



TENNESSEE UNDERGROUND UTILITY DAMAGE ENFORCEMENT BOARD
Meeting on October 29, 2024

MINUTES

The board meeting of the Tennessee Underground Utility Damage Enforcement Board commenced at 10:44 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 telephone)
Eddie Hood
Bob Pitts
Tim Settles
Lance Sledge
Steve Raper
Scott Niehaus
Bill Turner
Rob Arnold (via telephone)
Vaughn Charles

Board Members Not Present:

Jarrold Brackett
Milton Henderson
Charles Key

TPUC Staff Present:

Ryan McGehee, Legal Advisor to the TUUDEB
Aaron Conklin, Legal Advisor to the TPUC staff
Stacy Balthrop, Director, Consumer Services Division
Slayde Warren, UUDEB Staff

Current Vacancies:

Interstate Pipeline
Public Water/Wastewater

I. Opening of Meeting and Roll Call

Roll call showed twelve (10) members present in the room and two (2) 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 August 20, 2024. Mr. Hood motioned to approve the Minutes which was thereafter seconded and passed.

III. Program Updates

Stacy Balthrop, Director of Consumer Services provided an update on behalf of Bryce Keener, Gas Pipeline Safety Director. By way of update, Mr. Keener is still reviewing damage complains and issuing enforcement letters for damages under the root cause of “locating practices”. This includes, inaccurate marking, failure to mark, no response, incomplete marking, and/or incorrect mapping. Penalties for these damages are issued by the Gas Safety Division under the Federal 192 Code rather than the Board. Penalties are discretionary and often involve negotiations. Bryce is still analyzing data and will share more information in the future. Senior Counsel Aaron Conklin noted that PHMSA asks about 192 code enforcements and that we receive credit for those as well regarding adequacy status.

Next, Ms. Balthrop provided the program update. At the time of the meeting there were 326 complaints received YTD. Complaints received in 2023 totaled 360. Therefore, the program is currently trending within 34 complaints of meeting and exceeding last year’s totals. For the year 2024, we received \$133,128 in PHMSA grant funding. The next meeting will be on 1/7/2025 at the Tennessee Tower. All other meetings will take place in the normal location. The next full Board meetings following 1/7 will take place on 4/22/2025, 8/19/2025, and 10/28/2025, respectively.

Senior Counsel Aaron Conklin gave an update on enforcement efforts and uncollected penalties. There has been no change since the last meeting, and he has been continuing his efforts to locate companies. He has located one company in Missouri and has been in contact with violators regarding the collection of their outstanding settlement payment. Mr. Conklin further noted that he has obtained new addresses for two violator companies and has resent the relevant compliance material. Mr. Bill Turner asked if Staff is doing anything to collect the approximate \$153,000 of outstanding penalties to which Mr. Conklin reiterated that the biggest obstacle to collection efforts is locating the companies who may or may not exist. Further, in the future “Show Cause” proceedings will be filed, but it does not do any good to file cases when you cannot find the companies to properly serve them. Ms. Balthrop noted that when the

companies come back around as repeat violators, Staff has a second opportunity to inform them of previous violations and move towards to compliance. Mr. Conklin noted that Stacy and Slayde have made good contacts with violators and have gotten them scheduled or substituted for compliance training, which is progress.

Mr. Bill Turner noted that no one had been added to the uncollected penalties list since 3/28/2025. Mr. Conklin advised that companies need to be in Show Cause prior to being moved to the list and that no new companies had been added since the last meeting. Brief discussion regarding repeat violators and locating efforts concluded this portion of the agenda.

IV. Request for Reimbursement of Cost and Expenses for FY 2024 Covering July 2023 through June 2024

Samantha Lay from Fiscal provided information regarding the financial report provided to the Committee for FY 2024. She noted that there was an approximate \$72,000 increase in expenses from the previous year likely due to the inclusion of Staff's full salary and benefits over the last twelve (12) months rather than the previously included two (2) months. The UUDEB staff was hired at the end of the fiscal year and only their first two months of employment was included on the last bill. Mrs. Lay also noted that the governor's administration provided 10-15% increases in employee salaries, much higher than the normal 3-5%, in an effort to become more on par with the private sector. The only other increases came from a payment to risk management insurance, required by the State for all agencies, which was increased to 5x the amount for the previous year (approximately \$1,300). Of beneficial note, Mrs. Lay indicated that the reduction in office size has resulted in a \$7,000-\$8,000 decrease in rent, which will be seen in future billing.

