



TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
Meeting on May 16, 2018

MINUTES

The board meeting of the Tennessee Underground Damage Enforcement Board was called to order at 10:00 a.m. in the Ground Floor Hearing Room of 502 Deaderick Street, Nashville, Tennessee 37243 by Chairman Kevin Tubberville.

Board Members Present:

Kevin Tubberville, Chairman
Bill Hollin
Eddie Hood
Craig Jensen
Kenneth King
Kevin Kruchinski
Bob Lambert
Scott Niehaus
Bobby Pitts
Bob Lambert
Bill Turner
Steve Raper

Board Member(s) via telephone:

Wayne Hastings, Vice-Chairman
Jonathan Campbell
Kevin Raley
Rick Tunnell

TPUC Staff Present:

Aaron Conklin
Chris Eaton
Ectory Lawless
Ryan McGehee
Tim Schwarz

Chairman Tubberville opened the meeting at 10:00 a.m. Roll-call was taken of the Board members. The Board considered the Minutes of the last meeting of February 14, 2018. Mr. Turner proposed a correction on page 3 to indicate he stated or intended that the presentation he gave covered the beginning of the program to the end of the month. The Minutes were approved, as corrected, on a voice-vote.

Chairman Tubberville reported that PHMSA has determined the Board earned an “adequate” rather than an “inadequate” rating in an audit of the program for compliance with federal requirements. The Chairman thanked the Commission Staff for their efforts and in providing additional information to federal evaluators.

I. January –March 2018 Quarterly Report, Training Schedule and Legislation

Mr. Ryan McGehee provided a summary of information from the quarterly staff report provided to the Board and posted on the website covering January-March 2018 complaints. New complaints filed in 2018 to date included sixteen (16) complaints filed in April and eight (8) complaints in May. Mr. McGehee stated that the next quarterly report should come out sometime in July and will be posted on the Board’s webpage.

Mr. McGehee then introduced Mr. Chris Eaton, Chief Financial Officer for the Tennessee Public Utility Commission. Mr. Eaton stated that the second quarter’s invoice was sent out on March 29th, and was in line with previous invoices. The total for that quarter was \$76,068.45. Mr. Eaton reported there were no drastic changes in any of the percentages. Thus far for the year, going through the second quarter, total expenditures are \$148,000.00. Mr. Eaton projected that the Board was on track to come in at about \$50,000.00 under the projected budget of \$350,000.00 for the fiscal year.

Mr. Eaton reported a balance of \$5,625.00 as the amount of civil penalties as of April. Including \$625.00 from the previous period, the balance is \$6,250.00.

Mr. Turner questioned why the time for Mr. Aaron Conklin had gone from fifteen percent (15%) to twenty-five percent (25%) for the billing quarter. Mr. Eaton stated the increase in

Aaron's time is directly related to the program evolving into a different phase of more contested cases and show-cause hearings. The increase in Mr. Conklin's time is directly related to his work conducted on show-cause and contested case hearings.

Mr. Turner questioned the five percent (5%) billing rate for Mr. Eaton on the quarterly invoice due to his belief Mr. Eaton was absent on medical leave during that time frame. Mr. Eaton responded that the quarter spanned from October 1st until December 31st, and that he was at work until the last week of October when he had surgery. Mr. Eaton was out the first two weeks of November and reported that he worked from home the last two weeks in November and all of December. The additional five percent of work was finished in the third quarter and will appear on the third-quarter billing.

Mr. Turner then asked about Mr. Tracy Stinson, a Commission Staff member that handles Information Technology ("IT") for the Commission and the Board, being billed at twenty percent (20%). Mr. Eaton stated it is anticipated that at some point IT costs will decline. Mr. Eaton reported that Mr. Stinson has been involved in the development and testing of different modules of the program. Testing and development continues to occur during the second quarter of fiscal year 2018.

Mr. Turner then asked about the work study/time study. Mr. Eaton stated the Board is entering different phase of active enforcement, as noted by Mr. Conklin's increased work devoted to the Board. Mr. Eaton stated that when the Commission reaches a point where the Board's program and enforcement activity is stable, and one (1) month is reflective of normalized workload, then it will be the appropriate time to conduct a time study.

