



**TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD  
EXECUTIVE COMMITTEE MEETING  
Meeting on January 10, 2018**

---

**MINUTES**

---

The Executive Committee meeting of the Tennessee Underground Utility Damage Enforcement Board commenced immediately following the conclusion of the Enforcement Board Meeting, scheduled 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

*TPUC Staff Present:*

Ryan McGehee, legal advisor to the TUUDEB  
Aaron Conklin, legal advisor to the TPUC staff  
Slayde Warren  
Jaclyn Hammons  
Sharla Dillon

*Also Present:*

Bill Turner, Tennessee 811

## Roll Call & Minutes

Sharla Dillon opened the meeting and confirmed that all Executive Committee members were present. The Committee considered the Minutes of the meeting of November 29, 2017. The Minutes were approved as corrected on a voice vote.

### Presentation of Investigation of Complaints:

The Committee heard and ruled on the following complaints:

#### **EB17-0143** –

Alleged Violator: Metro Public Works  
Complainant: David Lutz  
Facility Type: water  
Equipment Used: unknown  
Root Cause: improper locate  
Finding: no violation

#### **EB17-0170** –

Alleged Violator: Hi Tech Utility  
Alleged Excavator: Eddie Diaz  
Complainant: OSP on behalf of Comcast  
Facility Type: cable  
Equipment Used: trencher  
Root Cause: excavating beyond the 15-day expiration  
Finding: High Tech Utility in violation of excavation beyond 15-day expiration of dig ticket and Eddie Diaz ordered to attend training.

#### **EB17-0171** -

Alleged Violator: Smith & Sons Landscaping  
Alleged Excavator: Unknown  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: trencher  
Root Cause: No notification made to Tennessee 811/One-call prior to excavating  
Finding: Smith & Sons Landscaping in violation for failure to provide notice to One-Call prior to excavation and an owner's representative ordered to attend training.

#### **EB17-0177**–

Alleged Violator: South Central Excavating, LLC  
Alleged Excavator: Trey Green  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: backhoe  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: South Central Excavating, LLC in violation of failure to give notice to One-Call prior to excavation and Adam Lynn ordered to attend training

**EB17-0179-**

Alleged Violator: American Fence Company  
Alleged Excavator: Danny Frazier  
Complainant: OSP with Comcast  
Facility Type: Cable  
Equipment Used: auger  
Root Cause: Failure to notify Tennessee 811 prior to excavating  
Finding: American Fence Company in violation of failure to provide notice to One-Call prior to excavation and Danny Frazier ordered to attend training

**EB17-0191 -**

Alleged Violator: Dream Homes  
Alleged excavator: Mr. Dwayne Evans  
Complainant: OSP with Comcast  
Equipment Used: backhoe  
Root Cause: Demolishing beyond 15-day expiration  
Facility Type: Cable  
Finding: Dream Homes, Inc. in violation of excavating beyond the 15-day expiration of the dig ticket and Dwayne Evans ordered to attend training.

**EB17-0192**

Alleged Violator: Scott Contractors  
Alleged Excavator: Gary Rapp  
Complainant: OSP/Comcast  
Facility Type: cable  
Equipment Used: backhoe  
Root Cause: Excavating/demolishing beyond 15-day expiration  
Finding: Scott Contractors in violation of excavation beyond 15-day expiration of dig ticket and Gary Rapp ordered to attend training

**EB17-0195 -**

Alleged Violator: RMC Construction  
Alleged Excavator: Unknown  
Complainant: Atmos Energy  
Equipment Used: backhoe  
Root Cause: no notification made to Tennessee 811 prior to excavating  
Findings: RMC Construction in violation of failure to give notice to One-Call prior to excavation. The Executive Committee also found that this was a second violation and ordered RMC Construction to pay a civil penalty in the amount of \$625.00.

**EB17-0196** –

Alleged Violator: Kirk Lindstrom

Complainant: Atmos Energy

Facility Type: gas

Equipment Used: backhoe

Root Cause: no notification to One Call

Finding: Kirk Lindstrom (no company identified) in violation of failure to give notice to One-Call prior to excavation and Kirk Lindstrom ordered to attend training.

**EB17-0200** –

Alleged Violator: Jose Hernandez

Alleged excavator: Jose Hernandez

Facility Type: cable

Complainant: OSP

Equipment Used: backhoe

Root Cause: Failure to give notice

Finding: Jose Hernandez in violation of failure to give notice to One-Call prior to excavation and Jose Hernandez ordered to attend training.

**EB17-0207** –

Alleged Violator: Triton Construction

Alleged Excavator: Roger Munoz

Complainant: OSP on behalf of Comcast

Facility Type: cable

Root Cause: excavating beyond the 15-day expiration

Finding: Triton Construction in violation of excavation beyond 15-day expiration of dig ticket and Roger Munoz ordered to attend training.

