



**TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
EXECUTIVE COMMITTEE MEETING
Meeting on August 30, 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
Kevin Tubberville, Chairman

Tennessee 811 Members Present:

Bill Turner

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 July 26, 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:

17-0056 –

Alleged Violator: Mark Rouse, M.R. Utilities
Complainant: OSP/Comcast
Equipment Used: borer
Root Cause: failure to use reasonable care
Recommendation: no violation
Finding: no violation

17-0067 –

Alleged Violator: David Shanks, Shanks Properties
Complainant: Atmos Energy
Equipment Used: backhoe
Root Cause: failure to use reasonable care
Recommendation: no violation
Finding: no violation

17-0070 –

Alleged Violator: Cochos Construction
Complainant: OSP/Comcast
Facility Type: cable
Root Cause: failure to use reasonable care in the safety tolerance zone
Recommendation: no violation
Finding: no violation

17-0075 –

Alleged Violator: Bob Catey, Deal and Sons Grading
Complainant: OSP
Facility Type: cable
Equipment Used: backhoe
Root Cause: excavating outside of the requested locate area
Recommendation: training for Mr. Catey
Finding: there was a violation of notice of intent to excavate; training for Bob Catey

17-0080 –

Alleged Violator: Phillip Swords, All Green Irrigation
Complainant: OSP/Comcast
Facility Type: telecom
Equipment Used: backhoe
Root Cause: failure to use reasonable care in the safety tolerance zone
Recommendation: no violation
Finding: no violation

17-0084 –

Alleged Violator: Marvin Rouse, M.R. Utilities

Complainant: OSP/Comcast

Equipment Used: borer

Root Cause: excavating before locate ticket was valid

Facts: The individuals were not contacted after the alleged damage occurred. However, they were able to provide ticket information showing that they were within the valid dates of the locate ticket

Recommendation: no violation

Finding: no violation

17-0088 –

Alleged Violator: Forrest Visser, Precision Plumbing

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811

Recommendation: training for Mr. Visser

Finding: there was a violation of notice of intent to excavate or demolish; training for Forrest Visser

17-0096 –

Alleged Violator: Alexander Simbeck, Superior Energy

Complainant: OSP

Facility Type: telecom

Equipment Used: backhoe

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

Recommendation: no violation

Finding: no violation

17-0100 –

Alleged Violator: Hamilton-Elles, Inc.

Complainant: OSP

Facility Type: cable

Equipment Used: auger

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

Facts: Flintco was the main contractor, and there were two subcontractors. Comcast had marked “clear, no conflict” at the right of way. This company didn’t get a locate ticket for inside the actual project because it was new construction, and there shouldn’t have been any utility lines. There was a temporary line to the job-site trailer, and the Committee expressed concerns about OSP filing complaints on Comcast for temporary services - which would not show up on the maps for the locaters to even be able to identify them in the field. However, the subcontractor should have called in his own locate.

Recommendation: training

Finding: there was a violation of notice of intent to excavate; training for William Elles

17-0102 –

Alleged Violator: Ben Idell, Idell's Landscaping & Excavation

Complainant: Charter/PRG

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811

Recommendation: training for Mr. Idell

Finding: there was a violation of notice of intent to excavate; training for Ben Idell

17-0104 –

Alleged Violator: Cole Fairchild, Prime Homes Services

Complainant: OSP

Facility Type: cable

Equipment Used: trencher

Root Cause: excavating beyond the 15-day expiration

Recommendation: training

Finding: there was a violation of notice of intent to excavate/demolishing beyond the 15-day expiration; training for Cole Fairchild

17-0107 –

Alleged Violator: Flanagan Contracting (excavator unknown)

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: no notification made to Tennessee 811

Facts: Gilliam Bentley stated that the work was time-sensitive, that they typically always call Tennessee 811, and that this was an abnormal and unusual case. However, he did not say what the specific work was, nor did he give the name of the excavator.