Mr. Pitts inquired if there were any legislative needs next session. Bill Turner stated that he was pitching five or six things to the Tennessee 811 board planning session in June, indicating he would bring such matters to the Board's attention if Tennessee 811 felt they should be pursued.

Mr. McGehee reported that he had contacted individual Board members to alert them as to when their terms expire. Mr. Tim Schwarz of the Commission Staff is available for questions both during the meeting or privately if Board members have questions about their status and reappointment. Mr. Tim Schwarz on behalf of the Commission Staff reported that there was one vacancy on the Board representing electric coops. Mr. Schwarz reported he has been in touch with appointing authorities to fill that vacancy and another vacant position for the utility locator industry created by the new legislation. Mr. Turner offered to provide helpful contacts to fill the utility locator position. Mr. Schwarz indicated he had also been working to encourage appointing authorities to be mindful of expiring Board appointments.

Mr. Schwarz also indicated he was working on the upcoming legislative sunset hearing for reauthorizing the Board. The current sunset date for the Board is June 30, 2019.

Mr. Aaron Conklin provided an update on enforcement activities on behalf of the Board. He reported sixteen (16) new complaints, eight (8) in May and twenty-one (21) active cases. Five (5) contested cases are open. One has a pending a resolution. Mr. Conklin discussed various enforcement options available for cases in which violators have been unresponsive. An additional seven (7) cases are being prepared for filing.

Mr. Conklin stated three show-cause cases were recently resolved by obtaining compliance from the violators. Mr. Conklin stated that the enforcement process has been evolving and he along with the Staff are making refinements to bring violators into compliance. Mr. Turner inquired if legislative would be beneficial. Mr. Conklin answered that he was unsure yet and cautioned that each matter, thus far, has been taken on a case by case basis.

An update of the Tennessee 811 training program was provided by Mr. Turner. Mr. Turner reported that since the beginning of 2018, forty-five (45) individuals, representing forty-two (42) organizations have completed training. Three (3) are scheduled for May 30, 2018. Mr. Turner reported that there are thirty-seven (37) individuals representing thirty-three (33) organizations that have not scheduled training and that these may include some of the contested cases Mr. Conklin referred to earlier.

In response to questions about violators that have not scheduled training yet, Chairman Tuberville and Mr. Bob Lambert reported that the Executive Committee had allowed some leniency to scheduling training, especially in the beginning of the program. Ms. Stacy Balthrop of the Commission Staff tracks and contacts the violators to encourage compliance before matters are turned over to Mr. Conklin for legal enforcement. In response to questions concerning open cases from 2016, Mr. McGehee reported that he has been informed that there are no open complaints from 2016 or 2017.

Mr. Tuberville inquired if everyone had time to review the invoice. The motion was made to approve the invoice. The motion was seconded and passed without a no vote or abstention.

II. Schedule and Discuss Future Topics for Next Board Meeting

Mr. Turner requested a proposed budget for the next fiscal year at the next board meeting. Mr. Turner also inquired about some board members' terms that will expire before the next board meeting. Mr. McGehee explained that expiring terms do not prevent Board members from continuing to serve as holdovers. Mr. McGehee announced there will be an officer election

for Chairman and Vice-Chairman at the next meeting. Mr. Turner asked for clarification of how appointments and reappointments are handled. Mr. Tim Schwarz stated that the agency will continue to offer assistance to the appointing authorities.

Mr. Turner inquired if action was needed with respect to the special contract for training that is in effect between the Board and Tennessee 811, given the new legislation specifically allows Tennessee 811 to provide training, subject to the Board and supervision of the Executive Committee. Mr. McGehee stated that no action was needed as the basic terms of the contract itself serves as a memorandum of understanding between the Board and Tennessee 811 and that changing the contract may involve additional input from the State CPO office. Mr. McGehee inquired if the Board desired to take action or otherwise place the matter on the next agenda for a discussion of a new memorandum of understanding for the training program. Mr. Pitts answered no.

The Board meeting was adjourned at 11:10 a.m.