FILED
FEB 23 2024
EXECUTIVE SECRETARY
G.P.S.C.

COMMISSIONERS:

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

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

DOCKET # DOCKET NO. 44729
DOCUMENT # 217707

IN THE MATTER OF:
Case Nos. 22-24390
D. Shepherd Construction & Utilities, L.L.C.;

DOCKET NO. 44729

FINAL ORDER

MAILED
2-26-2024

APPEARANCES:

Georgia Public Service Commission Staff: Janey Chauvet

D. Shepherd Construction & Utilities, L.L.C.: No appearance

PROCEDURAL HISTORY

On August 30, 2022, while working at 2671 Cranbrook Drive, Hephzibah, **D. Shepherd Construction & Utilities, L.L.C.** ("Respondent") caused damage to a utility facility while using mechanized equipment. Following its investigation of this incident, Commission Staff determined that the Respondent was in violation of O.C.G.A. §§ 25-9-8(a) and 25-9-8(b) (the "Violations") and recommended, through Consent Agreement, that Respondent be assessed a $5,000 civil penalty with the ability to mitigate $4,000 by completing a Commission approved damage prevention training program.

On May 2, 2023, the Commission issued a Notice of Hearing and Procedural and Scheduling Order. Respondent was advised that a hearing would be held for the purpose of hearing evidence regarding the Violations and that, if proven, such Violations may result in the imposition of a civil penalty as provided by law.

On September 27, 2023, a hearing was conducted in this Docket, at which time the Commission's Hearing Officer heard testimony from Staff witnesses. Staff entered two exhibits into evidence. Exhibit 1 was a chart that detailed information regarding: the incident date and location, violation cited, terms of Consent Agreement, date of service for both Consent Agreement and Notice of Hearing, and status of certified mail return receipt for Notice of Hearing. Exhibit 2

included copies of: The Notice of Probable Violation, Incident Investigation Report, Consent Agreement, Notice of Hearing and Procedural and Scheduling Order, Certified Mail Return Receipt and other supporting documentation. At the hearing, several issues were presented for determination, including whether Respondent committed the Violations and whether the Respondent should be penalized pursuant to O.C.G.A § 25-9-14(k)(7) [pursuant to O.C.G.A § 25-9-13(h)(7) prior to September 2022] in an amount of up to $10,000.00 for each violation.

FINDINGS AND CONCLUSIONS

Staff witnesses Onterio Johnson and Morgan Mitchell testified at the proceeding. Mr. Johnson is a Commission GUFPA investigator and is generally responsible for investigating notices of probable violation of the Act. Ms. Mitchell is the assistant to the GUFPA Program and Assistant Program Managers and is generally responsible for the delivery of consent agreements, Notice of Hearings, and Final Orders to probable violators of GUFPA and O.C.G.A. § 46-2-91. Mr. Johnson submitted a detailed copy of his report of the investigation. Based on the probable violation damage reports filed by the utility and upon further investigation into the matter. Mr. Johnson determined that:

1. Respondent struck, injured, or loosened any utility facility which had been staked or marked in violation of O.C.G.A. § 25-9-8(a);
2. Respondent failed to exercise reasonable care when blasting or excavating is to take place within the tolerance zone in violation of O.C.G.A. § 25-9-8(b);

Based upon the facts and circumstances presented in this case, the Commission finds that Respondent committed the Violations.

PENALTIES

Pursuant to O.C.G.A § 25-9-14(k)(7), the Commission has the authority to impose a civil penalty not exceeding $10,000.00 for each violation of the Act, if it is proven that any person violated any provision of the Act as a result of a failure to exercise reasonable care.

WHEREFORE IT IS ORDERED, that pursuant to O.C.G.A § 25-9-14(k)(7) a civil penalty in the amount of **$6,000** be imposed against Respondent for the above cited violations. Respondent shall pay such civil penalty to the Commission, in certified funds, within thirty (30) days from the date of this Order.

