



TENNESSEE UNDERGROUND UTILITY DAMAGE ENFORCEMENT BOARD
Meeting on August 20, 2024

MINUTES

The board meeting of the Tennessee Underground Utility Damage Enforcement Board commenced at 10:00 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
Earl Bolin
Milton Henderson
Eddie Hood
Charles Key (via Phone)
Bob Pitts
Tim Settles
Lance Sledge
Jarrod Brackett (via phone)
Steve Raper
Scott Niehaus
Bill Turner
Rob Arnold
Vaughn Charles

TPUC Staff Present:

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

Presenter in Attendance:

Mr. Craig Ingram, TN 811

Current Vacancies:

Interstate Pipeline
Public Water/Wastewater

I. Opening of Meeting and Roll Call

Thirteen (13) members present in the room and two (2) members participating by phone at Roll Call. A physical quorum was met. New Board member Mr. Vaughn Charles was welcomed.

II. Review and Adopt Board Meeting Minutes

The Board considered the Minutes of the last meeting on April 9, 2024. Mr. Brackett requested he be listed as “present” instead of “via phone” and Mr. Bill Turner requested a correction of extra “commas” in two monetary amounts. The motion to approve the Minutes with the aforementioned edits thereafter passed unanimously.

III. Program and Legislative Updates

Ms. Brittany Shaw of the Staff provided a program update. At the time of the meeting, 72 complaints were received in the month of July and 22 complaints were received in August to date. There were six (6) administrative closures in July and eight (8) administrative closures in August, respectively. There were 93 open investigations. The year-to-date total was 261 compared to last year where 215 complaints were received, thus trending 46 ahead of last year. The total amount of civil penalties assessed since program inception including those dismissed and refunded is \$479,786 and the current fund balance is \$278,286.

As part of outreach efforts, Slayde Warren attended the Tennessee Gas Association (TGA) Safety Summit hosted at Montgomery Bell State Park in early August. The next Executive Committee meeting will be September 24, 2024, and the next Board meeting is scheduled for October 29, 2024.

Senior Counsel Aaron Conklin gave an update on enforcement efforts and uncollected penalties. Mr. Conklin reported that payments totaling \$30,000 were collected from two prolific violators and that new insight had become available with regard to pursuing actions against a company’s licensures in order to prompt more cooperation with the program.

Tim Schwarz, Director of External Affairs, updated the Board regarding the expiration of terms for members, Charles Key, Lance Sledge, and Chairman Kevin Tuberville. The Interstate

Pipeline seat also remains vacant. Mr. Schwarz asked for Board approval to send a letter to Speaker Sexton regarding appointments as they have done in the past. There was brief discussion regarding the cause for delay and Mr. Bill Turner thereafter motioned to authorize the sending of the letter, which was seconded and passed.

A financial report from the Commission was provided for the Board's review. There were no questions.

IV. Elections for Seats A, B, C, Chair and Vice Chair

Elections for Seats A, B, C, Chair and Vice Chair were held. Prior to nominations, there were discussions concerning eligibility for designated and undesignated seats among the stakeholder groups represented on the Board.

Nominations for Seat A were taken. Chairman Kevin Tubberville was the sole nominee. A roll call vote was taken and the motion to re-elect Mr. Tubberville passed unanimously with abstention from Chairman Tubberville.

Nominations for seat B were taken. Mr. Eddie Hood was the sole nominee. A roll call vote was taken and the motion to re-elect Mr. Hood passed unanimously with abstention from Mr. Hood.

Nominations for Seat C were taken. Members Wayne Hastings and Milton Henderson Jr. were nominated by Eddie Hood and Steve Raper, respectively. With his nomination, Mr. Raper indicated that he had a letter of support for Mr. Henderson from TGA. Mr. Bill Turner seconded his nomination as well. After a roll call vote, Mr. Wayne Hastings received nine (9) votes to Mr. Henderson's six (6) and Vice Chairman Hastings was re-elected to seat C.

Nominations for Chairman were next, and Chairman Kevin Tubberville was the sole nominee. A motion with a roll call vote was made and passed unanimously with abstention from Chairman Tubberville. Finally, nominations for Vice Chairman were taken and Vice Chairman Wayne Hastings was the sole nominee. No roll call vote was taken. A voice vote with unanimous "ayes" re-elected to Mr. Hastings to his position as Vice Chairman.

