

12-1061

(Do Not Write Above This Line)

A RESOLUTION BY CITY UTILITIES COMMITTEE

A RESOLUTION TO AUTHORIZE THE MAYOR OR HIS DESIGNEE TO ENTER INTO A CONSENT AGREEMENT WITH THE PUBLIC SERVICE COMMISSION, STATE OF GEORGIA AND TO AUTHORIZE PAYMENT PURSUANT TO THE CONSENT AGREEMENT IN THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$100,000.00); AND FOR OTHER PURPOSES.

As Amended ADOPTED BY

SEP 04 2012

COUNCIL

- CONSENT REFER
REGULAR REPORT REFER
ADVERTISE & REFER
1st ADOPT 2nd READ & REFER
PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

Committee
Date
Chair
Referred To

First Reading

City Utilities
August 8 2012

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

Committee

Date

Chair

Action

Fav, Adv, Hold (see rev. side)

Other

Members

Refer To

- FINAL COUNCIL ACTION
2nd
1st & 2nd
3rd
Consent
V Vote
DRC Vote

CERTIFIED
SEP 04 2012

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED
SEP 04 2012

Ronald D. Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

SEP 13 2012

WITHOUT SIGNATURE
BY OPERATION OF LAW



CITY COUNCIL  
ATLANTA, GEORGIA

**12-R-1061**

**AN AMENDED RESOLUTION BY  
CITY UTILITIES COMMITTEE**

**A RESOLUTION TO AUTHORIZE THE MAYOR OR HIS DESIGNEE TO ENTER INTO A CONSENT AGREEMENT WITH THE PUBLIC SERVICE COMMISSION, STATE OF GEORGIA AND TO AUTHORIZE PAYMENT PURSUANT TO THE CONSENT AGREEMENT IN THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$100,000.00); AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta (“City”) is responsible for operating and maintaining the City’s drinking water and wastewater system (the “System”); and

**WHEREAS**, the City is a municipal corporation, subject to the jurisdiction of the Georgia Utility Facility Protection Act, O.C.G.A. § 25-9-1 *et seq.* (the “Act”); and

**WHEREAS**, the Act imposes various requirements upon the City to locate and mark facilities and to contact the Utility Protection Center before excavating and to avoid damaging facilities of other utilities while excavating among other things; and

**WHEREAS**, the Georgia Public Service Commission (the “Commission”) is authorized to enforce provisions of the Act; and

**WHEREAS**, the Commission received notices of probable violation alleging the City violated the Act in sixty-nine (69) incidents between January 2010 and June 30, 2012 because it failed to contact the Utilities Protection Center before excavating or damaged another utility’s marked facility, among other allegations; and

**WHEREAS**, the Commission has proposed a Consent Agreement attached herewith as “Exhibit A” (“Proposed Consent Agreement”) to resolve these alleged violations; and

**WHEREAS**, the Proposed Consent Agreement shall not constitute an admission of fault or liability; and

**WHEREAS**, the City and the Commission desire to resolve the matter of the alleged violation and it is in the City’s best interest to enter the Proposed Consent Agreement.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES**, that the Mayor or his designee is authorized to execute a consent agreement with



substantially similar terms as the Proposed Consent Agreement and to pay the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) to the Commission to resolve alleged violations of the Act as set forth in the Proposed Consent Agreement.

**BE IT FURTHER RESOLVED**, that the Chief Financial Officer of the City is authorized to remit payment in certified funds in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00) to the Commission pursuant to the Proposed Consent Agreement.

**BE IT FINALLY RESOLVED**, that said payment will be charged to and paid from Fund, Department Organization and Account Number 5051 (Water and Wastewater Revenue Fund) 170201 (DWM Wastewater Treatment) 5750002 (Property/Liquidation) 4310000 (Sanitary Administration).

A true copy,

A handwritten signature in black ink, appearing to be "A. J. [unclear]", written over a horizontal line.

