

C.W. Matthews vs Windstream

CSSF T - 0008 - 00 (534)

Peach County.

Step - I
closed

05/22/2014

Joseph, Shajan

From: McEver, Alan <Alan.McEver@windstream.com>
Sent: Thursday, May 22, 2014 1:19 PM
To: Joseph, Shajan; Gooch, Carl
Cc: Upkins, Lee
Subject: RE: CSSFT-0008-00(534) ; Peach County - Utility Delay
Attachments: Roundabout Work Plan.doc

Yes, this issue has been resolved. Our facilities have been relocated and cutover which was completed on 5/2/14 and the contractor is presently working on this project. Attached is our response that we sent to the contractor.

If you have any questions, please let me know.

Thanks,

Alan McEver
OSP Engineer II
WINDSTREAM COMMUNICATIONS
2031 Hwy41 South
Perry, Ga 31069
Ofc: 478-988-4042 Cell: 478-262-1106
alan.mcever@windstream.com

From: Joseph, Shajan [mailto:sjoseph@dot.ga.gov]
Sent: Thursday, May 22, 2014 12:26 PM
To: Gooch, Carl; McEver, Alan
Cc: Upkins, Lee
Subject: RE: CSSFT-0008-00(534) ; Peach County - Utility Delay

Dear Carl Gooch and Alan McEver:

I am just checking the status of the below e-mail.

Did you completely resolved this issue?

or

Did you send an official reply back to the contractor with a detail response to eliminate the delay or how is future work plans?

Please forward me the correspondence which you may already forwarded to the contractor, so that I can complete my Escalation Step 1 process or advise the contractor to proceed with Escalation Process Step 2.

If you have any questions or need any additional information, please let me know.

Thanks.

Shajan P. Joseph, P.E.
State Utilities Construction Engineer
Georgia Department of Transportation
Office of Utilities – 10th Floor[1014]
600 West Peachtree St, NW
Atlanta, GA - 30308
Phone: (404)347-0604
Cell: (404)272-9264
E-mail: sjoseph@dot.ga.gov



From: Joseph, Shajan
Sent: Monday, April 07, 2014 2:50 PM
To: 'carl.gooch@windstream.com!'; 'alan.mcever@windstream.com'
Cc: Gore, Kerry; Peek, Tyler; Robinson, Ken; Minor, Sheldon; Collins, Kraig; Ford, Keenan; Upkins, Lee; Bolden, Mike
Subject: CSSFT-0008-00(534) ; Peach County - Utility Delay

Dear Carl Gooch and Alan McEver:

The Department received a copy of the letter, addressing to Windstream Corporation from C.W. Matthews Contracting Co., Inc. concerning with the issue of the delay in the removal / relocation of your facilities on the Project CSSFT-0008-00(534); Peach County.

The department reminds you to follow the procedure outlined in the Utility Accommodation Policy and Standard Manual. According to the manual, you must respond to this letter within 10 business days. The response shall include a proposal to cure the delay identified by the Department's Contractor. If you require that a utility coordination meeting (due to the complexity of the project) is held to address the issues identified by the Department's Contractor, then your response letter shall include a request to hold a utility coordination

meeting with the Department's Contractor, the District Construction Engineer, and, the District Utilities Engineer for utility delay resolution.

A copy of the page detailing about the procedures to be followed is attached for your quick reference.

If you have any questions or need any additional information, please contact me or District Utilities Engineer.

Thanks.

Shajan P. Joseph, P.E.
State Utilities Construction Engineer
Georgia Department of Transportation
Office of Utilities – 10th Floor[1014]
600 West Peachtree St, NW
Atlanta, GA - 30308
Phone: (404)347-0604
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“4.4.C Procedures for Utility Damages or Delay Costs - If the Utility fails to provide a Work Plan or fails to complete the removal, relocation, or adjustment of its facilities in accordance with the Work Plan or Revised Work Plan approved by the Department, then the Utility may be liable to the Department or its Contractor for delay costs and damages incurred by the Department or its Contractor which grow out of the failure of the Utility to carry out and complete its work accordingly. However, the following escalation process shall be utilized by the Department, its Contractor, and the Utility to resolve such disputes regarding damages or delays prior to requests for payment or such claims being brought forth to a mediation board hearing for resolution as prescribed in O.C.G.A. § 32-6-171 and GDOT Board Rule 672-19.

