



**TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD  
EXECUTIVE COMMITTEE MEETING  
Meeting on October 25, 2017**

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**MINUTES**

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The Executive Committee meeting of the Tennessee Underground Utility Damage Enforcement Board commenced at 10:01 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

*TPUC Staff Present:*

Jaclyn Hammons  
Slayde Warren  
Aaron Conklin  
Ryan McGehee  
Ectory Lawless

*Also Present:*

Bill Turner, Tennessee 811

Ectory Lawless opened the meeting, and the Committee considered the Minutes of the meeting of September 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:

**EB17-0085** –

Alleged Violator: Mr. Mireles, Davery Homes, Mireles Construction

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: bobcat

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

Recommendation: no violation

**Finding:** no violation

**EB17-0091** –

Alleged Violator: Star Construction

Complainant: a property owner

Facility Type: water

Equipment Used: unknown

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

Facts: This is the first of three complaints against this company (see EB17-0129 and EB17-0181).

Recommendation: no violation

**Finding:** no violation

**EB17-0129** –

Alleged Violator: Brent Frederick, Star Construction

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: backhoe

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

Facts: Although a photograph was submitted, no conclusion could be drawn from it. This is the second complaint against this company.

Recommendation: no violation

**Finding:** no violation

**EB17-0181** –

Alleged Violator: Steve Fann, Star Construction

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: backhoe

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

Facts: Star Construction is headquartered in Knoxville but has nearly a dozen satellite offices. This is the third complaint against this company.

Recommendation: training for Star Construction

**Finding:** there was a violation of Star Construction for failure to use reasonable care in the tolerance safety zone; training for Steve Fann

**EB17-0106** –

Alleged Violator: Todd Mills, GCM, Inc.

Complainant: OSP

Equipment Used: backhoe

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

Facts: This is the first of two complaints against this company and excavator (see EB17-0119), but the company had not received the first NAV prior to the second report date. The Committee considered both complaints at the same time.

In EB17-0106, the area was marked; but in EB17-0119 the locate ticket said clear, no conflict. In both cases, concrete had to be cut away in order to do handicap ramps, but in doing so on both projects, the wire or cable came up with the concrete. Pictures were submitted, and it was clear that there was no stone backfill that would indicate to an operator to move slowly.

Recommendation: no violation

**Finding:** no violation

**EB17-0119** –

Alleged Violator: Todd Mills, GCM, Inc.

Complainant: OSP

Equipment Used: backhoe

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

Facts: see EB17-0106

Recommendation: no violation

**Finding:** no violation

**EB17-0128** –

Alleged Violator: Jason Wyres, JV & Sons Excavating

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: backhoe

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

Recommendation: training for Jason Wyres

**Finding:** there was a violation of JV & Sons Excavating for no notice to One Call prior to excavation; training for Jason Wyres

**EB17-0142** –

Alleged Violator: Brad Phillips Landscaping d/b/a Primavera, LLC (excavator unknown)

Complainant: OSP

Equipment Used: trencher

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

Recommendation: training for Brad Phillips and Omar Garcia

**Finding:** there was a violation of Brad Phillips Landscaping d/b/a Primavera, LLC for no notification to One Call prior to excavation; training for Brad Phillips and Omar Garcia

**EB17-0146** –

Alleged Violator: Alpha Water Systems (excavator unknown)  
Complainant: TDS Telecom  
Facility Type: cable  
Equipment Used: trencher  
Root Cause: failure to use reasonable care in the tolerance zone  
Recommendation: first training for Tyler Tackett

**Finding:** there was a violation of Alpha Water Systems for failure to use reasonable care in the safety tolerance zone; training for Tyler Tackett

**EB17-0151** –

Alleged Violator: Regency Home Builders, subcontractor Lawscon, LLC (excavator unknown)

Complainant: OSP  
Equipment Used: backhoe  
Root Cause: no notification made to Tennessee 811 prior to excavation  
Recommendation: training

**Finding:** there was a violation of Lawscon, LLC for no notification to One Call prior to excavation; training for Todd Lawson

**EB17-0153** –

Alleged Violator: B&E Irrigation & Landscaping; supervisor - Lance Farris; excavator - Jamie Jimenez

Complainant: Atmos Energy  
Facility Type: gas  
Root Cause: no notification made to Tennessee 811

Facts: There was no damage reported in this incident; however, the builder did not have a valid locate ticket.

Recommendation: training for Lance Farris

**Finding:** there was a violation of B&E Irrigation & Landscaping for no notification to One Call prior to excavation; training for Lance Farris

**EB17-0159** –

Alleged Violator: Beazer Homes USA, subcontractor SLS Services  
Complainant: a property owner  
Equipment Used: backhoe  
Root Cause: no notification made to Tennessee 811 prior to excavating  
Recommendation: no violation based on the line not being properly marked  
**Finding:** no violation

**EB17-0160** –

Alleged Violator: Jonathan Gaines, City of Memphis Division of Public Works  
Complainant: OSP  
Equipment Used: backhoe  
Root Cause: excavating beyond 15-day expiration  
Recommendation: training for Jimmy Hines

**Finding:** there was a violation of the City of Memphis Division of Public Works for excavation beyond the 15-day locate ticket; training for Jimmy Hines

**EB17-0173** –

Alleged Violator: George Witherspoon, George's Concrete

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: track hoe

Root Cause: no notification to Tennessee 811 prior to excavating

Recommendation: training for George Witherspoon

**Finding:** there was a violation of George's Concrete for no notification to One Call prior to excavation; training for George Witherspoon

**EB17-0178** –

Alleged Violator: David Cross, Southern Land Company, LLC

Complainant: OSP

Equipment Used: backhoe

Root Cause: excavating beyond the 15-day expiration

Recommendation: training for David Cross

**Finding:** there was a violation of Southern Land Company, LLC for excavating beyond the 15-day locate ticket expiration; training for David Cross

**EB17-0185** –

Alleged Violator: Carl Mashburn, Coliman Interiors, Inc.