Deputy Municipal Clerk

**ADOPTED** as amended by the Atlanta City Council  
**APPROVED** as per City Charter Section 2-403

**September 04, 2012**  
**September 13, 2012**

**COMMISSIONERS:**

**TIM G. ECHOLS, CHAIRMAN  
CHUCK EATON  
H. DOUG EVERETTSTAN WISE**



**DEBORAH K. FLANNAGAN  
EXECUTIVE DIRECTOR**

**REECE McALISTER  
EXECUTIVE SECRETARY**

# Georgia Public Service Commission

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

244 WASHINGTON STREET, SW  
ATLANTA, GEORGIA 30334-5701

FAX: (404) 656-2341  
www.psc.state.ga.us

## IN THE MATTER OF:

City of Atlanta, Respondent

Docket No. 33494

**PSC CASE NUMBERS: 10-05500, 10-05501, 10-05505, 10-05512,  
10-05537,10-05542, 10-05561, 10-05566, 10-05667, 10-05777,  
10-06177, 11-00935, 11-00936, 11-00937, 11-00939, 11-00940,  
11-00941, 11-00942, 11-00944, 11-00945, 11-00948, 11-00950,  
11-00951, 11-00955, 11-00956, 11-00957, 11-00979, 11-01460,  
11-01461, 11-01462, 11-01463, 11-01471, 11-01479, 11-01609,  
11-01611, 11-01894,11-03060, 12-05737, 12-05738, 12-05739,  
12-05740, 12-05741, 12-05742, 12-05745, 12-05746, 12-05747,  
12-05748, 12-05749, 12-05750, 12-05751, 12-05752, 12-05753,  
12-05754, 12-05755, 12-05756, 12-05757, 12-05758, 12-05759,  
12-05760, 12-05761, 12-05762, 12-05763, 12-05764, 12-05765,  
12-05766, 12-05767, 12-05768, 12-05769, 12-05770 and 12-05830.**

## CONSENT AGREEMENT

The City of Atlanta, a municipal corporation organized under the laws of the State of Georgia ("Respondent"), hereby agrees to presentation of the following proposed disposition of the above named matter to the Georgia Public Service Commission ("Commission"):

## FINDINGS AND CONCLUSIONS:

1.

The Commission has the power and authority to enforce the provisions of the Georgia utility Facility Protection Act ("GUFPA" or "Act"), O.C.G.A. T. 25, Ch. 9 and O.C.G.A. T. 46, Ch. 2 (See especially O.C.G.A. §46-2-91) as well as the Orders and Rules issued/implemented by the Commission.



**2.**

The Commission received Notices of Probable Violation (“NOPVs”), alleging that on various dates, Respondent violated O.C.G.A. T. 25, Ch. 9.

**3.**

The City’s latest **69 violations** alleged in each of the above-styled PSC Case Numbers are all incidents known to the Commission and alleged against the City of Atlanta through June 30, 2012. (See “Exhibit ‘A,’” attached) If proven at Hearing, such incidents are *per se* violations of the statutes and rules implemented by the Commission.

**4.**

Respondent and Staff recommended to the Commission that the NOPVs involved in this Docket No. 33494, be resolved pursuant to the terms set forth in this Consent Agreement.

**AGREEMENTS**

**By signing below,** Respondent hereby agrees that this matter shall be resolved as follows:

**1.**

This Consent Agreement, if approved by the Commission, shall constitute a final resolution of this proceeding. Respondent agrees that it will abide by the terms of this Consent Agreement.

**2.**

Respondent agrees that it will comply with all applicable provisions of the Act.

**3.**

Staff initially recommended a **Five Hundred Eighty Five Thousand Dollars (\$585,000.00)** civil penalty for the violations alleged against Respondent. Through good faith negotiations, Staff recommends and Respondent agrees that it will pay to the Commission in **certified funds**, a *mitigated* civil penalty of **One Hundred Thousand Dollars (\$100,000.00)** within forty-five (45) days after the date of an Order issued by the Commission approving this Consent Agreement. Payment must be forwarded to:



Georgia Public Service Commission  
**Attention: Mr. Will Culbreath, GUFPA Case Manager**  
244 Washington Street, S.W.  
Atlanta, Georgia 30334-5701

**All payment of penalties must be remitted in certified funds.**

**4.**

The *mitigated* civil penalty of **One Hundred Thousand Dollars (\$100,000.00)** is appropriate due Respondent having previously and promptly completed a training program acceptable to the Commission, with ALL CITY EMPLOYEES and ALL SUBCONTRACTORS working therefor, that are directly and/or indirectly involved with the excavation activities of the City's Watershed Department, including but not limited to all administrative personnel responsible for the calling in of locate ticket requests and damage ticket notifications having attended such training. Proof of completion of such training program for these employees and subcontractors was thereafter promptly provided to the Commission.

