to enable the locating ~~utility~~ underground facility or its locators to quickly identify the requested locate at the job site and expedite the locating process, each excavator when white lining shall identify himself or itself by labeling the white line area with the excavator's name or the applicable locate ticket number or both.

(2) Facility Marking by or for Utilities.

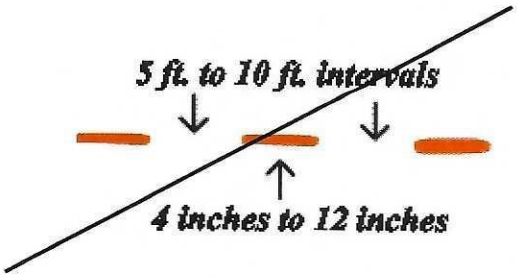
(a) "No conflict" with the excavation should only be communicated by facility owners through the Positive Response Information System (PRIS). No marks or messages with paint or stakes should be left at the proposed excavation if there is no conflict.

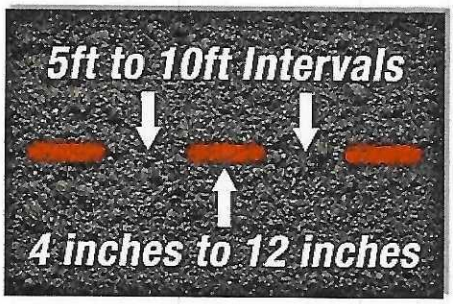
~~(a)~~(b) ~~Utility~~ **Underground Facility Markings**. Facility owners or their locate contractors shall indicate ~~utility~~ underground facilities by placing their UPC alpha code, along with the type material (if known) that the facility consists of, at the beginning and end of locates. Also, arrows should be placed at the ends of markings to indicate that the underground facility continues. In accomplishing the locate task, the line locator shall use industry-approved and generally accepted methods of locating.

(i) To avoid confusion on long runs, the marks shall be frequent enough to identify the owner.

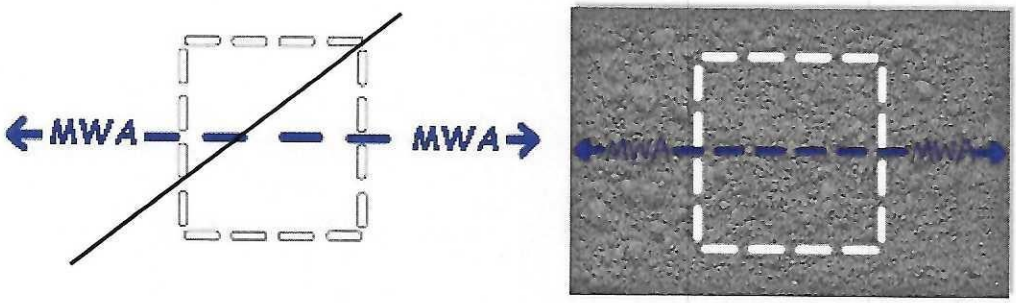
~~(ii) The marks shall indicate the approximate center-line of the underground lines. For example, the middle of the cable, line or pipe shall be at the center of the dashed marks.~~

~~(iii)~~ (ii) Location marks shall be 4 to 12 inches in length and at intervals of 5 to 10 feet.





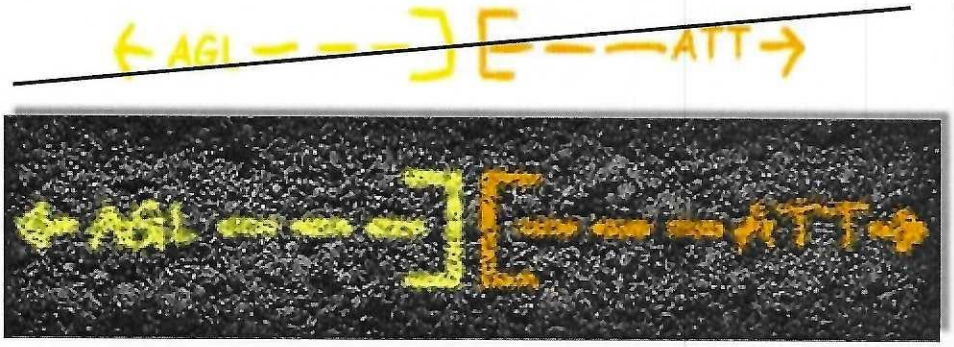
~~(iv)~~ (iii) The line locator (person marking the lines) shall extend marks outside the proposed work area by ~~20 to 30~~ 25 feet if those facilities extend outside the proposed excavation area.



