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IN THE MATTER OF:

DOCKET NO. 44924 **TD Utilities, Inc.** **CASE NO. 22-24872**

FINAL ORDER

MAILED
10·23·2024

APPEARANCES:

Georgia Public Service Commission Staff: Chesley Dix

RESPONDENT: No appearance

PROCEDURAL HISTORY

On October 17, 2022, while working at the intersection of Campbellton Road SW and Epworth Street in Atlanta, **TD Utilities, Inc.** ("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"), sections of the Georgia Underground Facilities Protection Act ("GUFPA"). Staff 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 March 19, 2024, 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 May 15, 2024, 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 an investigator with the Facility Protection section of the Commission and is generally responsible for investigating notices of probable violation of the Act. Ms. Mitchell is an administrative assistant with the Facility Protection section of the Commission 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); and
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 20th day of August 2024.

Sallie Tanner

Sallie Tanner
Executive Secretary

10-22-24
Date

Jason Shaw
Chairman

10-22-24
Date

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF GEORGIA

DOCKET NO. 44924	TD Utilities, Inc.;	Case Nos. 22-24872

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 insure delivery and addressed as follows:

Sallie Tanner, Executive Secretary Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY HAND)	TD Utilities, Inc. Attn: Tim Hill 3501 Haddon Hall Drive Buford, GA 30519
Chesley Dix Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY ELECTRONICALLY)	United States Corp Agents, Inc., registered agent c/o TD Utilities, Inc. 1420 Southlake Parkway Morrow, GA 30260
Ray-Kelle Preston Georgia Public Service Commission 244 Washington Street, SW Atlanta, GA 30334 (BY ELECTRONICALLY)	

This 23rd day of October 2024.

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