ORDERED FURTHER, that Respondent may mitigate $ $4,000 of the civil penalty ordered in this case by a minimum of five (5) employees completing a Commission-approved damage prevention training course within forty-five (45) days from the date of this Order.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are hereby adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

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 this 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 5th day of December 2023

Sallie Tanner
Executive Secretary

2-23-24
Date

Jason Shaw
Chairman

2-23-24
Date

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

DOCKET NO. 44729 **D. Shepherd Construction & Utilities, L.L.C.; Case Nos. 22-24390**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Final Order** was filed with the Executive Secretary of the Georgia Public Service Commission, and a copy of same was served upon all parties listed below via hand or electronic delivery as indicated, or by depositing same in the United States mail with sufficient postage thereon to ensure delivery and addressed as follows:

Sallie Tanner, Executive Secretary Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY HAND)	**D. Shepherd Construction & Utilities, L.L.C.** Attn: Dittilio Shepherd 2428 Peach Orchard Road Augusta, GA 30906
Janey Chauvet Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY ELECTRONICALLY)	Dittillio Shepherd, registered agent c/o 1739 Harrogate Drive Augusta, GA 30906
Ray-Kelle Preston Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY ELECTRONICALLY)	

This 26th day of February, 2024.

Maritza Rivera
Clerk
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

FILED
OCT 30 2023
EXECUTIVE SECRETARY
G.P.S.C.

DOCKET# 44729
DOCUMENT# 216195

COMMISSIONERS:

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

REECE McALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
EXECUTIVE SECRETARY

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244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

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

IN THE MATTER OF:
Case Nos. 22-24390 **DOCKET NO. 44729**
D. Shepherd Construction & Utilities, L.L.C.;

RECOMMENDED FINAL ORDER

APPEARANCES:

Georgia Public Service Commission Staff: Janey Chauvet

D. Shepherd Construction & Utilities, L.L.C.: No appearance

PROCEDURAL HISTORY

On August 30, 2022, while working at 2671 Cranbrook Drive, Hephzibah, **D. Shepherd Construction & Utilities, L.L.C.** ("Respondent") caused damage to a utility facility while using mechanized equipment. Following its investigation of this incident, Commission Staff determined that the Respondent was in violation of O.C.G.A. §§ 25-9-8(a) and 25-9-8(b) (the "Violations") and recommended, through Consent Agreement, that Respondent be assessed a $5,000 civil penalty with the ability to mitigate $4,000 by completing a Commission approved damage prevention training program.

On May 2, 2023, the Commission issued a Notice of Hearing and Procedural and Scheduling Order. Respondent was advised that a hearing would be held for the purpose of hearing evidence regarding the Violations and that, if proven, such Violations may result in the imposition of a civil penalty as provided by law.

On September 27, 2023, a hearing was conducted in this Docket, at which time the Commission's Hearing Officer heard testimony from Staff witnesses. Staff entered two exhibits into evidence. Exhibit 1 was a chart that detailed information regarding: the incident date and location, violation cited, terms of Consent Agreement, date of service for both Consent Agreement and Notice of Hearing, and status of certified mail return receipt for Notice of Hearing. Exhibit 2

included copies of: The Notice of Probable Violation, Incident Investigation Report, Consent Agreement, Notice of Hearing and Procedural and Scheduling Order, Certified Mail Return Receipt and other supporting documentation. At the hearing, several issues were presented for determination, including whether Respondent committed the Violations and whether the Respondent should be penalized pursuant to O.C.G.A § 25-9-14(k)(7) [pursuant to O.C.G.A § 25-9-13(h)(7) prior to September 2022] in an amount of up to $10,000.00 for each violation.

FINDINGS AND CONCLUSIONS

Staff witnesses Onterio Johnson and Morgan Mitchell testified at the proceeding. Mr. Johnson is a Commission GUFPA investigator and is generally responsible for investigating notices of probable violation of the Act. Ms. Mitchell is the assistant to the GUFPA Program and Assistant Program Managers and is generally responsible for the delivery of consent agreements, Notice of Hearings, and Final Orders to probable violators of GUFPA and O.C.G.A. § 46-2-91. Mr. Johnson submitted a detailed copy of his report of the investigation. Based on the probable violation damage reports filed by the utility and upon further investigation into the matter. Mr. Johnson determined that:

1. Respondent struck, injured, or loosened any utility facility which had been staked or marked in violation of O.C.G.A. § 25-9-8(a);
2. Respondent failed to exercise reasonable care when blasting or excavating is to take place within the tolerance zone in violation of O.C.G.A. § 25-9-8(b);

Based upon the facts and circumstances presented in this case, the Commission finds that Respondent committed the Violations.