Recommendation: training

Finding: there was a violation of notice of intent to excavate; training for Gilliam Bentley or, in the alternative, Mr. Bentley's named excavator

17-0108 –

Alleged Violator: Paul Eakes, SLS Services (Charlie Scott, owner)

Complainant: Atmos Energy

Equipment Used: backhoe

Root Cause: failure to use reasonable care

Facts: This is the second violation for this company - same complainant, supervisor, excavator and root cause. The company stated that the gas line was not properly buried. Paul Eakes is scheduled for training today.

Finding: second violation; civil penalty of \$625; follow-up to confirm that training was completed for the first violation

17-0111 –

Alleged Violator: Jim Renfro, Grainger County Highway Department

Complainant: PRG on behalf of Charter

Facility Type: cable

Equipment Usced: backhoc

Root Cause: no notification made to Tennessee 811 prior to excavating
Recommendation: no violation
Finding: no violation

17-0114 –

Alleged Violator: Robert Smith, Roto-Rooter
Complainant: OSP
Facility Type: cable
Equipment Used: backhoe
Root Cause: failure to use reasonable care in the tolerance and safety zone
Recommendation: no violation
Finding: no violation

17-0122 –

Alleged Violator: William Toth, Eutaw Construction, Inc. (Dak Parker, field supervisor)
Complainant: Atmos Energy
Facility Type: gas
Equipment Used: track hoe
Root Cause: failure to use reasonable care in the safety and tolerance zone
Facts: It appears from pictures and the company response that they were trying to use reasonable care, and they took the damage seriously afterwards.
Recommendation: no violation
Finding: no violation

17-0133 –

Alleged Violator: Devin Lane, M Squared Custom Homes
Complainant: PRG on behalf of Charter
Equipment Used: backhoe
Root Cause: failure to notify Tennessee 811
Facts: This was attributed to clerical error, and the company did not give specifics as to their protocol on who calls in locates.
Recommendation: training
Finding: there was a violation for failure to notify; training for Devin Lane and a person responsible for calling 811 locates

17-0136 –

Alleged Violator: John Cook, Cook Brothers Construction, LLC
Complainant: OSP on behalf of Comcast
Facility Type: telecom
Equipment Used: backhoe
Root Cause: no notification made to Tennessee 811 prior to excavating
Recommendation: training
Finding: there was a violation of failure to give notice; training for John Cook

17-0138 –

Alleged Violator: Robert Hammond, South Texas Innovations
Complainant: OSP on behalf of Comcast
Equipment Used: grader
Root Cause: failure to use reasonable care
Recommendation: no violation
Finding: no violation

17-0139 –

Alleged Violator: Mike Bolton, Bolton & Company
Complainant: Atmos Energy
Equipment Used: backhoe
Root Cause: failure to use reasonable care
Recommendation: training
Finding: there was a violation of failure to use reasonable care; training for Mike Bolton

17-0145 –

Alleged Violator: Jason Curtis, Curtis Fence Company
Complainant: OSP on behalf of Comcast
Facility Type: cable
Equipment Used: posthole digger
Root Cause: failure to use reasonable care in the tolerance zone
Recommendation: no violation
Finding: no violation

17-0155 –

Alleged Violator: Greg White
Complainant: OSP on behalf of Comcast
Facility Type: telecom
Equipment Used: backhoe
Root Cause: no notification made to Tennessee 811 prior to excavating
Facts: The damaged line goes through Mr. White's property outside of any recorded easements and outside of the distance from the right of way that's required. Therefore, Mr. White had no reasonable expectation that the line was in that location and no requirement to have either notified 811 or be defined as excavating. This situation fits none of the situations defined by statute.
Recommendation: no violation
Finding: no violation

17-0157 –

Alleged Violator: Town of Tellico Plains Water (excavator unknown)
Complainant: USIC, locater
Root Cause: reporting a false emergency for late ticket
Facts: Justin Newberry called in the locate, but it is unclear who typically calls in the tickets for this company. Robert Patty, Tellico Plains utilities manager, responded to the

complaint and indicated that the individual that called in the ticket basically made a mistake by calling it in as an emergency. There was some discussion regarding the fact that if the excavator was tying into something that's already been tapped, it might cause some confusion when he called in to dispatch, with dispatch thinking it was an emergency repair.

