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DOCKET NO. 28596

ORDER APPROVING ADOPTION OF NEW RULES REGARDING GUFPA PROCEDURES FOR LARGE PROJECTS

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") has considered and adopted rules regarding Georgia Utility Facility Protection Act ("GUFPA") Procedures for Large Projects. The new rules shall become effective as provided by law twenty (20) days after adoption at the Commission's regularly scheduled Administrative Session on February 3, 2009, and subsequent filing with the Secretary of State.

BY THE COMMISSION:

Whereas, during Administrative Session on February 3, 2009, the Commission approved the adoption of new Utility Rules 515-9-4-.02 and 515-9-4-.13; and

Whereas, the new Utility Rules 515-9-4-.02 and 515-9-4-.13 contain nine (9) definitions, nine (9) paragraphs, some of which have subparts as well as a sample large project facility locating agreement with at least six (6) parts; and

Whereas, copies of written notices of the proposed rules previously were mailed to all utilities subject to the jurisdiction of this Commission, and to all interested persons on the mailing list of the Commission pursuant to O.C.G.A. § 50-13-4(a)(1); and

Whereas, a copy of said written notices were furnished to the Legislative Counsel of the State of Georgia, pursuant to said O.C.G.A. § 50-13-4(e); and

Whereas, the Commission received comments from parties regarding the proposed rules contained in the rule chapter that were duly considered, and

WHEREFORE, IT IS ORDERED, that effective February 3, 2009, the new Utility Rules 515-9-4-.02 and 515-9-4-.13 are hereby approved and adopted as follows:

PROPOSED RULES

Pursuant to the requirements of the Georgia Administrative Procedures Act at **O.C.G.A. § 50-13-4(a) (1)**, the Commission adopts the following new Utility Rules 515-9:

RULES OF THE GEORGIA PUBLIC SERVICE COMMISSION NEW CHAPTER 515-9-4 ENFORCEMENT PROCUDURES UNDER THE GEORGIA UTILITY FACILTIY PROTECTION ACT

515-9-4-.02 Definitions.

Terms used in these rules have the following meaning:

- (a) "Act" means the Georgia Utility Facility Protection Act (O.C.G.A. § 25-9-1 *et 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.
- (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) "Facility owner or operator" means any person or entity who owns, operates or controls the operation of a utility facility.
- (g) "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.
- (h) "Utilities Protection Center" or "Center" 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) O.C.G.A. § 25-9-3 (17) defines “Large Project” as an excavation that involves more work to locate utility 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”). 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(12), 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.

Authority O.C.G.A. Secs. 25-9-3, 25-9-6, 25-9-7, 25-9-13. **History.** Original Rule entitled “Definitions” adopted. F. Dec. 8, 2000; eff. Dec. 28, 2000. **Repealed:** New Rule of same title adopted. F. Feb. 5, 2002; eff. Feb. 25, 2002. **Amended:** F. May 19, 2006; eff. June 8, 2006. **Amended:** F. Dec. 21, 2006; eff. Jan. 10, 2007.

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 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 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 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. § 25-9-1 *et. 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 UPC's 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 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 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 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 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 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. § 25-9-1 *ET. 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 a utility 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. § 25-9-1 *et. 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 facilities.

SAMPLE

SAMPLE

Large Project – Sample Utility 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 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 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 25-9-1 *et. 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

Authority O.C.G.A. Secs. 25-9-3, 25-9-6, 25-9-7, 25-9-13. **History.** Original Rule entitled "Procedures for Large Projects" adopted. F. May 19, 2006; eff. June 8, 2006. **Amended:** F. Dec. 21, 2006; eff. Jan. 10, 2007.

ORDERED FURTHER, that said adopted rules, having been published as provided in O.C.G.A. § 50-13-3(b), shall be filed with the Administrative Procedure Act Division of the Secretary of State as provided in O.C.G.A. § 50-13-6(b).

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 action taken by the Commission in Administrative Session on the 3rd day of February 2009.

Reece McAlister
Executive Secretary

H. Doug Everett
Chairman

Date

Date