Escalation Process Step 1 - It shall be the Contractor's responsibility to coordinate and track each Utilities progress in relation to the Work Plan or Revised Work Plan previously approved by the Department. Once the Contractor has determined that the Utilities work progress is at

least 20% behind the approved Work Plan, the Contractor will notify the Utility and the Department of such apparent delay through written correspondence. Such written correspondence shall detail the delay in question and request the Utility to submit a proposal on how the Utility plans to rectify such delay and maintain the project's schedule prescribed by the previously approved Work Plan. The Utility will respond to this letter within 10 business days. The response shall include a proposal to cure the delay identified by the Department's Contractor. In some cases, the complexity of the project may require that a utility coordination meeting be held to address the issues identified by the Department's Contractor. If the Utility determines that this is the case, then the Utility's response letter shall include a request to hold a utility coordination meeting with the Department's Contractor, the District Construction Engineer, and, the District Utilities Engineer for utility delay resolution. If any changes are made to the Utility's Work Plan, such revisions shall adhere to Section 4.4.B. If the utility delay dispute cannot be resolved through the coordination efforts described above after 20 business days from the date provided in the Contractor's original written correspondence; the said dispute shall escalate to the State Construction Engineer for further consideration."

The Georgia DOT Teens in the Driver Seat initiative is a peer-to-peer program that educates teens and parents on the dangers of distracted driving, delivers safe driving messages, and helps prevent teens from becoming a statistic. Car crashes are the number one killer of teenagers in America. Almost 6,000 teens die every year in preventable car crashes, which means a teenage driver dies every 90 minutes. Help to drive down these numbers. Visit <http://www.t-driver.com/whatyoucando/get-started/gainfo/> to get more information on teen driving; visit us at <http://www.dot.ga.gov>; or follow us on <http://www.facebook.com/GeorgiaDOT> and <http://twitter.com/gadepoftrans>.

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C. W. MATTHEWS CONTRACTING CO., INC.

DRAWER 970

MARIETTA, GEORGIA 30061

TELEPHONE (770) 422-7520

FAX (770) 422-1068

April 21, 2014

Certified Mail: 7100 3308 7234 1001 3764

Mr. Carl Gooch
Windstream Corporation
750 North Jefferson Street
Milledgeville, GA 31061

RE: CWM Job No. 2024 – Roundabout at SR 247 Connector and John E. Sullivan
Road/Walker Road
GDOT Project No. CSSFT-0008-00(534) - Peach County
P. I. No. 0008534
Bid Control No. 30519
Windstream – Escalation Process Step 1

Dear Mr. Gooch:

C. W. Matthews Contracting Company, Inc. (CWM) has received the e-mail response of your Mr. Alan McEver to our Notice of Escalation dated April 7, 2014 which is hereto attached as Exhibit E.

Upon receiving the response of Windstream, I circulated the same to the CWM project management. Our project management generally finds Windstream's response acceptable; however, CWM reminds Windstream that the construction schedule that was articulated to Windstream on February 27, 2014 prevails.

CWM is attempting to perform per schedule, and facilities of Windstream pose direct conflict to that schedule. As per the Notice of Escalation, CWM expects Windstream to remedy these direct conflicts immediately. Please consult our Project Manager, Mr. Alex Dyer toward immediate resolution of the conflicts that constrain the installations of proposed storm drainage and the grading of proposed ditches. Mr. Dyer can be contacted at 404-625-2225 toward the identification of direct conflicts and immediate resolution of the same. As of this date, direct conflicts preclude installation of Storm Drain A-2/A-3 and Storm Drain K-1/K-2.

Again, please be further advised that CWM scheduled its operations in good faith following the jobsite meeting of February 27, 2014 and assumed that delinquent facility owners/operators would remedy delays posed to proposed construction by March 31, 2014. The delinquency of Windstream has put its own infrastructure at risk of damage as it has forced the invasive operations of CWM to occur in close proximity to the pre-existing facilities of Windstream. CWM will continue its usual effort to avoid damage of utility facilities; however,

CWM will not assume responsibility for damage to the pre-existing conflicting facilities of Windstream and will deny payment of any and all claims for recovery of damage to such facilities. CWM will not assume responsibility for any costs associated with the adjustments of pre-existing facilities to accommodate the proposed construction even if these pre-existing facilities are scheduled for retirement.

