



TENNESSEE UNDERGROUND UTILITY DAMAGE ENFORCEMENT BOARD
Meeting on April 09, 2024

MINUTES

The board meeting of the Tennessee Underground Utility Damage Enforcement Board commenced at 10:33 a.m., at the Tennessee Public Utility Commission, 502 Deaderick Street, Ground Floor Conference Room, Nashville, TN, 37243.

Board Members Present:

Kevin Tubberville, Chairman
Wayne Hastings, Vice Chairman (Via Phone)
Earl Bolin (via Phone)
Milton Henderson
Eddie Hood
Jarrod Brackett
Charles Key (via Phone)
Bob Pitts
Tim Settles
Lance Sledge
Steve Raper
Scott Niehaus
Bill Turner
Rob Arnold (Via Phone)

Board Members Not Present:

TPUC Staff Present:

Ryan McGehee, Legal Advisor to the TUUDEB
Aaron Conklin, Legal Advisor to the TPUC staff
Stacy Balthrop, Director, Consumer Services
Brittany Shaw, UUDEB Staff
Bryce Keener, Director, Gas Pipeline Safety

Also Present:

Craig Ingram, TN 811

Current Vacancies:

Interstate Pipeline
Natural Gas
Public Water/Wastewater
Municipal Electric

I. Opening of Meeting and Roll Call

Roll call showed nine (9) members present in the room and four (4) members participating by phone. A physical quorum was met.

II. Review and Adopt Board Meeting Minutes

The Board considered the Minutes of the last meeting on January 9, 2024. The motion to approve the Minutes meeting passed unanimously.

III. Program and Legislative Updates

Brittany Shaw from TPUC gave the program update. At the time of the meeting, 23 complaints were received in the month of February and 35 complaints were received in March. There were five (5) administrative closures in February and 3 administrative closures in March. There were 39 open investigations. The year-to-date total was 77 compared to last year where 122 complaints were received, thus trending 45 behind last year. The total amount of civil penalties assessed since program inception including those dismissed and refunded is \$478,411 and the current fund balance is \$228,286.

PHMSA Grants were submitted on 4/5/2024 and results are expected to be announced in September. PHMSA evaluations were due on 5/31/2024.

By way of outreach: Slayde Warren and Brittany Shaw, TPUC staff attended the 811 Summit in Franklin at the end of March and Slayde, Brittany, and CSD Director Stacy Balthrop were gearing up to attend the Common Ground Alliance (CGA) conference in Colorado the following week.

Samantha Lamon (not present) provided a detailed financial report for the Board's review. There were no questions.

IV. PHMSA Discussion re: Equitable Enforcement

TPUC Gas Safety Director, Bryce Keener gave an update on his data collection from seven (7) operators, namely Atmos Energy, Middle Tennessee Natural Gas, Knoxville Utilities Board (KUB), Piedmont Natural Gas, Memphis Light, Gas, and Water (MLGW), Chattanooga Gas and Jackson Energy Authority (JEA) regarding the reporting of damages to gas facilities by operators. JEA was excluded from data due to higher number of damages. Mr. Keener gathered 2-4 months of data relating to locating practices. Mr. Keener noted that he planned to focus his attention on repeat offenders that are not turned into the Board by the operators and stressing the benefit of self-reporting and holding those who damage facilities accountable. A review of the data found that most of the damages reported were occurring in rural areas where landowners were not calling 811 while doing work on their own land, thus skewing the statewide numbers. With regard to locating, the data revealed that there were issues with tracer wire deterioration and the inability to locate the facilities when marking. For the purposes of enforcement, Mr. Keener stated that the Board should look at those who fail to mark their utilities, generally, and hold those operators accountable.

Mr. Keener initiated further discussion on potential penalties and other enforcement methods for the Board to consider and implement in the future. He stated that his minimum civil penalty was \$100,000 and that he was happy to have discussions on how to get the numbers down for Middle Tennessee. Any decline in numbers would be good for state metrics. He mentioned speaking to Atmos who will be bringing the responsibility for locating their facilities in-house within the next 12-18 months. Three of the six operators on which data was presented have developed plans and put someone in place to aid in future damage prevention. Mr. Keener mentioned reviewing the data more often, quarterly or every six months to assist with resolving the issues.

Board member Bill Turner commented on Mr. Keener's updates stating that the Board was created to address those very issues and that it should be placed on the Board's action list. The issues can likely be solved with legislative changes and Mr. Turner remarked that TPUC may lose PHMSA funding if audited. Mr. Turner further stated that he had discussions with David Appelbaum of PHMSA and suggested trying a solution utilized by Alabama, which engages in "info-only" reporting, meaning operators can self-report, but no action will be taken against them. This practice will create data that can be reviewed and used to solve the problem.