Equipment Used: backhoe

Root Cause: excavating before locate ticket was valid

Facts: Bob Lambert recused himself because he knows Carl Mashburn.

Recommendation: no violation

**Finding:** no violation; the motion carried 2-0, with one recusal

**EB17-0186** –

Alleged Violator: Michael Rollins, Logan Construction

Complainant: Atmos Energy

Equipment Used: backhoe

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

Recommendation: training for Michael Rollins

**Finding:** there was a violation of Logan Construction for no notification to One Call prior to excavation; training for Michael Rollins

**EB17-0187** –

Alleged Violator: Sessions Paving Company; supervisor - Forest Hill; excavator - Richard Nibblet

Complainant: OSP

Equipment Used: backhoe

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

Recommendation: training for Forest Hill

**Finding:** there was a violation of Sessions Paving Company for no notification made to One Call prior to excavation; training for Forest Hill

**EB17-0188** –

Alleged Violator: Lithko Contracting, LLC (excavator unknown)

Complainant: Atmos Energy

Equipment Used: backhoe

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

Recommendation: training for Dave Breault

**Finding:** there was a violation of Lithko Contracting, LLC for no notification made to One Call prior to excavation; training for Dave Breault

**EB17-0189** –

Alleged Violator: Kirk Pile, MSI Services, Inc.

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: trencher

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

Recommendation: training for Kirk Pile

**Finding:** there was a violation of MSI Services, Inc. for no notification to One Call prior to excavation; training for Kirk Pile

**EB17-0206** –

Alleged Violator: ITG Communications (excavator unknown)

Complainant: East Tennessee Natural Gas

Facility Type: gas

Equipment Used: plow

Root Cause: excavating before locate ticket was valid

Recommendation: training

**Finding:** there was a violation of ITG Communications for excavating before the locate ticket was valid; training for Brent Campbell or a field supervisor

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

Bill Turner stated that to date 69 individuals, representing 48 organizations, have gone through training. Twelve of those training sessions have been held at the Tennessee 811 location, and four have been held off-site or at the location determined by the violator. Twelve individuals, representing 11 organizations, were scheduled for training that day. One violator in Jacksboro, Tennessee, has requested off-site training, so Mr. Turner recommended travel reimbursement of 360 miles round trip at \$192.60, plus a \$500 fee for up to five individuals, totaling \$692.60. The cost fee request by Tennessee 811 was unanimously approved on a voice vote.

## Topics for Next Executive Committee Meeting

Aaron Conklin gave an update on compliance. He stated that currently a total of 14 complaints have gone into the contested case phase. Six of those cases are noncompliance cases where the Committee issued citations and the violators have not completed the action required to satisfy the citation but have not contested the citation. One person has contacted the TPUC staff concerning one of those cases, so that case has been held back for further exploration. Eight cases have actively sent in a notice of contest, and three of those are currently set for a December 12, 2017 hearing. Because of a room scheduling conflict, the tentative new date is December 11, 2017, but only one person has confirmed for that date. There are three cases at the warning stage which are approaching noncompliance.

Mr. Lambert asked whether the hearings will be held in Nashville and, if so, would it be permissible for Committee members to attend. Ryan McGehee responded that if a case is appealed from the hearing officer level, it would come before the Committee again. He stated that he needed to research that question and would give Mr. Lambert an answer before the December 11, 2017 hearing.

Mr. Lambert asked about the steps involved in a contested case, and Mr. Conklin responded that when a contested case is opened, it goes before a hearing officer. The hearing officer makes a decision, and the person has the opportunity to appeal that decision. The case then comes back before the Executive Committee for the presentation of evidence. The Committee will make a decision based on what is presented at that hearing - a full trial type of case.

Mr. McGehee pointed out that the person might bring a lawyer, and Steve Raper asked if the burden of proof is on the violator. Mr. Conklin responded that it depends on the nature of the case. Where a case is contested by an alleged violator, the burden of proof is actually on the Committee to prove that the violation happened. Where the contested case is based upon noncompliance - where the alleged violator has not satisfied the requirement of a citation and the Committee has, by filing a show cause petition, required the alleged violator to show cause why they should not have an order entered saying that they must complete the action - then the alleged violator has the burden of proof. Mr. Conklin stated that most of the current cases are on the contested route where the Committee will have the burden of proving that the violation happened.

Jaelyn Hammons reported that 21 complaints had been received so far in October and asked the Committee if they would like to cancel the December 13, 2017 meeting due to a low turnaround time following the meeting on November 29, 2017. The Committee agreed to the cancellation. Ms. Hammons gave the following proposed dates for 2018 Executive Committee meetings:

January 10, 2018	July 18, 2018
February 14, 2018	August 15, 2018
March 14, 2018	September 19, 2018
April 18, 2018	October 17, 2018
May 16, 2018	November 14, 2018
June 20, 2018	December 19, 2018

The Executive Committee meeting adjourned at 10:50 a.m.