Recommendation: training

Finding: there was a violation of false emergency locate; training for Justin Newberry (The motion passed 2-0, with one abstention - Bob Lambert abstained on the basis of being personally acquainted with the individuals involved)

17-0165 –

Alleged Violator: Brian Moore, Hawkins & Price

Complainant: OSP on behalf of Comcast

Equipment Used: track hoe

Root Cause: failure to use reasonable care

Recommendation: training for Brian Moore

Finding: there was a violation of failure to use reasonable care; training for Brian Moore (The motion passed 2-0, with one abstention - Kevin Tuberville abstained on the basis that his company does work with Hawkins & Price)

Presentation of Cost/Fee Request by Tennessee 811 for Training of Violators

Bill Turner stated that Tennessee 811 has received its fourth request for off-site training. Shanks Property of Maryville, Case No. EB17-0068, would like to schedule training on September 20th. They have been quoted \$500 for the training fee and mileage reimbursement of \$192.06, for a total of \$692.60. This is consistent with the other three off-site training costs approved by the Board. The fees and costs were unanimously approved on a voice vote.

Mr. Turner reported that so far 66 companies have been mandated training, representing 88 people. Of those, 27 companies have completed training, which represents 39 individuals - with some people bringing extras. Twelve companies have scheduled training, with a total of 17 people, and 14 of those are being trained today. Nineteen companies with a violation have made no contact, and eight companies have made contact but are not yet scheduled. Seven companies have exceeded the 60 days, but they may be in the group that is appealing. He stated that the training is going very well, and so far everyone has been very appreciative and has found the training very valuable.

Mr. Tuberville asked if there has been any feedback other than casual conversation, such as a comment card following training. Mr. Turner responded that they haven't done a survey but that conversations with the people afterwards has shown that attendees have found the training very informative, and they have learned things they didn't realize.

Mr. Lambert expressed his appreciation for how courteous the Tennessee 811 staff has been to the companies, and Mr. Turner responded that he and the 811 staff also appreciate all the kindness and help from the Tennessee Public Utility Commission staff in letting these companies know that we're here to help them.

Staff Update on Enforcement

Stacy Balthrop reported that 22 complaints were received during the month of July, and 24 were received in August. She stated that she has received a few requests for substitutions and that although most requests are granted, she doesn't grant every substitution. She reported that the staff is receiving good feedback also.

Ms. Balthrop reported that four companies are being monitored for failure to communicate with staff and/or respond to their citation. She gave these four companies a deadline of August 23rd to respond in order to discuss compliance, and two have contacted her. One of them has contacted 811 to inquire about training but has not scheduled training yet. Aaron Conklin stated that the statute calls for a contested case to be convened at this point, but he proposes that a show cause be initiated. This would be a process where the company is sent a notice that a complaint has been before the Executive Committee, that their company has been found in violation, and that it's their responsibility to come and show cause why penalties should not be imposed upon them. This process shifts the burden of proof to the company to show that there was no violation. Mr. Conklin stated that this process will get started once it has been determined whether they have scheduled training after final notices have been received.

Mr. Tubberville inquired about the location for the hearings, and Mr. Conklin responded that the statute states that when a contested case is convened, the hearing occurs in the county of damage unless agreed otherwise. Mr. Conklin further stated that staff will try to encourage either a telephonic hearing or basically have a paper hearing where everything is submitted via briefs and affidavits. Staff would also suggest they come to Nashville so it would not add the expense to the Board of going to that county.

Mr. Tubberville asked if there is a differentiation that can be made between a show cause versus a formal contested case, in addition to less expense and more convenience to the Board. Mr. Conklin responded that under the statute they are treated the same, but because of the limited responses received from these companies and the probability that there will be a default situation, a show cause will require a more minimal effort than a full-blown hearing, thus involving less time and effort. Ms. Balthrop pointed out that there are three that have requested a contest, and those are separate from these that are coming.

Topics for Next Executive Committee Meeting

Mr. Tubberville pointed out that the next Executive Committee meeting will follow the full Board meeting, and most likely something will come out of the Board meeting that will need discussion at the Committee meeting.

The Executive Committee meeting adjourned at 11:05 a.m.