Should you have questions regarding the preceding contents, please contact and so inquire of me.

Sincerely,



C. Allen Scott

Worksite Utility Coordination Supervisor

cc: 2024 Time Extension File
Frank Crumbley
Kevin Eubanks
Bill Holle
Alex Dyer
Sheldon Fram
Kerry Gore
Kraig Collins

Attachments:

1. Exhibit E – Response of Windstream to Escalation Step 1

EXHIBIT E
RESPONSE
OF
WINDSTREAM
TO
ESCALATION PROCESS STEP 1

- 1) All boring, crossing and paralleling should be completed by Tuesday 4-22-14.
- 2) Placement of 300 feet of buried 600 pair copper cable and 60 fiber optic cable placed by dual trenched beginning at STA.91+85.62 on the South side of Summit Drive paralleling West to the intersection with Walker Road to STA.50+29.00. Then continuing South on the east of Walker Road to STA.49+00.00. Then crossing to the West side of Walker placing 610 feet of buried 300 pair copper cable and 60 fiber optic cable placed by dual trenched and continuing south on the West side of Walker Road to the intersection with S.R.247C, paralleling on the North side of S.R.247C to STA.17+45.00. Then crossing to the South side of S.R.47C. Then place 850 feet of buried 300 pair copper cable and 36 fiber optic cable by dual trenched paralleling S.R.247C to the intersection with John E. Sullivan Road then continuing South paralleling on the West side of John E. Sullivan Road to STA.40+67.00. Then crossing John E. Sullivan Road and ending. This should be completed by Friday 4-25-14. Cutover of these cables will then begin as soon as placement has been completed.
- 3) Placement of 650 feet of buried 300 pair copper cable by plow method beginning at STA.49+00.00 on the East side of Walker Road paralleling South to the intersection with S.R.247C then paralleling East on the North side of S.R.247C to STA.24+47.00. Then crossing S.R.247C and ending. This should be completed by Monday 4-28-14. Cutover of this cable will begin as soon as placement has been completed.
- 4) Placement of 1010 feet of buried 400 pair copper cable by plow method beginning on the South side of Summit Drive beginning at STA.91+85.62, crossing to North side of Summit Drive paralleling West to the intersection with Walker Road. Then continuing North paralleling on the East side of Walker Road to STA.57+41.13. Then crossing to the West side of Walker Road and ending. Then beginning where the 400 pair copper cable ends place 350 feet of buried 100 pair copper cable North paralleling on the West side of Walker Road and ending outside of project limits. This should be completed by 5-1-14. Cutover of these cables will then begin as soon as placement has been completed.
- 5) Cutover of all new cables and abandonment of existing facilities should be completed by Wednesday 5-7-14.
- 6) Note: we currently have one construction crew working on this project and are working toward bringing a second crew to help expedite this process. If so then completion should be by Friday 5-2-14.

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Joseph, Shajan

From: Joseph, Shajan
Sent: Monday, April 07, 2014 2:50 PM
To: 'carl.gooch@windstream.com'; 'alan.mcever@windstream.com'
Cc: Gore, Kerry; Peek, Tyler; Robinson, Ken; Minor, Sheldon; Collins, Kraig; Ford, Keenan; Upkins, Lee; Bolden, Mike
Subject: CSSFT-0008-00(534) ; Peach County - Utility Delay
Attachments: C.W. Matthew's Initial Letter.pdf

Dear Carl Gooch and Alan McEver:

The Department received a copy of the letter, addressing to Windstream Corporation from C.W. Matthews Contracting Co., Inc. concerning with the issue of the delay in the removal / relocation of your facilities on the Project CSSFT-0008-00(534); Peach County.

The department reminds you to follow the procedure outlined in the Utility Accommodation Policy and Standard Manual. According to the manual, you must respond to this letter within 10 business days. The response shall include a proposal to cure the delay identified by the Department's Contractor. If you require that a utility coordination meeting (due to the complexity of the project) is held to address the issues identified by the Department's Contractor, then your response letter shall include a request to hold a utility coordination meeting with the Department's Contractor, the District Construction Engineer, and, the District Utilities Engineer for utility delay resolution.

A copy of the page detailing about the procedures to be followed is attached for your quick reference.