Mr. Lance Sledge provided commentary regarding his review of the numbers. Additionally, he expressed needing more time to review the invoices and asked that the Board be provided updates more frequently, either quarterly or bi-annually, to which Mrs. Lay agreed. Mr. Sledge also asked to be provided the annual numbers in order to analyze the trend of expenses.

Mr. Steve Raper asks whether the increases in salary were going to continue or if it was something done all at once. Mrs. Lay indicated that it appeared to be complete per the administration.

Mr. Turner inquired about whether the amount of work has increased along with the expenses, to which Ms. Balthrop noted that the workload has increased, as well as provided a brief overview of Staff duties as it relates to their full-time assignment to the Board. Mr. Eddie Hood moved that the invoice be approved, which was seconded and passed unanimously.

V. Discussion of the Timing of the Renewal and Start of the Board's Grant Application Process for awarding grants under Tenn. Code Ann. § 65-31-117(b)

UUDEB Legal Advisor, Ryan McGehee informed the Board that he provided a memo with dates regarding the start of the Board's grant process, noting that there has been no change to

the process. He further noted that kicking off the process now, earlier than normal, would give more time to get the Word out to increase interest and applications. Chairman Tubberville noted that they previously voted to kick it off earlier in 2023 and received three applications. Mr. Pitt motioned to approve the revised grant timing, which was seconded and unanimously passed.

VI. Continuation of Reimbursement for Cost and Expenses for FY 2024

Mr. Bill Turner indicated that he would like to ask the Board to consider utilizing some of the fund balance to offset the costs to the 811 members/operators which has increased from 2.2 cent per ticket to 3.5 percent per ticket, which is about a 70% increase from the previous year. He referenced the legislation which took effect on July 1, 2024, that allows the Board to do so. He continued by asking the Board to leverage the law to use some of the civil penalty money to offset the costs of the invoice. Mr. Ryan McGehee stated that it was up to the Board to either partially or fully offset the amount billed to 811's members using the fund. In kicking off the grants earlier, checks will come in after the current meeting and the money will continue to accumulate.

Chairman Tubberville asked if Mr. Turner was wanting to offset the amount one-time or a portion for the foreseeable future, to which Mr. Turner replied that 811 was dealing with staffing issues and wages, which was going to result in a "bad budget" year. The current fund balance was approximately \$234,235 and he is wanting to offset the entire amount using the civil penalty fund. Mr. McGehee notes that after offsetting the liabilities from two grant contracts awarded in 2024, the fund balance would still contain \$222,348. Mr. Turner noted that because the Board was not getting a lot of grant proposals that he recommends using the fund to pay the entire invoice amount of \$189,906.61. Mr. Pitts echoed the Chairman's previous question and asked what Mr. Turner's intent was in making the request. Mr. Turner indicated that last year they assessed approximately \$117,000 and that using the fund to pay the entire amount would certainly help 811 budget-wise, but he is otherwise at the discretion of the Board. Mr. Hastings (via phone) and Mr. Raper agreed with Mr. Turner's proposal. Mr. Hood asked how many members 811 currently has and what the current ticket price is, which is approximately 785 members billed at 1.36 a ticket, respectively. 811 produces about a million tickets a year. 2.2 cents of that billing is for reimbursement of the enforcement board. Mr. Conklin clarified that this was a request for this year's invoice only.

Chairman Tubberville inquired as to where the 2.2 cents allocated to the Board was going to be spent, if the fund was used to cover the full invoice. Mr. Turner expressed that they are a non-profit organization and that member fees are based on their budget and if the 2.2 cents or 3.5 cents not there, it will not be added to the ticket price. Mr. Hood verified that Mr. Turner would not be making a profit if the fund balance was used to cover the invoice expenses. Mr. Turner provided that the \$198,000 will not be presented with his budget nor assessed to his members next year. Mr. Tubberville further inquired that if the fund was used this year to cover the costs, but not next years, a substantial increase would still occur and the cost would still be assessed to 811's members. Mr. Turner provided that he made the recommendation based on the change in the law, providing for the use of the fund. While TN 811 aims to be more efficient, revenue is generated by volume and Mr. Turner predicts an increase in volume due to infrastructure work.