~~(v)~~ (iv) ~~In areas such as flower beds, rock gardens, etc., flags or stakes may be an alternative to paint. The decision to use flags, paint, or stakes shall be based on the terrain and job conditions. For instance, flags or stakes in wet areas, offsets in dirt construction zones that have a high volume of traffic crossing their line location marks.~~ In environmental conditions such as but not limited to, rain, snow, wet or marshy areas and or temporary surface conditions, flags will be used in addition to paint markings. Flags and/or stakes cannot be used as a substitution to paint markings and offsets. It will be the facility owner's decision to use flags and or stakes in addition to paint markings.

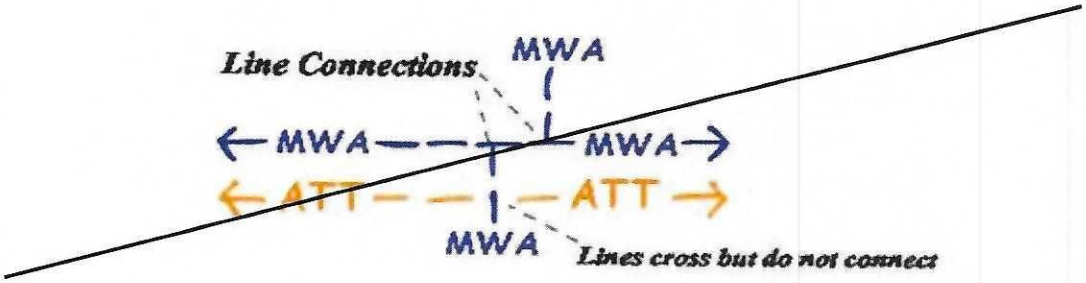


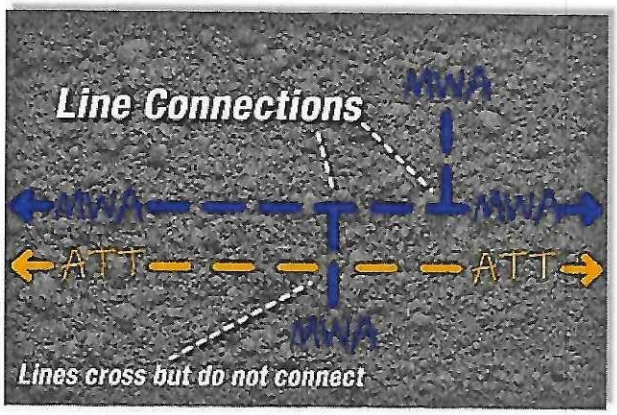
~~(vi)~~ (v) Dead ends, stub-outs, termination points, etc., shall be marked as follows:



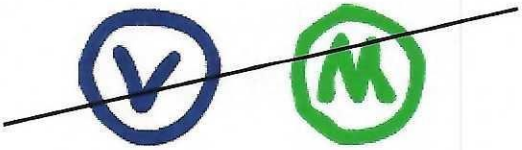
~~(vii)~~ (vi) Lines that have connections (e.g., T's or Y's) or changes in directions shall be clearly indicated. Marks indicating lines or connections shall clearly

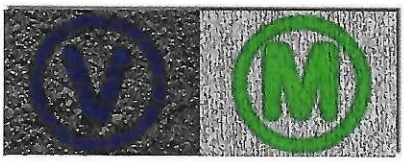
show the intersection and path of the line or connection. Marks that show changes in direction shall be placed closer together for more clarity and accuracy.