PENALTIES

Pursuant to O.C.G.A § 25-9-14(k)(7), the Commission has the authority to impose a civil penalty not exceeding $10,000.00 for each violation of the Act, if it is proven that any person violated any provision of the Act as a result of a failure to exercise reasonable care.

WHEREFORE IT IS ORDERED, that pursuant to O.C.G.A § 25-9-14(k)(7) a civil penalty in the amount of **$6,000** be imposed against Respondent for the above cited violations. Respondent shall pay such civil penalty to the Commission, in certified funds, within thirty (30) days from the date of this Order.

ORDERED FURTHER, that Respondent may mitigate $ $4,000 of the civil penalty ordered in this case by a minimum of five (5) employees completing a Commission-approved damage prevention training course within forty-five (45) days from the date of this Order.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are hereby adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

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 this 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 ___ day of _____ 2023.

Sallie Tanner **Executive Secretary**	**Jason Shaw** **Chairman**
Date	Date

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

DOCKET NO. 44729 **D. Shepherd Construction & Utilities, L.L.C.;** **Case Nos. 22-24390**

CERTIFICATE OF SERVICE

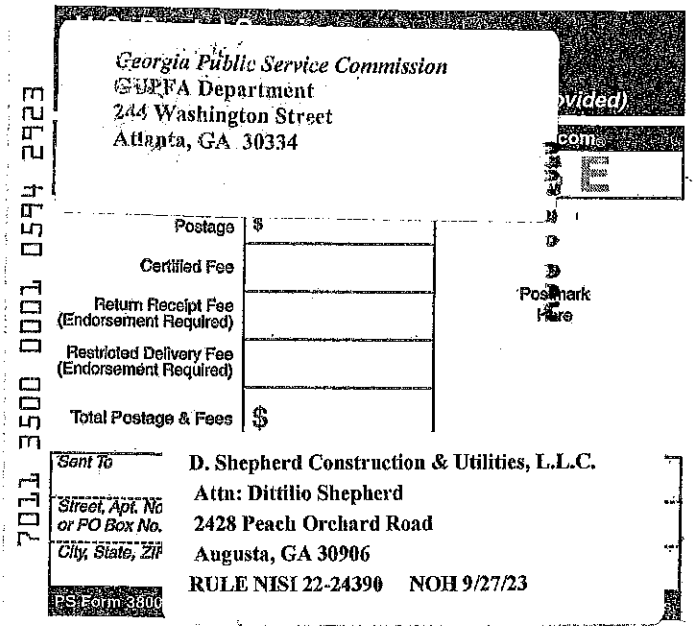
I hereby certify that a copy of the foregoing **Recommended Order** was filed with the Executive Secretary of the Georgia Public Service Commission, and a copy of same was served upon all parties listed below via hand or electronic delivery as indicated, or by depositing same in the United States mail with sufficient postage thereon to ensure delivery and addressed as follows:

Sallie Tanner, Executive Secretary Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY HAND)	**D. Shepherd Construction & Utilities, L.L.C.** Attn: Dittilio Shepherd 2428 Peach Orchard Road Augusta, GA 30906
Janey Chauvet Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY ELECTRONICALLY)	Dittillio Shepherd, registered agent c/o 1739 Harrogate Drive Augusta, GA 30906
Ray-Kelle Preston Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY ELECTRONICALLY)	

This 25th day of October, 2023.