Mr. McGehee provided a simple calculation to assist with Mr. Turner's proposal. If the fund balance was used to pay the invoice, the remaining fund balance would be \$32,442, which would necessitate further discussion regarding grant caps and the future applications coming in. Mr. McGehee further clarified that the grant money comes from the fund balance. Mr. Pitts inquired as to how much was spent on the grants the previous year, to which Mr. McGehee estimated approximately \$100,000. There is still a current \$71.450 liability on two contracts. Mr. Tubberville asked Mr. Conklin if the increase in civil penalties has slowed down the amount of checks coming in and Mr. Conklin says that since the effectiveness of the law is in the beginning, we don't really have a good track record as to what the effect is going to be. Presumably, it should rise since all first-time violations are assessed a full civil penalty, with the alternative of training. Further presumed is that people will just want to pay and not deal with training. Therefore, Mr. Conklin expects the collections to rise.

Mr. Hood did not like the idea of only leaving \$32,000 in the bank. Mr. Sledge indicated that he agreed with Mr. Turner's proposal and that if the money is available, then it should be used, despite the limitations it would place on the grant amounts. In speculation, we could get one grant request for a low amount and if the money is not used on the invoice, there would be \$200,000 sitting in the bank. Mr. Raper agreed and suggested maybe grants should not be done this year, as long as things are still done legally. Mr. Raper stated that the higher priority was to help offset member fees. Mr. Pitts made commentary in opposition expressing concern that money would be taken from the grant programming which had been so highly regarded previously. He requested a compromise that did not involve depleting the fund. Chairman Tubberville agreed and suggested the compromised amount be more in line with the 2.2 cents. At a minimum, he was thinking of offsetting the increase from the last invoice and this invoice, which would not take too much off the balance. A brief discussion of that amount ensued, with more suggestions for compromising amounts being made by Mr. Hastings and Mr. Hood. Mr. Hastings motioned that \$100,000 of the fund balance be used to offset the invoice amount, which was seconded, and unanimously passed with one abstention by Mr. Bill Turner.

Mr. McGehee verified with Mrs. Lay that \$122,348 would be left in the fund balance after offsetting grant contract liabilities and the invoice amount. He asked the Board if they were still comfortable with a \$40,000 cap, which the Board agreed they were.

VII. Legislative Update

Director of External Communications, Tim Schwarz provided the legislative update. As of the date of the meeting, there were still two vacancies, namely water/wastewater service providers, and interstate pipelines. With regard to the water/wastewater positions, Tennessee American Water has submitted a name for Lt. Governor McNally's appointment. The Interstate Pipeline appointment belongs to Speaker Sexton and there is no update on that. Four Board members terms have expired but they will continue to serve until addressed by the appointing authority. He hoped that after the elections there would be some action on these items.

Mr. Pitts inquired as to how long the vacancies have existed and Mr. Schwarz noted it has been about a year and a half to two years. The term actually expired in 2021. There was further discussion about the expired terms of several board members and a note to continue working with the Governor and Speaker's office to get the appointments done.

Mr. Tuner noted that he had a TN 811 Board meeting in a couple weeks and that they are not prepared to propose any 2025 legislative changes but will likely have some for 2026.

VIII. Update of Training Program by TN 811

Mr. Bill Tuner gave the training program update on behalf of 811. He indicated that he sent an email prior to the meeting with the training report, with little substantial update. He noted that most people are still opting to do the online training rather than in-person. Following a presentation from Craig Ingram from the last Board meeting on the on-demand training module, they had hoped to have it up and running by October 1st but do to some delays it will not be live until November 8th, 2024. They intend to offer that option to anyone that is currently scheduled to attend. Chairman Tubberville asked if the delay was due to the vendor or other reasons, to which Mr. Turner offered insight.

IX. Discussion of Topics for Further Meetings

Prior to a motion to adjourn, Chairman Tubberville asked that the grant and fiscal update be placed on the next agenda. Mr. Turner asked if a report from Bryce Keener from Gas Safety could be put on the agenda regarding his future plans and sharing of the data collected. There was no public comment. Mr. Pitts moved to adjourn, which was seconded by Mr. Hood and unanimously passed. The meeting concluded at 11:45 am.