Board member Mr. Eddie Hood remarked that the operators need to come to the Board for solutions because they are losing money from repeated damages. Mr. Hood proposed that operators could have a training session, or some other action taken in-house, to reduce damage which can then be reported to the Board, without the Board having to "run them down". Further discussion of enforcement options ensued. TUUDEB Legal Advisor Ryan McGehee noted that the Board is only able to do what is authorized within the "four corners of the statute" which requires a complaint be made voluntarily. Therefore, operators can be encouraged to report but it is unlikely to occur in a non-mandatory state.

Mr. Jarrod Brackett provided insight on re-engaging with and re-educating the community on the complaint process and the law, in general. Aaron Conklin, Senior Counsel proposed having Board members meet with their respective stakeholders within the areas they represent to discuss the issues. Mr. Keener stated he would follow up with David Appelbaum regarding the enforcement data. Additionally, beginning in January 2025, companies will be required to

complete new damage reports, similar to DIRT reports, that contain additional metrics which will aid in data collection. The conversation was tabled for further discussion at future meetings.

V. Outstanding Civil Penalties Update

Aaron Conklin, Senior Counsel presented a report of violators currently in “Show Cause” status for non-payment of civil penalties. He noted that some payments had been received since the last meeting and that he had engaged in settlement discussions with two repeat violators, namely Taylor Plumbing and American Exscapes, LLC., who had provided some payment and had additional payments on the way. Mr. Bill Turner asked a question regarding the point in time in which a debt becomes “uncollectible”. Mr. Conklin provided that as a government entity, the debt is recoverable until the company is found, and enforcement measures can be taken. Discussions ensued regarding potential enforcement and collection options, which Mr. Conklin noted he would look into.

VI. Complaint Streamlining and Training Update

Mr. Conklin initiated a discussion regarding a desire to improve or streamline the process from complaint to closure, with closure being “enforcement”. Mr. Conklin informed that the new law effective on July 1st, removed the mandatory compliance training requirement for first-time violations and penalties can be imposed at the Committee’s discretion, which allows for an update of the current penalty scale. Mr. Conklin noted there are plans to amend the Citation and allow for mitigated penalty options. He also expressed a desire to implement an on-demand training option with a post-test. Given that the law is not effective until July 1st, these changes would likely not be seen until August or September for violations occurring after July 1st. Craig Ingram from TN 811 concurred with the need for an on-demand training option. Mr. Ingram discussed what it would take to implement this form of training with regard to costs, verification tools, and technology capabilities. A discussion involving anticipated outcomes ensued briefly. Board member Mr. Bobby Pitts asked if these discussions regarding the updates to the process needed to be approved by the Board at this meeting or whether TPUC staff intended to put together additional information to be presented at a later meeting. Mr. Conklin stated there was need to have the Board pre-authorize the concept of making the changes. Mr. Ingram volunteered to prepare a demonstration for the next meeting. Mr. Brackett moved the Board approve the concept of on-demand training which was approved by voice vote.

Mr. Ingram provided a brief update on trainings held by 811. 811 now offers a bilingual option and has held one class thus far. Mr. Ingram further discussed 811’s “Safe Digging Month” activities including social media campaigns and partnership with several others to educate the community. They had eleven (11) different events scheduled across the state throughout the month of April. Mr. Ingram thanked everyone for their involvement and assistance.

VII. Grant Application Review and Approval

Prior to review and voting, Mr. Wayne Hastings disclosed that his utility is a member of the National Utility Contractors Association (NUCA)-East TN (Applicant #3), to which Chairman Tubberville and Mr. Bill Turner concurred in part, as they are members of NUCA as well, but not of the East TN subset. Chairman Tubberville also noted that his company was currently working on a project with Clarksville Gas and Water (Applicant #1). Ms. Shaw then presented the applications. The Board asked for clarification on certain projects and re-capped the discussion from the previous meeting on the cap of \$40,000 for the maximum award amount. Hendersonville Utility District's application needed to be clarified as there was a typo in the final amount to be reimbursed, which the grant committee requested staffing costs be excluded from the final award due to its ineligibility for funding under the grant rules. Mr. Turner asked whether all three applications can be approved with one motion, to which Mr. McGehee indicated the Board may do so in its discretion. Mr. Pitts asked how much was in the fund balance and expressed concern with negating the reserve if all monies were to be awarded for each application. Mr. McGehee noted that the fund is built by civil penalties, the amount of penalties has increased, and that more money would be coming in the future. Jarrod Brackett made a motion to approve all grant applications collectively for a total expenditure of \$108,262 as provided in the grant committee memos. A roll call vote was taken in which Mr. Pitts voted "no" and Mr. Key, who participated in the meeting via telephone, did not respond. The motion passed with 11 votes to approve.

VIII. Future Topics and Meeting

The next Board meeting will be on August 20, 2024, at 10:30am. There was no public comment. A motion to adjourn was made, seconded, and approved. The meeting concluded at 12:19 PM.