Nancy Gibson
Hearing Officer
Georgia Public Service Commission
244 Washington Street, SW
Atlanta, Georgia 30334

EXHIBIT 2



7011 3500 0001 0594 2923

Georgia Public Service Commission
GUPFA Department
244 Washington Street
Atlanta, GA 30334

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

Postmark Here

Sent To
Street, Apt. No. or PO Box No.
City, State, ZIP

D. Shepherd Construction & Utilities, L.L.C.
Attn: Dittilio Shepherd
2428 Peach Orchard Road
Augusta, GA 30906
RULE NISI 22-24390 NOH 9/27/23

PS Form 3800

Georgia Public Service Commission
244 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334-5701

CERTIFIED MAIL

7011 3500 0001 0594 2923

US POSTAGE PITNEY BOWES
ZIP 30334 $ 009.97⁰
02 4W
0000358407 AUG. 02. 2023

RECEIVED
SEP 11 2023
GUFPA UNIT
GPSC

PSC 22-24390

LN/8-4

D. Shepherd Construction & Utilities, L.L.C.
Attn: Dittilio Shepherd

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

D. Shepherd Construction & Utilities, L.L.C.
Attn: Dittilio Shepherd
2428 Peach Orchard Road
Augusta, GA 30906
RULE NISI 22-24390 NOH 9/27/23

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7011 3500 0001 0594 2923

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

NIXIE 328 CC 1 7209/02/23
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
MANUAL PROC REQ 2247N245164-00069

MY RESULT
$15,000

EXHIBIT 2

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

FILED
JUL 31 2023
EXECUTIVE SECRETARY
G.P.S.C.

EXHIBIT 2

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 # 44729
DOCUMENT # 205290

IN THE MATTER OF:

GUFPA CASE NO. PSC 22-24390

DOCKET NO. 44729

D. Shepherd Construction & Utilities, L.L.C.,
Respondent

MAILED
7.31.2023

NOTICE OF HEARING AND PROCEDURAL AND SCHEDULING ORDER

To: **D. Shepherd Construction & Utilities, L.L.C.**
Attn: Dittilio Shepherd
2428 Peach Orchard Road
Augusta, GA 30906

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 September 27, 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 D. Shepherd Construction & Utilities, 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 August 30, 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 May 2, 2023.

Sallie Tanner
Executive Secretary

7-28-23
Date

Jason Shaw
Chairman

7-31-23
Date

COMMISSIONERS:

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

EXHIBIT 2

REECE McALISTER
EXECUTIVE DIRECTOR

SALLIE TANNER
EXECUTIVE SECRETARY

Georgia Public Service Commission

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(800) 282-5813

244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

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

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

IN THE MATTER OF:	)	
	)	
D. Shepherd Construction & Utilities, L.L.C.,	)	DOCKET NO. 44729
RESPONDENTS	)	(PSC Case No. 22-24390)
	)	

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

D. Shepherd Construction & Utilities, L.L.C.
Attn: Dittilio Shepherd
2428 Peach Orchard Road
Augusta, GA 30906

Dittillio Shepherd, registered agent c/o
1739 Harrogate Drive
Augusta, GA 30906

Respectfully Submitted this 31st day of July, 2023:

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

EXHIBIT 2

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

2/21/2023

D. Shepherd Construction & Utilities, L.L.C.
Attn: Dittilio Shepherd
2428 Peach Orchard Road
Augusta, GA 30906

REVISED

Date of Incident: 8/30/2022
Docket #: 44729
Case #: PSC 22-24390
Incident Location: 2671 Cranbrook Drive, Hephzibah

To Whom It May Concern:

A Notice of Probable Violation(s) ("NOPV") of the Georgia Underground 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

25-9-8(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 $5,000.00. Respondent may choose from one of several options regarding the alleged probable violations. Staff recommends mitigation of $4,000.00 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 $1,000.00 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**, 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

EXHIBIT 2

RESPONSE OPTIONS

(Please check only one)

Respondent: D. Shepherd Construction & Utilities, L.L.C. **REVISED**
Docket #: 44729
Case #: PSC 22-24390

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 Underground 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 **$1,000.00.** 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 **$5,000.00.** Staff must receive the **signed Consent Agreement** within **thirty (30) days** of this NOPV. THIS OPTION DOES NOT REQUIRE TRAINING.