**5.**

The mitigated civil penalty of **One Hundred Thousand Dollars (\$100,000.00)** is further appropriate because Respondent promptly prepared and provided to Staff, step-by-step written policies and procedures to be followed by all City employees directly and/or indirectly involved with the mechanized excavation activities of the City. Such mitigation is also appropriate given Respondent's commitment to continue working with Staff to further refine these written policies and procedures.

**6.**

Respondent understands that failure to comply with the terms of this Consent Agreement may subject Respondent to additional civil penalties.

**7.**

This Consent Agreement shall not become effective until and unless approved by the Commission.

**8.**

Respondent enters into this Consent Agreement without admission of fault or liability. Nothing in this Consent Agreement is intended by the parties to create or support any private causes of action in favor of any third parties.



**9.**

The undersigned authorized representative of the Respondent 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.

**(Sign, date and mail or fax)**

Consented to this \_\_\_\_\_ day of \_\_\_\_\_ 2012:

**CITY OF ATLANTA**

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**Jo Ann J. Macrina, PE, Commissioner  
Department of Watershed Management**

**PSC CASE NUMBERS: 10-05500, 10-05501, 10-05505, 10-05512, 10-05537, 10-05542, 10-05561, 10-05566, 10-05667, 10-05777, 10-06177, 11-00935, 11-00936, 11-00937, 11-00939, 11-00940, 11-00941, 11-00942, 11-00944, 11-00945, 11-00948, 11-00950, 11-00951, 11-00955, 11-00956, 11-00957, 11-00979, 11-01460, 11-01461, 11-01462, 11-01463, 11-01471, 11-01479, 11-01609, 11-01611, 11-01894, 11-03060, 12-05737, 12-05738, 12-05739, 12-05740, 12-05741, 12-05742, 12-05745, 12-05746, 12-05747, 12-05748, 12-05749, 12-05750, 12-05751, 12-05752, 12-05753, 12-05754, 12-05755, 12-05756, 12-05757, 12-05758, 12-05759, 12-05760, 12-05761, 12-05762, 12-05763, 12-05764, 12-05765, 12-05766, 12-05767, 12-05768, 12-05769, 12-05770 and 12-05830.**

RCS# 2239  
9/04/12  
2:43 PM

Atlanta City Council

CONSENT I

CONSENT AGENDA SECTION I  
9/4/2012  
ADOPT

YEAS: 11  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 3

Y Smith	B Archibong	Y Moore	Y Bond
NV Hall	B Wan	B Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

		09-04-12
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT
1. 12-O-1132	35. 12-R-1086	48. 12-R-1114
2. 12-O-1144	36. 12-R-1087	49. 12-R-1115
3. 12-O-1142	37. 12-R-1088	50. 12-R-1116
4. 12-O-0349	38. 12-R-1104	51. 12-R-1117
5. 12-O-1134	39. 12-R-1105	52. 12-R-1118
6. 12-O-1135	40. 12-R-1106	53. 12-R-1119
7. 12-R-1097	41. 12-R-1107	54. 12-R-1120
8. 12-R-1098	42. 12-R-1108	55. 12-R-1121
9. 10-R-1099	43. 12-R-1109	56. 12-R-1122
10. 12-R-1100	44. 12-R-1110	57. 12-R-1123
11. 12-R-1102	45. 12-R-1111	58. 12-R-1124
12. 11-R-1103	46. 12-R-1112	59. 12-R-1125
13. 12-R-1130	47. 12-R-1113	60. 12-R-1126
14. 12-R-1057		61. 12-R-1127
15. 12-R-1058		
16. 12-R-1059		
17. 12-R-1060		
18. 12-R-1061		
19. 12-R-1062		
20. 12-R-1145		
21. 12-R-1064		
22. 12-R-1065		
23. 12-R-1066		
24. 12-R-1148		
25. 12-R-1073		
26. 12-R-1074		
27. 12-R-1075		
28. 12-R-1076		
29. 12-R-1078		
30. 12-R-1079		
31. 12-R-1082		
32. 12-R-1083		
33. 12-R-1084		
34. 12-R-1085		