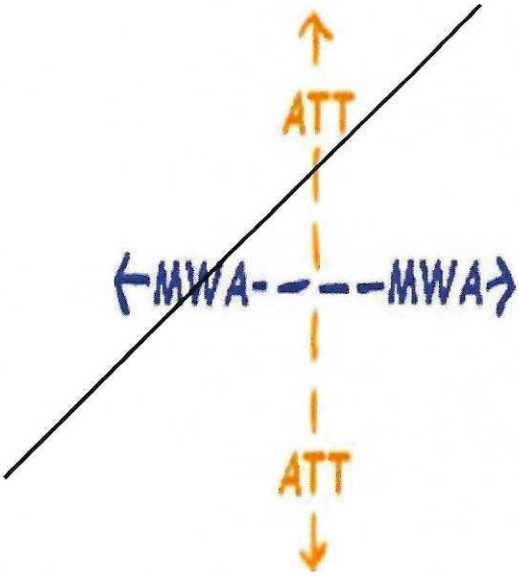


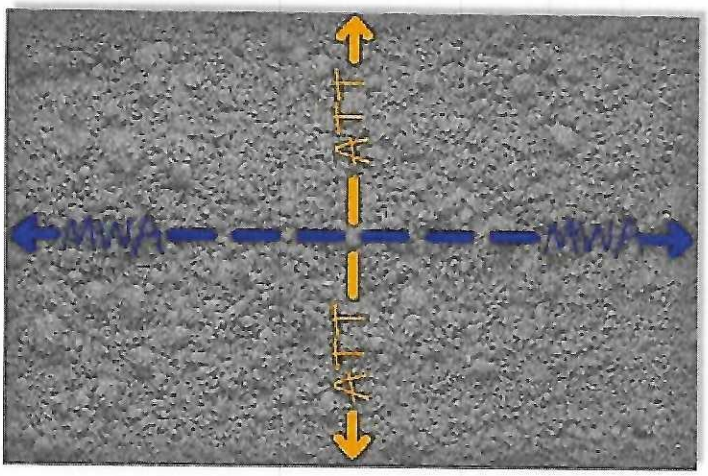
~~(viii)~~ (vii) Manholes and valves shall be identified by using a circle and letters if they are not visible (dirt covering valve boxes or pavement covering manhole cover).



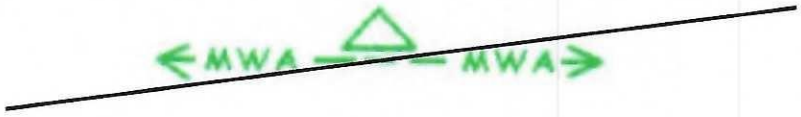


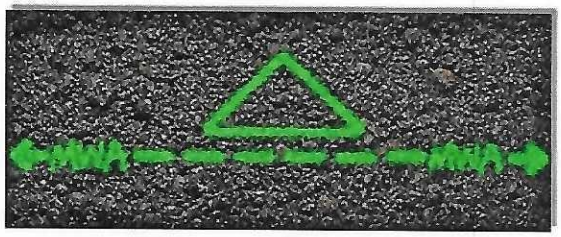
~~(ix)~~ (viii) Facilities that cross but do not intersect shall be marked as described to indicate such installation manner.





~~(x)~~ (ix) Unlocatable sewer laterals, installed prior to 2006, shall be marked by placing a green triangle on the sewer main and, if the location of the tap for such unlocatable sewer lateral is known, by placing a green "T" or "Y" or other appropriate symbol at the tap pointing generally toward the address served by such unlocatable sewer lateral.



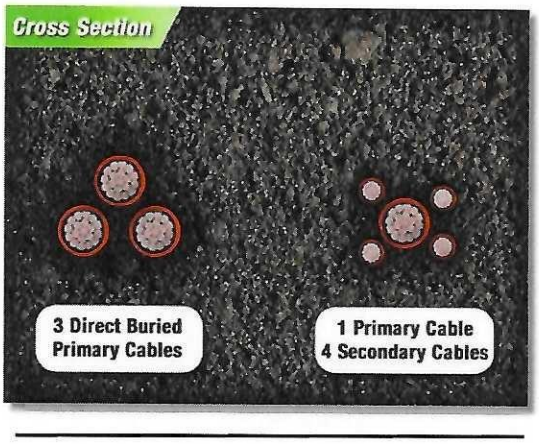


(x) Single facilities, including direct buried facilities, should be marked by placing marks over the approximate center of the facility

(xi) One or multiple facilities housed in a single conduit should be marked with one single mark per conduit.