EXHIBIT 2

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

DAMAGE REPORT (PROBABLE VIOLATION) – PSC 22-24390

INCIDENT INFORMATION

INCIDENT DATE:	8/30/2022	MATERIAL TYPE:	Plastic
FACILITY TYPE:	Gas	SIZE:	1/2-inch
INCIDENT ADDRESS:	2671 Cranbrook Drive, Hephzibah		
UTILITY LINE FUNCTION:	Service		
MECHANZIED EQPT.:	Boring		

LOCATE INFORMATION

LOCATE COMPANY NAME:	USIC Locating Services
LOCATE NUMBER:	220815-003750
WAS FACILITY LOCATED?	Yes
LOCATE MARKS WITHIN 18 INCHES?	Yes

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:	$688.00

PROBABLE VIOLATOR INFORMATION

VIOLATOR COMPANY NAME:	D. Shepherd Construction & Utilities, L.L.C.
CONTACT NAME:	Aner Ramirez
CONTACT NUMBER:	706-733-5833
MAILING ADDRESS:	Attn: Dittilio Shepherd 2428 Peach Orchard Road
CITY, STATE, ZIP:	Augusta, GA 30906

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:

D Shepherd damaged a 1/2-inch plastic gas service line with mechanized equipment while installing cable tv line.

EXHIBIT 2

GEORGIA PUBLIC SERVICE COMMISSION
GEORGIA UNDERGROUND FACILITY PROTECTION ACT

NOPV / INCIDENT REPORT – PSC 22-24390

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:	44729
Case Number:	PSC 22-24390
Report Date:	9/19/2022
Incident Date:	8/30/2022
Facility Owner:	Atlanta Gas Light
Facility Owner Phone:	404-584-3135
Locator:	USIC Locating Services
Locator Phone:	317-810-8077
Excavator:	D. Shepherd Construction & Utilities, L.L.C.
Excavator Phone:	706-733-5833
Violator:	D. Shepherd Construction & Utilities, L.L.C.
Contact:	Aner Ramirez
Address:	Attn: Dittilio Shepherd 2428 Peach Orchard Road
City, State, Zip	Augusta, GA 30906
Incident Location:	2671 Cranbrook Drive
Incident City:	Hephzibah
Incident County:	Richmond
Jurisdiction:	NOT REPORTED

UTILITY LINE IMPACT

Facility Type:	Gas
Material Type:	Plastic
Size (Diameter/Voltage/Pairs/etc.):	1/2-inch
Pressure (PSIG/Inches):	MP
Utility Line Function:	Service
Number of Customers Affected:	1
Repair Cost:	$688.00

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):	220815-003750
Equipment Involved:	Boring
Nature of Excavation:	Cable TV
Direction of Excavation Relative to Damaged Utility Line:	

SYNOPSIS

According to a submitted report of probable violation, D. Shepherd Construction & Utilities, L.L.C. was excavating at 2681 Cranebrook Drive, Hepzibah, Georgia on August 30, 2022. Atlanta Gas Light reported this incident because D. Shepherd Construction & Utilities, 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 System regarding the damage that occurred at 2681 Cranebrook Drive, Hepzibah, Georgia on August 30, 2022. The submitted Atlanta Gas Light damage report indicates D. Shepherd Construction & Utilities, L.L.C. caused damage to a ½-inch plastic gas service facility. According to the report, the contractor was installing a CATV main 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 D. Shepherd Construction & Utilities, L.L.C. may be in violation, pending a response to this Notice of Probable Violation.

CONCLUSION:

The Pipeline/Facilities Safety Staff found **D. Shepherd Construction & Utilities, 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.

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JASON SHAW

EXHIBIT 2

MICHELLE THEBERT
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UNIT DIRECTOR

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psc.ga.gov

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

IN THE MATTER OF:

D. Shepherd Construction & Utilities, L.L.C.,
RESPONDENTS

REVISED

CASE NUMBER: PSC 22-24390

CONSENT AGREEMENT

D. Shepherd Construction & Utilities, 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 Underground 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 8/30/2022, 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 $5,000.00 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 $4,000.00 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 $1,000.00 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__.

REVISED

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

_____

On behalf of: D. Shepherd Construction & Utilities, L.L.C.