V. Discussion About PHMSA Evaluation

Director of Consumer Services Division Stacy Balthrop discussed the new penalty scale adopted by the Executive Committee at the July meetings and directed Board members to reference the memo previously sent for additional information.

Ms. Balthrop reiterated that the Board received a determination of "adequate" by PHMSA for its state damage prevention programming but included an additional warning about inequitable enforcement of gas operations. The Board was asked to respond back to them within sixty (60) days. PHMSA further asked for review of the definition of excavation and its applicability to underwater activities, which UDEB Legal has determined that the current definition does so. Prior to the meeting, TGA provided a letter to the Board expressing their thoughts on

PHMSA's evaluation and comments. Ms. Balthrop indicated that staff will draft a response and consult with the Commission's Gas Pipeline Safety Division and the Chairman for review.

VI. Updates on Equitable Enforcement Efforts

Gas Pipeline Safety Director, Bryce Keener gave an update on his efforts to address PHMSA's concerns with enforcement of gas operators for underground damage. Operators were required to submit a full root cause analysis within thirty (30) days of the damage occurring. To date, approximately fifty (50) reports were received. Bryce anticipated an additional 25-30 by the end of August. Mr. Keener indicated he hoped to have a better understanding of what is being submitted by Labor Day and to be able to do further analysis. Mr. Keener maintains contact with David Appelbaum and Glen Blanton of PHMSA and will be discussing the matter with other states with the same issue.

Mr. Keener indicated he may file complaints with the Board however, if repeated incidents occur, he will aim to take enforcement action under the 49 CFR 192 rules and regulations. Chairman Tubberville expressed appreciation for the work being done in Mr. Keener's office.

The discussion concluded with a plan for UUDEB staff to respond to PHMSA's request within the sixty (60) day timeframe.

VII. TN 811 Presentation on On-Demand Training Module

Mr. Craig Ingram of TN 811 gave a training program update. Since its inception, 28 cancellation fees have been issued. Upon insufficient notice, individuals are given leniency and grace dependent on their situation. Mr. Ingram indicated that fees are assessed about 60% percent of the time and waived 40% of the time.

TN 811 currently offers both live in-person and live online violator trainings via Zoom. The online training program developed as a result of COVID and has remained a staple since that time. In 2023, 18% of trainings were held in person and 83% were online.

With regard to the development of an on-demand option, Mr. Ingram stated that the program they will be using will have the ability to be customized to fit the nature of a root cause of a violation and would serve as more of an individualized solution rather than having to hold a class for multiple people. There is a quizzing functionality which has already been offered during the current trainings, however they are not pass/fail as it has never been ordered by the Executive Committee. It has been used as more of an assessment and an opportunity to review the previously learned material.

Roll out of the base compliance programming is expected by October 1, 2024. According to 811, there is no need to adjust the current training fee at this time. Mr. Ingram requested authorization to collect a cancellation fee when the programming is not completed within the specified amount of time and asked to discontinue Zoom training unless additional circumstances require it. Mr. Ingram further asked for the flexibility to roll out the program and evaluate, then return to discuss a future meeting.

A motion to accept the proposal for implementing the on-demand feature was made and seconded. Chairman Tubberville asked that the Board still reserve the right to adjust the fee structure as necessary with the curriculum. A voice vote was taken and approved with one abstention from Bill Turner.

VIII. Future Topics and Meeting

Chairman Tubberville requested to consider dates for the 2025 Executive Committee meetings at the next meeting and only schedule the Board at this time. Additionally, a request was made by Bill Turner to reschedule the October 29, 2024, meeting due to his absence. After a brief discussion, it was determined that it would cause issues with the availability of the investigators and the meeting room. The Board proceeded with the scheduling of the 2025 dates.

Prior to a motion to adjourn, Mr. Henderson expressed wanting to have a more in-depth discussion regarding the data being collected for PHMSA and what the Board is doing in response. Additionally, Mr. Turner requested to add potential 2025 legislation to the next meeting agenda, especially regarding "dredging".

There was no public comment, and the meeting was adjourned at 12:27pm.