(xii) If the facility to be marked has a diameter greater than 12", the size of the facility shall be indicated if known

(xiii) Multiple direct buried electric facilities where the separation does not allow for a separate tone for each facility, but the number of the facilities is known should be marked by corridor marks not to exceed 24 inches. The marks shall indicate the number of facilities in the corridor.

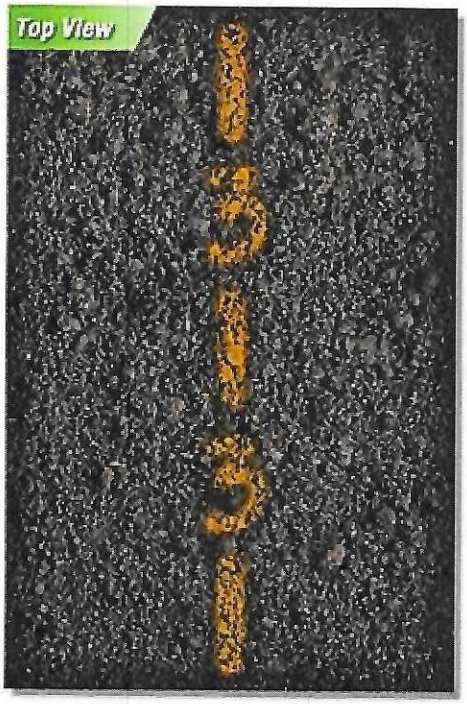




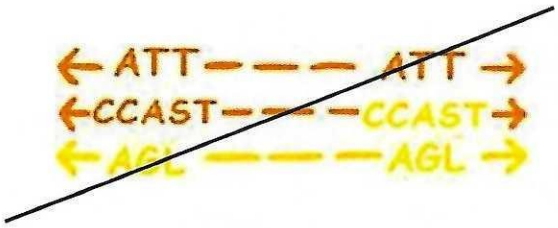
(xiv) Multiple facilities of the same type other than electric that are bundled and intertwined in the same trench shall be marked over the approximate center of the facilities. The marks shall indicate the number of facilities in the corridor.

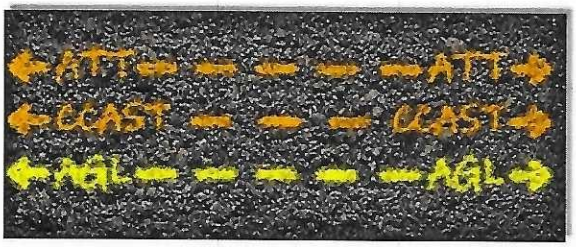
Multiple facilities of the same type intertwined in the same trench.





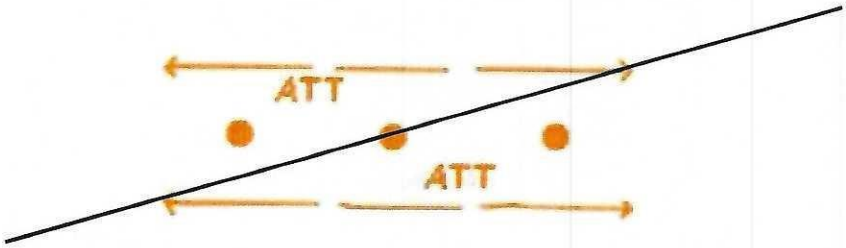
~~(xi)~~ (xv) When facilities share the same trench, they shall be heavily identified and separated enough so that they can be readily identified. This would apply to lines that share the same color code. For example, cable television & telephone lines:





~~(xii) If the facility to be marked has a diameter greater than 12", the size of the facility shall be indicated if known. If the size is not known, then the mark shall indicate greater than 12 inches.~~

~~(xiii)~~ (xvi) Duct structures are multiple conduits stacked or side by side, installed at the same time, in a singular trench or bore path, that may or may not be encased with a protective structure. These facilities shall be marked by using a dot with parallel boundary on each side of the dot.