**EB17-0208** –

Alleged Violator: MLG&W

Alleged excavator: unknown

Complainant: OSP on behalf of Comcast

Equipment Used: backhoe

Root Cause: Failure to use reasonable care in a tolerance zone

Finding: No violation

**EB17-0209** –

Alleged Violator: Oropeza Construction

Alleged excavator: Felipe Oropeza

Complainant: OSP on behalf of Comcast

Facility Type: cable

Equipment Used: track hoe

Root Cause: No notification made to Tennessee 811

Finding: Oropeza Construction in violation of failure to give notice to One-Call prior to excavation and Felipe Oropeza ordered to attend training.

**EB17-0210** –

Alleged Violator: Stansell Electric

Alleged excavator: None noted

Complainant: none noted  
Facility Type: none noted  
Equipment Used: none noted  
Root Cause: none noted  
Finding: no violation  
Note: Motion carried 2-0 with one recusal, Kevin Tubberville

**EB17-0211** –

Alleged Violator: Davis H. Elliot Company, Inc.  
Alleged excavator: Nick Bush  
Complainant: Metro Water  
Facility Type: water  
Equipment Used: drilling  
Root Cause: Failure to use reasonable care in the safety/tolerance zone  
Finding: no violation

**EB17-0213** –

Alleged Violator: Atchley's Lawn Service  
Alleged excavator: Michael Atchley  
Complainant: Sevier County Utility District  
Facility Type: gas  
Equipment Used: track hoe  
Root Cause: no notification made to Tennessee 811 prior to excavating  
Finding: Atchley's Lawn Service in violation of failure to give notice to One-Call prior to excavation and Michael Atchley ordered to attend training.

**EB17-0214** –

Alleged Violator: MLGW  
Alleged excavator: unknown  
Complainant: OSP  
Facility Type: Cable  
Equipment Used: track hoe  
Root Cause: Failure to use reasonable care in the tolerance/safety zone  
Finding: MLGW did not use reasonable care and ordered to send a representative to attend training.

**EB17-0223** –

Alleged Violator: Stansell Electric  
Alleged excavator: John Parker  
Complainant: OSP  
Facility Type: cable  
Equipment Used: backhoe  
Root Cause: Failure to use reasonable care in the safety/tolerance zone

Finding: Stansell Electric in violation of failure to use reasonable care in the tolerance/safety zone, and as this is a third violation, ordered to pay a civil penalty of \$1,250.00.

**EB17-0224** –

Alleged Violator: Superior Traffic Control  
Alleged excavator: Jay Blumenstock  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: auger  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: Superior Traffic Control in violation of failure to provide notice to One-Call prior to excavation and Jay Blumenstock ordered to attend training.

**EB17-0225** –

Alleged Violator: Ronnie Payne Construction  
Alleged excavator: Ronnie Payne  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: track hoe  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: Ronnie Payne Construction in violation of failure to provide notice to One-call prior to excavation and Ronnie Payne ordered to attend training.

**EB17-0227** –

Alleged Violator: Concrete King  
Alleged excavator: Jason Williams  
Complainant: OSP  
Facility Type: cable  
Equipment Used: backhoe  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: no violation

**EB17-0231** –

Alleged Violator: Nature's Path Pool and Landscape  
Alleged excavator: Manuel Rodriguez  
Complainant: OSP  
Facility Type: cable  
Equipment Used: shovel and backhoe  
Root Cause: Failure to use reasonable care in the safety/tolerance zone  
Finding: no violation

**EB17-0232** –

Alleged Violator: Duggin Construction Company  
Alleged excavator: unknown  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: backhoe  
Root Cause: No notification made to Tennessee 811 prior to excavating

Recommendation: Aaron Duggin to attend training based on expired ticket  
Finding: Duggin Construction Company in violation of excavation beyond the 15-day expiration of the dig ticket and Aaron Duggin ordered to attend training.

**EB17-0234** –

Alleged Violator: Walden Ridge Utility District  
Alleged excavator: Jeff Perkins  
Complainant: OSP  
Facility Type: cable  
Equipment Used: backhoe  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: Walden Ridge Utility District in violation of failure to give notice to One-Call prior to excavation and Jeff Perkins ordered to attend training.

**EB17-0237 – EB17-238** – (motion to consolidate passed)\*

Alleged Violator: First Choice Masonry  
Alleged excavator: Francisco Martinez  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: track hoe  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: First Choice Masonry in violation of failure to give notice to One-Call prior to excavation and Francisco Martinez ordered to attend training.