If you have any questions or need any additional information, please contact me or District Utilities Engineer.

Thanks.

Shajan P. Joseph, P.E.
State Utilities Construction Engineer
Georgia Department of Transportation
Office of Utilities – 10th Floor[1014]
600 West Peachtree St, NW
Atlanta, GA - 30308
Phone: (404)347-0604
Cell: (404)272-9264
E-mail: sjoseph@dot.ga.gov



“4.4.C Procedures for Utility Damages or Delay Costs - If the Utility fails to provide a Work Plan or fails to complete the removal, relocation, or adjustment of its facilities in accordance with the Work Plan or Revised Work Plan approved by the Department, then the Utility may be liable to the Department or its Contractor for delay costs and damages incurred by the Department or its Contractor which grow out of the failure of the Utility to carry out and complete its work accordingly. However, the following escalation process shall be utilized by the Department, its Contractor, and the Utility to resolve such disputes regarding damages or delays prior to requests for payment or such claims being brought forth to a mediation board hearing for resolution as prescribed in O.C.G.A. § 32-6-171 and GDOT Board Rule 672-19.

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Joseph, Shajan

From: Gore, Kerry
Sent: Monday, April 07, 2014 2:02 PM
To: Joseph, Shajan; Upkins, Lee
Cc: Bolden, Mike; Robinson, Ken
Subject: FW: 2024 - Escalation Process Step 1
Attachments: Escalation Letter.pdf

FYI

Kerry Gore
District Utilities Engineer
District 3 - Thomaston
115 Transportation Boulevard
Thomaston, GA 30286
(706) 646-7603

From: Allen Scott [mailto:Allens@cwmmatthews.com]
Sent: Monday, April 07, 2014 1:56 PM
To: Carl Gooch (carl.gooch@windstream.com)
Cc: William Holle; Frank Crumbley; Kev (alan.mcever@windstream.com)
Subject: 2024 - Escalation Process Ste

RE: CWM Job No. 2024 - Roundab
GDOT Project No. CSSFT-0008-1
P. I. No. 0008534
Bid Control No. 30519
Windstream

Carl,
I am forwarding this notice of Permit No. 1079872 is based. My conv on this e-mail. Your prompt attention t

Thanks,
C. Allen Scott, Engineer
C. W. Matthews Contracting Company,
P. O. Drawer 970
Marietta, GA 30061
Office: 770-422-7555 (1906)
Cell: 770-377-7585
E-mail: allens@cwmmatthews.com

① allens@
cwmmatthews.com

② carl.gooch@
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alan.mcever
@windstream.com

kwraig collis

keenan bowd

3/3/2014
Carl Pearson
Kerry Gore
Tyler Peck

DCE Ken Robinson

ADCE mimon sheldon

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This original email was sent to the internet for delivery at 07 Apr 2014 13:55:51 -0400

Georgia DOT commits \$7 million per year to an Off-System Safety Improvement Program designed to reduce fatalities and serious injuries on rural roads owned and maintained by local governments throughout Georgia. Thus far in FY2014, GDOT has administered approximately \$6.5 million of federal funds for local assistance in 78 counties. Visit us at <http://www.dot.ga.gov> (Local Government link) or follow us on <http://www.facebook.com/GeorgiaDOT> and <http://twitter.com/gadepthoftrans>.



C. W. MATTHEWS CONTRACTING CO., INC.

DRAWER 970

MARIETTA, GEORGIA 30061

TELEPHONE (770) 422-7520

FAX (770) 422-1068

April 7, 2014

Mr. Carl Gooch
Windstream Corporation
750 North Jefferson Street
Milledgeville, GA 31061

RE: CWM Job No. 2024 – Roundabout at SR 247 Connector and John E. Sullivan
Road/Walker Road
GDOT Project No. CSSFT-0008-00(534) - Peach County
P. I. No. 0008534
Bid Control No. 30519
Windstream – Escalation Process Step 1

Dear Mr. Gooch:

The above referenced project was let to contract by the State of Georgia – Department of Transportation (GDOT) on May 17, 2013 and was subsequently awarded to C. W. Matthews Contracting Company, Inc. (CWM) as lowest reliable bidder on May 31, 2013. On July 8, 2013, construction was authorized to proceed toward a Contract Completion Date of December 31, 2014.