PSC 22-24390

EXHIBIT 2

COMMISSIONERS:
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REQUESTS FOR CASES TO COME BEFORE "GUFPAAC"

THE GEORGIA UTILITY FACILTY PROTECTION ACT ADVISORY COMMITTEE

All requests for cases to come before the Georgia Underground 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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EXHIBIT 2

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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. 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.

EXHIBIT 2

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BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

D. Shepherd Construction & Utilities, L.L.C.,
RESPONDENTS

REVISED

DOCKET NO. 44729
(PSC Case No. 22-24390)

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.

D. Shepherd Construction & Utilities, L.L.C.
Attn: Dittillo Shepherd
2428 Peach Orchard Road
Augusta, GA 30906

Dittillio Shepherd, registered agent c/o
1739 Harrogate Drive
Augusta, GA 30906

Respectfully Submitted this 21st day of February, 2023:

Marilyn K. Morris-Simmons

Marilyn K. Morris-Simmons, Admin. Assistant
Facilities Protection Unit
Georgia Public Service Commission
244 Washington Street, Ste. 112
Atlanta, GA 30334

****** ATTENTION PLEASE READ ****** ****** ATTENTION PLEASE READ ******

You have just received a Notice of Probable Violation (NOPV) from The Georgia Public Service Commission (PSC) and here is why.

Anytime a buried public utility is damaged by mechanized equipment, by law that utility operator must repair the damaged utility and then report the incident to The PSC within 30 days. That utility operator is also required by law to do an investigation to determine the cause of the damage. If the damage was a result of an error made by the Utility operator or the locate company, the utility company must report themselves to the PSC. If the damage was the result of an error made by the contractor, the utility company must report the contractor, and list the dig law violations that may have occurred during the incident. Once the incident is reported, it gets assigned to a Georgia Dig Law Investigator and a notice is mailed.

Please keep in mind you have NOT been found in violation yet. The NOPV is sent to inform you of what has been reported against you, and is pending on a response from you. You must respond to the notice by letting your investigator know if you agree or disagree with the violations.

If you do NOT respond within 30 days, the PSC will proceed, finding you in violation. This decision will be based solely on the information provided by the utility operator.

Contact information for your investigator will be at the bottom of the first page. Please feel free to call or send an email to your investigator, they will be more than happy to assist and walk you through this process.

EXHIBIT 2

Common questions about this NOPV

I disagree how do I respond

Check option 1 or 2 on the response options page, return that document to your investigator by USPS or email. Send a statement letting us know why you disagree, along with any documentation or photos that proves why you are not in violation. The investigator will continue the investigation based on your disagreement and will contact you once the investigation is complete.

I agree with the violation, what do I do next?

Check option 3 or 4 on the response options page, Option 3 indicates you agree with the violations and you would like to pay the smaller mitigated penalty by sending employees to a training class. Option 4 indicates you agree with the violation but would rather pay the fine in full instead of attending training. After you've chosen an option, please sign and date the two page consent agreement and return those 3 documents to you investigator by email or USPS. If you chose option 3 you will have 30 days to get the training completed, penalty payments can be mailed or delivered to The Georgia Public Service Commission. Cashier checks or money orders are the only acceptable payment methods at this time.

I hired a subcontractor am I responsible for the violation / I was a subcontractor am I at fault?

The Georgia dig laws falls on whom ever was operating the equipment at the time of the incident. If you receive a notice from the PSC and you hired a sub, you should disagree with the violation. Check the appropriate box, provide a statement saying who you hired and provide documentation (Invoice) and contact information on the sub. Staff at The PSC will remove your name from the notice and reissue the notice to the Subcontractor.

How do I attend damage prevention training?

Use the GUFPA Training list that was provided in the packet to call and schedule the class. The class is a one-day class that usually last about 4 hours. After you complete training, you will get certificates of completion. The training facility will send copies of the certificates to the PSC.

I paid the utility company for the damage why do I have to pay the PSC?

Payment made for the repair cost to the utility company is a civil matter. That repair payment has no bearing over the possible penalty amounts for a violation of the state dig law.