\*2 instances same day, 2 different locations (same street)

**EB17-0241** –

Alleged Violator: Brown Construction Company  
Alleged excavator: Ryan Coppock  
Complainant: OSP on behalf of Comcast  
Facility Type: cable  
Equipment Used: directional drill  
Root Cause: Failure to use reasonable care  
Finding: no violation

**EB17-0243** –

Alleged Violator: Ed's Plumbing  
Alleged excavator: Ed Flewilling  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: backhoe  
Root Cause: Failure to use reasonable care  
Finding: Ed's Plumbing in violation of failure to use reasonable care in the tolerance/safety zone and Ed Flewilling ordered to attend training.

**EB17-0245** –

Alleged Violator: Hankins & Weems  
Alleged excavator: unknown  
Complainant: Atmos Energy  
Facility Type: gas

Equipment Used: auger  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: Hankins & Weems in violation of failure to give notice to One-call prior to excavation and Eric Hankins ordered to attend training.

**EB17-0247-**

Alleged Violator: Ark Construction Company  
Alleged excavator: Chris Simmons  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: skid loader  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: Ark Construction Company in violation of failure to give notice to One-Call prior to excavation and Tanner Watson ordered to attend training.

**EB17-0249 -**

Alleged Violator: Grade A Construction, LLC  
Alleged excavator: Unknown  
Complainant: Atmos Energy  
Facility Type: gas  
Equipment Used: track hoe  
Root Cause: No notification made to Tennessee 811 prior to excavating  
Finding: No violation

**EB17-0252 -**

Alleged Violator: Complete Contracting Services  
Alleged excavator: Robert Beene  
Complainant: OSP on behalf of Comcast  
Facility Type: cable  
Equipment Used: backhoe  
Root Cause: No notification made to Tennessee 811  
Finding: Complete Contracting Services in violation of failure to give notice to One-Call prior to excavation and Tim Chapman ordered to attend training.

Presentation of Cost/Fee Request by Tennessee 811 for Training of Violators: None

Discussion of future topics for next executive committee meeting (Dillon)

Aaron Conklin gave a brief update on compliance and contested cases. Mr. Conklin states that from November 30, 2017 to January 10, 2018, 17 complaints were received; 14 of those were in the month of December 2017.

On the compliance side, 38 cases have been referred to Legal for enforcement. He further stated that that is a total of cases that have entered either show cause or contested. 9 of the 38 are contested; 3 of that 9 have now been dismissed. Those were cases discussed at the last meeting and were pending at that time. Those orders have now been signed. 2 more have oral agreements and are waiting for an order. One additional case has pending action

required by the respondent, where the respondent is attending training. And three are in the process for a hearing.

Mr. Conklin stated that there are 29 show cause cases. 26 of these are in a holding pattern where the process is being explored for the first 3. The show cause petitions are anticipated to be prepared and filed in approximately the next 30 days. There will be decisions to be made in the future, depending on the reception to this process.

As far as a 2017 update, 267 underground complaints; 121 enforcement actions and of those, 83 are no violation, 14 administrative closures, 136 found in violation and ordered to training, \$5,000 worth of civil penalties assessed, not including the cases considered today. Of the \$5,000 civil penalties, \$2,500 has been received.

Ms. Hammons advised that Stacy Balthrop was in an all-day meeting and wanted to remind everyone that the last quarterly report was e-mailed on October 19. The next one will not be e-mailed but will be available on the website in early February.

Mc. McGehee provided a brief update regarding the special contract for training and advised that the bidding process is required at some point when the contract expires. The Staff was previously empowered to go to the CPOs office and began the process to ensure there was no gap in training, whether the legislation is enacted or not enacted. In discussions with the CPO, they suggested extending the contract as there is impending legislation on this issue. Bill Turner is agreeable to that. Mr. McGehee suggested nine months to a year which ensures there is not any type of a gap, whether the legislation is enacted or not.

Mr. Lambert recommends making the extension of the contract one year to give the maximum amount time to get everything done. Mr. McGehee concurred, stating that everyone is confident about the pending legislation but the outcome is never certain.

Mr. Lambert inquired about the status of the bill and its readiness to be presented. Mr. Turner stated that the bill had been drafted and has been made available. Mr Turner further stated that Senator Ketron has been secured and (we) are working with Pat Marsh on the House side as bill sponsors so it is prepared and moving forward.

Mr. Turner also stated that there was some discussion at the enforcement board meeting about storm water and storm sewer. Mr. Turner has been drafting some language associated with that and has taken it back to the committee working with Rodney Carmichael from County Services. A call was received from their attorneys and is waiting for approval. After which Mr. Turner will present it to the legislative committee, and hopefully to the entire enforcement board. There was one change, and the bill now references "natural flowing drainage" in order to protect us from the exemption with things during the audit process. Mr. Turner stated it would all be on one bill.

Mr. McGehee advised that the next meeting would be February 14, 2018.

The Executive Committee meeting adjourned at 11:04 a.m.