On April 19, 2013, by written instrument, Mr. Kerry Gore, District Utilities Engineer, directed utility facility owners/operators to proceed with the adjustment of facilities in conflict with the proposed construction and to complete such adjustment as per the respective Utility Adjustment Schedule (UAS). A copy of this instrument is hereto attached as Exhibit A. The effective permit for Windstream Corporation was issued under No. 1079872. It should be noted that the UAS (Exhibit B) upon which the permit is based indicated construction layout and clearing as predecessor activities. This same UAS defined a summation of activities that would involve 76 working days from completion of Preliminary Engineering to completion of Splicing or Tie-in Work.

As per Photograph Nos. 2507 and 2508, construction layout from which the right-of-way could be staked was in effect no later than August 7, 2013; thus, this predecessor activity was complete no later than August 7, 2013.

As per Photograph No. 2713, water system adjustments were in process on September 19, 2013. For these adjustments to proceed, clearing and grubbing had to have been completed; thus, this predecessor activity was finished no later than September 19, 2013.

Based upon the preceding information, it was entirely conceivable that the adjustments of Windstream could have completed by no later than January 2014. It should also be noted that on August 27, 2013, Windstream reported to the utility coordination meeting: **“funding for the project has been approved and should not be cause for delayed construction start.”** (Exhibit D)

On February 27, 2014, a jobsite utility coordination meeting was held to discuss delinquent performance toward utility accommodation. Multiple facility owners/operators were invited to this meeting including Windstream. Windstream was represented at this meeting by your Mr. Alan McEver. At this meeting, CWM articulated that the month of March 2014 would be devoted to delinquent utility accommodations and that following this month, the proposed construction would resume.

On April 3, 2014, I inspected the project and discovered that all delinquent utility accommodations had been performed with the exception of Windstream. There was no evidence that Windstream had begun the accommodations which GDOT authorized to proceed on April 19, 2013. There is no record that Windstream attempted to make contact with CWM and advise that remedy of conflicts posed by Windstream would surpass March 31, 2014.

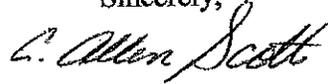
Following my inspection, I spoke with your Mr. Alan McEver and was advised that Windstream should start adjustments during the current week and complete project accommodation by the end of April 2014.

This is to advise you that Windstream is more than 20 percent delinquent in fulfilling Permit No. 1079872. As such, CWM has no option other than initiate Escalation Process Step 1 as per Chapter 4.4.C of the Utility Accommodation Policy and Standards Manual (UAM). Chapter 4.4.C of the UAM is based upon Official Code of Georgia Annotated Section 32-6-171. According to the UAM, Windstream will respond to this letter in 10 business days, and this response will include a proposal to cure the delay to continued construction. This delay is solely presented by the facilities of Windstream.

Please be further advised that CWM scheduled its operations in good faith following the jobsite meeting of February 27, 2014 and assumed that delinquent facility owners/operators would remedy delays posed to proposed construction by March 31, 2014. Such being the case, the proposed construction resumed on April 3, 2014. Should the pre-existing facilities of Windstream be found to conflict with the proposed construction, Windstream will be expected to perform toward resolution of such conflict immediately upon notification. Further, the risks associated with proposed construction in close proximity to pre-existing facilities have been created by the delinquency of Windstream. While CWM will make its usual effort to avoid damage of utility facilities, CWM will not assume responsibility for damage to pre-existing conflicting facilities and will deny payment of any and all claims for recovery of damage to such facilities. CWM will not assume responsibility for any costs associated with the adjustments of pre-existing facilities to accommodate the proposed construction even if these pre-existing facilities are scheduled for retirement.

Should you have questions regarding the preceding contents, please contact and so inquire of me.

Sincerely,



C. Allen Scott

Worksite Utility Coordination Supervisor

cc: 2024 Time Extension File
Frank Crumbley
Kevin Eubanks
Bill Holle
Alex Dyer
Sheldon Fram
Kerry Gore
Kraig Collins

Attachments:

1. Exhibit A – Notice to Proceed by Permit-Final Plans
2. Exhibit B – Utility Adjustment Schedule
3. Exhibit C – Photographs
4. Exhibit D – Utility Coordination Meeting Minutes (August 27, 2013)