



**TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
EXECUTIVE COMMITTEE MEETING
Meeting on June 28, 2017**

MINUTES

The Executive Committee meeting of the Tennessee Underground Utility Damage Enforcement Board commenced at 10:00 a.m. in the Ground Floor Meeting Room of 500 Deaderick Street, Nashville, Tennessee 37243.

Executive Committee Members Present:

Bob Lambert
Steven Raper, by telephone
Kevin Tubberville, Chairman

TPUC Staff Present:

Stacy Balthrop
Jaclyn Hammons
Slayde Warren
Aaron Conklin
Ryan McGehee
Sharla Dillon

Sharla Dillon opened the meeting, and the Committee considered the Minutes of the meeting of May 24, 2017. There were no corrections, and the Minutes were approved on a voice vote.

Presentation of Investigation of Complaints:

The Committee heard and ruled on the following complaints:

EB16-0062 –

Alleged Violator: Comcast Communications

Complainant: Property Owner

Facility Type: gas

Equipment Used: Ditch Witch

Root Cause: facility was not located or marked

Facts: The property owner found a Comcast employee excavating close to his gas line, but Comcast explained that the excavation was done by a subcontractor, Cable Television Installation and Service, Inc. The CTIS project manager explained that excavation was done without a locate ticket by subcontractor Lance Gibb from Starteck. There was no damage to any utilities, but there was damage to the siding of the house. The excavator is no longer working in the system.

Recommendation: training for Mark Green, project manager with CTIS

Finding: there was a violation; training for Mark Green, project manager with CTIS

EB17-0002 –

Alleged Violator: Tennessee Underground, LLC

Complainant: OSP

Facility Type: cable

Equipment Used: backhoe

Root Cause: no notification to Tennessee 811 before excavating

Facts: Mr. Iacob, site contractor, stated that Tennessee 811 said they could not mark on the property because it was on private land, so they only marked to the street. The cable line was hit approximately ¼ mile off the street, and the damaged line was actually a temporary cable running to the construction trailer. Mr. Iacob was unable to provide the ticket he had called in.

Recommendation: training for Mr. Iacob

Finding: there was a violation; training for Stefan Iacob

EB17-0005 –

Alleged Violator: Johnny Morris, K&M Excavating

Facility Type: gas

Equipment Used: track hoe

Root Cause: no notification made to Tennessee 811 prior to excavation

Facts: Mr. Morris was doing a house demolition project for the city, and no locate was called in.

The Committee discussed the need to stress to contractors that the people doing the excavation are responsible for their own locate tickets, not the person requesting their services.

Finding: there was a violation for failure to contact 811 prior to excavation; training for Johnny Morris

EB17-0007 –

Alleged Violator: Michael Welch

Complainant: Property Owner

Equipment Used: tractor

Root Cause: no notification made to Tennessee 811 prior to excavation

Facts: This complaint appears to be a family/neighbor dispute. The respondent, who shares a driveway with his brother-in-law, explained that he had not done any digging, just moved some gravel with a tractor to repair his driveway. He stated that he does not believe he hit a telecom line. He further stated that he did not think he needed to call Tennessee 811 because he was not doing any digging.

The Committee members discussed the fact that there are a lot of unknowns and too many unanswered questions in this case to find a violation.

Finding: no violation

EB17-0019 –

Alleged Violator: Pauly Vega, Changing Season Property Management

Facility Type: gas

Equipment Used: trencher

Root Cause: failure to use reasonable care in the tolerance/safety zone

Facts: Mr. Vega has admitted responsibility and has paid for damages. He stated that they initially hand dug but then hit the line with the trencher. He further indicated that there were depth issues with the line.

Finding: there was a violation for failure to use reasonable care; training for Pauly Vega

EB17-0024 –

Alleged Violator: Humerick Environment

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: track hoe

Root Cause: failure to use reasonable care in the tolerance zone

Facts: The report shows that the damage was over the tolerance width limit – it was outside the three-foot limit.

