

# TENNESSEE PUBLIC UTILITY COMMISSION



Underground Utility Damage Enforcement Board  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, Tennessee 37243

## NOTICE OF HEARING

**IN RE:**                    **SHOW CAUSE PROCEEDING AGAINST  
ALPHA WATER SYSTEMS FOR ALLEGED  
VIOLATIONS OF TENN. CODE ANN. § 65-31-101 et seq.**

**DOCKET NO.:**        **U19-0047 (EB 18-0030)**

**DATE:**                **June 10, 2019**


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Pursuant to the attached *Order Requiring Alpha Water Systems to Appear and Show Cause Why It Should Not Be Found Liable for Violations of Tenn. Code Ann. § 65-31-101 et seq.*, a Hearing has been scheduled in the above-captioned matter for **Monday, July 15, 2019 at 9:30 a.m. (central)**. The Hearing will be held in Hearing Room G.201 located on the Ground Floor of the Andrew Jackson State Office Building, 502 Deaderick Street, Nashville, Tennessee.

The Hearing Officer will conduct this hearing in accordance with the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 *et seq.* Alpha Water Systems shall appear on the aforementioned date and time to show cause why it should not be liable for violations of the Tennessee Underground Utilities Prevention Act, Tenn. Code Ann. §§ 65-31-101 *et seq.* Alpha Water Systems is entitled to be represented by counsel at its own expense.

Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Public Utility Commission ADA-EEO/AA Coordinator/Officer at 502 Deaderick Street, 4<sup>th</sup> Floor, Nashville, Tennessee 37243-0505, 1-800-342-8359 or TDD (615) 741-3930, so that reasonable accommodations can be made.

**FOR THE TENNESSEE UNDERGROUND DAMAGE PREVENTION ENFORCEMENT BOARD:**

  
Monica Smith-Ashford, Hearing Officer

Original in Docket File  
cc: Parties of Record

**BEFORE THE TENNESSEE UNDERGROUND UTILITY DAMAGE  
ENFORCEMENT BOARD**

**NASHVILLE, TENNESSEE**

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|--|---|----------------------------|
| <b>IN RE:</b>                          | ) |                            |
|  | ) |                            |
| <b>SHOW CAUSE PROCEEDING AGAINST</b>   | ) | <b>Docket No. U19-0047</b> |
| <b>ALPHA WATER SYSTEMS FOR ALLEGED</b> | ) | <b>(EB18-0030)</b>         |
| <b>VIOLATIONS OF TENN. CODE ANN.</b>   | ) |                            |
| <b>§ 65-31-101 et seq.</b>             | ) |                            |

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**ORDER REQUIRING ALPHA WATER SYSTEMS TO APPEAR AND SHOW  
CAUSE WHY IT SHOULD NOT BE FOUND LIABLE FOR VIOLATIONS OF TENN.  
CODE ANN. § 65-31-101 et seq.**

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This matter is before the Hearing Officer of the Tennessee Underground Utility Damage Enforcement Board (“UUEDEB”) to determine whether a Show Cause Order should be issued and sanctions imposed against Alpha Water Systems (“Alpha” or “Respondent”) for violation of the Tennessee Underground Utility Damage Prevention Act (“Underground Act”), Tenn. Code Ann. § 65-31-101 *et seq.* For this reason, the UUEDEB Investigative Staff (“Party Staff”) has presented its *Petition* and the Affidavits of Jaclyn Hammons and Stacy Balthrop, attached in support thereof, setting forth the allegations against Alpha. Based thereon, Party Staff requests the issuance of a show cause order requiring Alpha to appear before the Hearing Officer and show cause why it should not be liable for violations of the Underground Act.

**JURISDICTION**

The Hearing Officer is empowered to hear this matter and render an order pursuant to the authority granted in Tenn. Code Ann. § 65-31-116.

### RELEVANT FACTS

1. Alpha is a sole proprietorship owned and operated by Tyler Tackett, with a business address of 304 N. Rose St. Lenoir City, Tennessee, 37771, and a business telephone number of (865) 765-9567.

2. On or about March 7, 2018, Alpha performed excavation at 818 Brookwood Lane, Maryville, Tennessee ("Excavation Site").

3. Alpha utilized mechanized equipment, namely, a trencher, during the excavation performed at the Excavation Site.

4. Respondent did not provide notice prior to excavation at the Excavation Site as required by Tenn. Code Ann. § 65-31-106.

5. During its excavation at the Excavation Site, Respondent damaged an underground facility of Atmos Energy.

6. On or about May 16, 2018, upon presentation of the Complaint Number EB 18-0030 for consideration, the Executive Committee found Respondent in violation of Tenn. Code Ann. § 65-31-106 for failing to provide notice to the one-call service prior to excavation. The Commission further found that the violation was a second violation. An excerpt of the transcript of the Committee meeting addressing the Complaint was attached to the *Petition* as Exhibit 1.