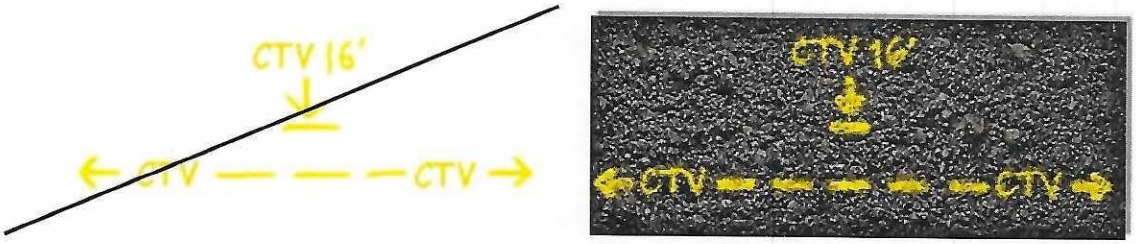




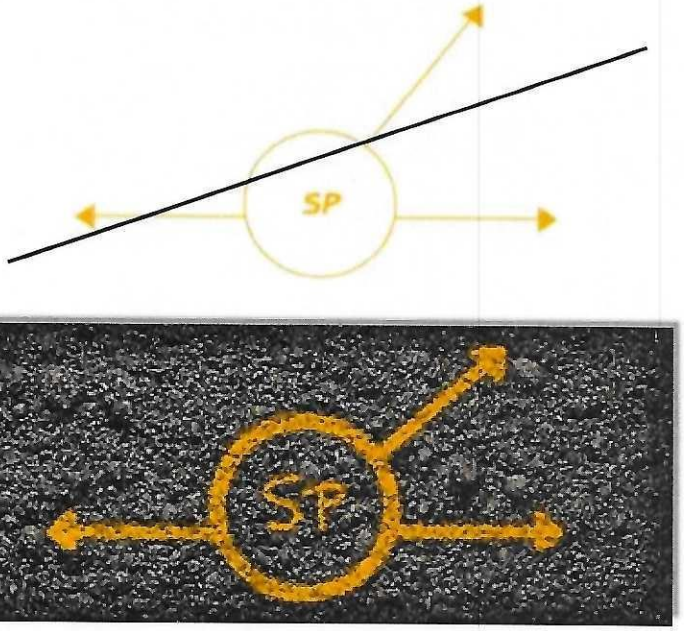
Duct structures marked in excess of 36 inches in total will require the underground facility notify the excavator and identify the size of the marked.

Any duct structure marked in excess of its actual size will be considered overmarked and will be considered a probable violation of the Marking Standards.

~~(xiv)~~ (xvii) In areas where there is a strong likelihood that any or all marker types showing line location would be destroyed, offsets shall be placed on a permanent surface. However, offsets should be used only in conjunction with marks placed above a facility. Offset spacing should be every third or fourth mark. For example, the following mark would indicate the line is 16 feet from the end of the arrow.



~~(xv)~~ (xviii) In areas where cables are spliced, the facilities should be located individually as far as possible on both sides of the splice. When the signal is distorted due to the near proximity to the splice a circle with "SP" should indicate the area of distortion or "splice pit".



(xix) The tolerance zone as defined in O.C.G.A 25-9-3 (34) is measured from the edge of the facility and is not based on the location of the marks.

(xx) Traffic Control and Traffic Management Devices will be marked orange for the communication facilities and red for the electric facilities. To clearly distinguish these devices from other communication and electric facilities, facility owners or their locate contractors shall indicate these facilities by placing their UPC alpha code, and a dash followed by "TC" for Traffic Control Devices and "TM" for Traffic Management Devices.

When electric and communication are bundled and intertwined in the same conduit, it shall be marked over the approximate center of the facility using red paint with the UPC alpha code and a dash followed by "TC" for Traffic Control Devices and/or "TM" for Traffic Management Devices.