Finding: no violation

EB17-0027 –

Alleged Violator: Kirby Excavating, excavator unknown

Complainant: OSP

Facility Type: telecom

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811 prior to excavation

Facts: The response from Kirby Excavating was that someone had borrowed the equipment. Ken Kirby is the company owner; his brother, Vince, responded to the inquiries; Vince Kirby's relationship to the company is unknown.

Finding: there was a violation for failure to give notice to 811 prior to excavation; training for Ken Kirby and Vince Kirby, with the understanding that Vince Kirby's relationship to the company requires further determination

EB17-0047 –

Alleged Violator: McMurray Construction Company, Inc.

Complainant: OSP

Facility Type: cable

Equipment Used: backhoe

Root Cause: excavating/demolishing beyond 15-day expiration

Facts: The company excavated, piled the debris somewhere, and returned to remove the pile, hitting the facility at that time. However, Comcast had indicated the area was "clear – no conflict."

Finding: no violation

EB17-0051 –

Alleged Violator: Rose Grading

Complainant: OSP

Facility Type: cable

Equipment Used: trencher

Root Cause: notification to One-Call was not sufficient

Facts: The line was marked along a fence, so the excavator went to the other side and excavated away from the mark. However, the actual marking was off by 11 feet, and the line was damaged.

Finding: no violation

EB17-0059 –

Alleged Violator: Brent Florida, Brent Florida Landscape Company

Complainant: OSP

Facility Type: cable

Equipment Used: trencher

Root Cause: excavating/demolishing beyond 15-day expiration

Recommendation: training for Mr. Florida

Finding: there was a violation for excavating beyond 15-days; training for Brent Florida

EB17-0079 –

Alleged Violator: Belew Construction

Complainant: OSP

Facility Type: cable

Equipment Used: mini excavator

Root Cause: failure to use reasonable care in the tolerance/safety zone

Facts: The company hand dug to expose the line and used the mechanized equipment to finish the excavation. They noticed that the line had been skinned and notified Comcast. They didn't know if the damage was done with the shovel or mechanized equipment.

The Committee discussed the degree of damage done by a shovel versus mechanized equipment and decided mechanized equipment would have dug the cable up entirely.

Finding: no violation

EB17-0081 –

Alleged Violator: T&E Cable

Complainant: Metro Water Services

Facility Type: sewer

Equipment Used: boring machine

Root Cause: failure to use reasonable care in the tolerance zone

Facts: The 811 ticket indicated “clear-no conflict,” and the company had difficulty determining to whom the line belonged.

The Committee discussed the accuracy of a boring machine.

Recommendation: no violation

Finding: no violation

EB17-0082 –

Alleged Violator: Johnny Jones (carryover complaint from May 24, 2017 meeting)

Complainant: Dyersburg Gas System

Facility Type: gas

Equipment Used: trencher

Root Cause: no notification to Tennessee 811 prior to excavating

Facts: This complaint was presented at the May 24, 2017 Committee meeting, and the Committee postponed a ruling, requesting the TPUC Staff to attempt to obtain photos of the damage. When TPUC Staff contacted Dyersburg Gas System, Dyersburg stated they wanted to withdraw the complaint. Dyersburg had been under the impression that filing the complaint was mandatory – otherwise, they would not have filed a complaint at all.

Finding: no violation; administrative closure

EB17-0090 –

Alleged Violator: Roto Rooter d/b/a Callie Services, LLC

Complainant: OSP

Facility Type: cable

Equipment Used: mini excavator

Root Cause: failure to use reasonable care in the tolerance zone

Facts: This was an emergency sewer situation, and the locate marks were not accurate.