7. As evidence of the above allegations, Party Staff submitted the Affidavit of Jaclyn Hammons which was attached to the *Petition* as Exhibit 2.

8. As evidence of the above allegations, Party Staff submitted the Affidavit of Stacy Balthrop which was attached to the *Petition* as Exhibit 3.

9. On or about June 8, 2018, the Committee issued a citation which was sent via U.S. Mail to Alpha for violation of Tenn. Code Ann. § 65-31-106 (failing to provide notice to the one-call service prior to excavation) and requiring completion of a compliance training course by Tyler Tackett. Further, as the violation was a second violation, the Citation assessed a Civil Penalty of Six Hundred Twenty Five and 00/100 Dollars (\$625). A copy of the Citation was attached to the *Petition* as Exhibit 4.

10. More than thirty (30) days have passed since the issuance of the Citation to Alpha. Neither Tyler Tackett, nor any other person on behalf of Alpha, has completed the compliance training course as of the date of the filing of the *Petition*. Further, the Civil Penalty that was assessed has not been paid.

#### **ALLEGED VIOLATIONS OF STATE LAW**

The following actions alleged in the *Petition* and the Affidavits of Jaclyn Hammons and Stacy Balthrop to have been performed by Alpha constitute violations of state law:

A. Alpha failed to provide notice of intent to excavate or demolish in violation of Tenn. Code Ann. § 65-31-106.

#### **COUNT 1:**

Each excavator is required to provide notice of intent to excavate or demolish as required by Tenn. Code Ann. § 65-31-106, which states in pertinent part:

(a) Except as provided in § 65-31-109, before beginning any excavation or demolition operation described in § 65-31-104, other than an impending emergency as defined in § 65-31-102, each person responsible for such excavation or demolition shall serve written, telephonic or e-mail notice of intent to excavate or demolish at least three (3) working days prior to the actual date of excavation or demolition, but not more than ten (10) full working days prior to such time, unless a different period has been agreed

to in writing by the person responsible for the excavation or demolition and the operator or designated representative.<sup>1</sup>

B. Alpha failed to complete a course of training concerning compliance with the Underground Act in violation of Tenn. Code Ann. § 65-31-112.

**COUNT 2:**

Alpha, by and through Tyler Tackett, has failed to complete a course of training concerning compliance with the Underground Act in violation of Tenn. Code Ann. § 65-31-112(a)(1), which states, in pertinent part:

(1) For a first violation, the violator shall complete a course of training concerning compliance with this chapter as determined by the executive committee.<sup>2</sup>

C. Alpha failed to pay the Civil Penalty assessed by the Executive Committee in the amount of \$625 in violation of Tenn. Code Ann. § 65-31-112.

**COUNT 3:**

Alpha, by and through Tyler Tackett, has failed to pay the Civil Penalty assessed by the Executive Committee for a second violation of the Underground Act pursuant to Tenn. Code Ann. § 65-31-112 (a)(2), which states, in pertinent part:

For a second or subsequent violation, the violator shall complete a course of training concerning compliance with this chapter as determined by the executive committee or pay a civil penalty in an amount set by the executive committee, not to exceed two thousand five hundred dollars (\$2,500) per incident, or both.<sup>3</sup>

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<sup>1</sup> Tenn. Code Ann. § 65-31-106 (2015).

<sup>2</sup> Tenn. Code Ann. § 65-31-112(a)(1) (2015).

<sup>3</sup> Tenn. Code Ann. § 65-31-112(a)(2) (2015).

**BASED UPON THE FOREGOING INFORMATION**, as presented by the Party Staff and filed in the docket file, the Hearing Officer, acting pursuant to and within the scope of the Hearing Officer's authority granted under Tenn. Code Ann. § 65-31-116, hereby determines that Alpha Water Systems should be required to appear and show cause why it should not be found in violation of state law and the Hearing Officer should not immediately impose civil penalties and sanctions to the maximum extent allowed by law.

**BE IT THEREFORE ORDERED THAT:**

Alpha Water Systems is hereby ordered and shall appear before the Hearing Officer of the Tennessee Underground Damage Prevention Enforcement Board on **July 15, 2019 at 9:30 a.m. (CDT)** to show cause why the Hearing Officer should not proceed to take action against Alpha Water Systems for the unlawful actions and omissions alleged in the *Petition*.

The Show Cause Hearing in these proceedings will commence promptly, as noted above, in **Hearing Room G.201**, located on the ground floor of the **Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, Tennessee**. Participants with disabilities who require special accommodations or alternate communications formats should contact the Tennessee Public Utility Commission ADA-EEO/AA Coordinator/Officer at 502 Deaderick Street, 4<sup>th</sup> Floor, Nashville, Tennessee 37243-0505, 1-800-342-8359 or TDD (615) 741-3930, so that reasonable accommodations can be made.

  
Monica Smith-Ashford, Hearing Officer