Subject 515-9-5 PROCEDURES REQUIRED UNDER THE GEORGIA ~~UTILITY~~ UNDERGROUND FACILITY PROTECTION ACT

Rule 515-9-5-.01 Emergency Procedures

Each and every entity under the jurisdiction of the Commission shall establish procedures that its employees and agents shall follow in the event that an ~~utility~~ underground facility is damaged when blasting or excavating activities are performed. At a minimum, these procedures shall prescribe the following:

(a) At least one person in authority present at an excavation or blasting site shall have a basic familiarity with Department of Transportation regulations, local municipal and state ordinances and Georgia ~~Utility~~ Underground Facility Protection Act laws and rules as they pertain to excavating and blasting as a measure to avoid striking or otherwise damaging ~~utility~~ underground facilities.

(b) At least one person present at an excavation or blasting site shall be adequately proficient in speaking the English language in order to effectively communicate to emergency personnel information pertaining to an unexpected impact with an ~~utility~~ underground facility, to notify the Utilities Protection Center and to instruct workers and members of the general public in surrounding areas to keep away from any potential ignition source or electrocution hazard.

(c) At least one person present at an excavation or blasting site shall be knowledgeable of safety measures that must be taken to protect individuals in the vicinity where an ~~utility~~ underground facility has been struck or damaged, including, but not limited to, restricting the access of persons and property to or around the area in which an impact with an ~~utility~~ underground facility has occurred and alerting parties in adjacent areas of the need to evacuate public and/or private properties because of existence of a potential ignition source or electrocution hazard.

(d) The need for safety equipment to effect the purposes of this rule that must be present at every excavation or blasting site, which equipment, at a minimum, shall include, reflective vests and hard hats to be worn by persons working in the excavation or blasting site; at least one working portable communication device, such as cellular telephone or a two-way radio, which may be utilized to contact emergency services on 911, the Utilities Protection Center and affected ~~utility(ies)~~ underground facility(ies); fluorescent cones for

blocking off pedestrian and vehicle traffic; and flags, signs or other devices to notify the general public to avoid the area in which excavation or blasting activities are taking place.

*****

The Commission shall consider adopting this proposed rule at its Administrative Session held at 9:30 a.m. on November 21, 2023 at its offices located at 244 Washington Street, S.W., Atlanta, Georgia 30334.

All interested parties who desire to do so may submit comments, data, views, arguments, or any other relevant matters in writing to the Commission concerning the proposed Rules. Such written material must be delivered to the Commission no later than **November 2, 2023.** The Commission requests that, where possible, comments include specific proposed edits to the Rules.

Any written materials are to be filed with:

Sallie Tanner
Executive Secretary
Georgia Public Service Commission
244 Washington St., S.W.
Atlanta, Georgia 30334

All persons interested in presenting views or arguments orally should present a written request for an oral hearing by **November 2, 2023.** If no request for oral hearing is made, the Commission shall consider only those written comments filed in accordance with the provisions of this notice. If oral hearing is requested, then the Commission shall hold oral hearings either virtually or in its First Floor Hearing Room at its offices located at 244 Washington Street, S.W., Atlanta, Georgia 30334 immediately following the 9:30 a.m. committee meetings on **November 16, 2023.**

The general authority for adoption of this Rule is found in O.C.G.A. § 46-2-30. Upon request by any interested parties either prior to the exception of the Rule or within thirty (30) days thereafter, pursuant to O.C.G.A. § 50-13-4(a)(2), the Commission shall issue a concise statement of the principal reasons for and against adoption of this Rule and incorporating the reasons for overruling the consideration, if any, urged against its adoption.

* * * * *

WHEREFORE IT IS ORDERED, that the Commission hereby issues this Notice of Proposed Rulemaking for consideration of adopting amendments to Commission 515-9-4 and 515-9-5

ORDERED FURTHER, that this Notice of Proposed Rulemaking shall be published in conformity with the requirements of the Administrative Procedure Act as provided in O.C.G.A. § 50-13-4.

ORDERED FURTHER, that all interested parties shall file comments and proposed edits no later than 4:00 p.m. on November 2, 2023.

ORDERED FURTHER, that all persons interested in presenting views or arguments orally should present a written request for an oral hearing by November 2, 2023. If requested, the Commission will hold a hearing to receive oral comments immediately following the 9:30 a.m. committee meetings on November 16, 2023.

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

ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 3rd day of October 2023.

Sallie Tanner
Executive Secretary

10-12-23
Date

Jason Shaw
Chairman

10-12-23
Date