Recommendation: no violation

Finding: no violation

EB17-0092 –

Alleged Violator: John Reaves, Reliable Building Services

Facility Type: gas

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811

Facts: Mr. Reaves was the excavator, and there was a clear violation – locates have to be called in and kept current

Finding: there was a violation for failure to give notice to 811; training for John Reaves and David Widmaier

EB17-0097 –

Alleged Violator: Howard Massengale, Reese Plumbing

Facility Type: cable

Equipment Used: backhoe

Root Cause: failure to use reasonable care in tolerance zone

Recommendation: training for Mr. Massengale

Finding: there was a violation for failure to use reasonable care; training for Howard Massengale

EB17-0099 –

Alleged Violator: Dale Sowders, Pinnacle Electric

Facility Type: cable

Equipment Used: Ditch Witch

Root Cause: facility was not located or marked

Facts: The marks were not discernable, and the locator indicated that his prints or maps did not indicate cables in the area.

Finding: no violation

EB17-0101 –

Alleged Violator: Corey Hicks, Legacy Construction

Facility Type: gas

Equipment Used: backhoe

Root Cause: no notification to Tennessee 811

Recommendation: training for Mr. Hicks

Finding: there was a violation for failure to give notice to 811 prior to excavation; training for Corey Hicks

EB17-0103 –

Alleged Violator: James Bledsoe, Jacobs Construction

Facility Type: gas

Equipment Used: backhoe

Root Cause: failure to use reasonable care in tolerance zone

Facts: The company responded to the complaint by letter, stating that the spotter, the person who was supposed to be watching the shoveling, took a two day pay cut as a result. The entire crew was reprimanded and required to attend a safety class.

Recommendation: training for Mr. Bledsoe

Finding: there was a violation for failure to use reasonable care; training for James Bledsoe

EB17-0105 –

Alleged Violator: Gavin Edwards, East Tennessee Excavating

Facility Type: cable

Root Cause: excavating before the locate ticket was valid

Facts: Mr. Edwards excavated just a few hours after he called in the ticket. He admitted fault and has paid for the damages.

Recommendation: training for Mr. Edwards on a violation

Finding: there was a violation for excavating without a valid 811 ticket; training for Gavin Edwards

Presentation of Tennessee 811 Cost/Fee Request for Training

Ms. Dillon stated that there were no travel expenses, so there would be no presentation.

Topics for Next Executive Committee Meeting

Kevin Tubberville commended, and thanked, the investigators for their thoroughness. Stacy Balthrop stated that since October 2016 there have been 213 complaints filed. There were 17 in May and 17 thus far in June. She stated that approximately 44 citations have been issued thus far, and the next Executive Committee meeting is July 26, 2017.

Bob Lambert asked about the few people who haven't responded in the 30-day window, and Ms. Balthrop responded that she's been in touch with the violators and currently sees no cause for alarm. Mr. Lambert then asked what the next step would be if a violator decides to simply ignore the required training, and Aaron Conklin responded that it would be treated as a contested case and go before a hearing officer for a full prosecution of the case to be conducted. Mr. Conklin stated that this is the required process to get it to an enforcement posture.

Mr. Conklin clarified that the Hearing Officer is required to go to the county where the violation occurred, but he stated that the two cases that have been contested so far involve Nashville-based companies. He stated that a procedure is being discussed for asking the companies if they are willing to come to Nashville or maybe hold the hearing telephonically

in order to keep down costs. Mr. Lambert asked who would be assigned as hearing officer, and Mr. Conklin stated that Monica Ashford is the designated hearing officer for the TPUC.

Mr. Lambert asked if there is a point at which a company can be fined for refusing to participate at all. Ryan McGehee responded that it is not explicit in the code, but there are a couple of options: (1) fine them and turn them over to collections with the Attorney General's office or (2) pursue them in chancery or circuit court. Mr. Lambert stated that he was inquiring because he is concerned that there has been difficulty, in some cases, getting people to return calls relating to the violations, and he wonders if the Board might need to start looking at some language to be introduced as a bill in order to close any possible loopholes. He asked if some background information could be explored and presented to the Committee at a future meeting, and Mr. Conklin responded that it could.

The Executive Committee meeting adjourned at 10:55 a.m.