



TENNESSEE UNDERGROUND UTILITY DAMAGE ENFORCEMENT BOARD
Meeting on November 2, 2023

MINUTES

The board meeting of the Tennessee Underground Utility Damage Enforcement Board commenced at 10:07 a.m., at the Tennessee Public Utility Commission, 502 Deaderick Street, Ground Floor Conference Room, Nashville, TN, 37243.

Board Members Present:

Kevin Tubberville, Chairman
Wayne Hastings, Vice Chairman
Earl Bolin
Milton Henderson (via WebEx)
Eddie Hood
Charles Key
Bob Pitts
Tim Settles
Lance Sledge
Bill Turner

Board Members Not Present:

Rob Arnold
Jarrod Brackett
Scott Niehaus
Steve Raper
Doug Wagner

TPUC Staff Present:

Ryan McGehee, Legal Advisor to the TUUDEB
Aaron Conklin, Legal Advisor to the TPUC staff
Stacy Balthrop, Director, Consumer Services
Brittany Shaw (via WebEx)
Tim Schwarz, Director, Communications

Samantha Lamon, Chief Financial Officer
Bryce Keener, Director, Gas Pipeline Safety

Also Present:

Craig Ingram, TN 811
David Appelbaum
Glynn Blanton

Current Vacancies:

Interstate Pipeline
Natural Gas
Public Water/Wastewater
Municipal Electric

I. Opening of Meeting and Roll Call

Roll call showed nine (9) members present in the room and one (1) member participating by WebEx. A physical quorum was met.

II. Review and Adopt Board Meeting Minutes

The Board considered the Minutes of the last meeting on August 31, 2023. The motion to approve the Minutes meeting passed unanimously.

III. Program and Legislative Updates

Brittany Shaw from TPUC gave the program update. At the time of the meeting, 41 complaints were received in the month of October. There were 50 open investigations. The year-to-date total was 295 compared to last year where 275 complaints were received, thus trending 20 ahead of last year. There were 3 staff administrative closures for the month of August. The total amount of civil penalties assessed since program inception including those dismissed and refunded is \$417,600 and the current fund balance is \$197,475.

PHMSA grant reports for funding activities were in progress and due at the end of November. No updates regarding outreach efforts.

Samantha Lamon gave the update regarding finances. The invoice for this year for Board expenses totaled approximately \$117,000. A motion to approve the invoice for payment was made and passed after a roll call vote.

Tim Schwarz of TPUC gave an update on vacant positions within the Board. There are currently 2 open seats and Mr. Schwarz is awaiting further communication from the administration regarding re-appointments and new appointments.

Aaron Conklin, Senior Counsel gave an update on the list of persons or entities with outstanding unpaid civil penalties as discussed at the April 25, 2023, meeting. The list was sent

to the board via email. He further informed the Board that the list contains several companies or individuals who have been non-responsive from investigation through compliance and thereafter. Letters have been sent to those with outstanding citations through 2021 and there have been several responses. Overall, progress has been made in the communications with persons and entities on the list. Ms. Shaw noted there have been several civil penalty payments made in the last month with some dating back to citations assessed in 2020. Additional methods of investigation and collection were discussed by several members of the Board.

IV. PHMSA

PHMSA sent a Letter of Adequacy to TPUC regarding program metrics, policies, and practices as it relates to PHMSA standards. David Appelbaum of PHMSA was present and discussed the main points of the letter. Despite being viewed as having a “strong” program regarding the complaint system and the One-Call law, some “deficiencies” were noted. A discussion regarding “equitable enforcement” ensued involving a comparison between complaints filed against excavators, other participants, and locator/operators wherein a disproportionate amount of enforcement activities were taken against excavators and other actors. Mr. Appelbaum noted that PHMSA regulates gas operators only but also examines public facing data collected concerning all utilities.

Data provided that although a quarter of complaints were filed against locator/operators, enforcement activities were disproportionate. Mr. Appelbaum noted that a similar letter had been sent to TPUC in 2020 expressing a need for all states to ramp up on complying with PHMSA standards, but that Tennessee has a history of repeatedly failing to respond to warning letters or addressing the issue. Further, if the issues continue, it could lead to Tennessee receiving a Letter of Inadequacy. Mr. Appelbaum suggested that Tennessee find the solution to the issues raised. Chairman Tubberville expressed that we are still learning and complying with the law as best as we can as written. Discussions about a possible solution included encouraging excavators and other participants to file complaints against gas operators. Bryce Keener, Director of Gas Pipeline Safety commented that the data needed to be looked at to identify the source of the issues and resolve it without having to go the route of enacting a state law. Mr. Milton Henderson, Board member representing TN Natural Gas Distribution, stated that the ability of either a locator or an operator to file a complaint is the premise of law and there’s nothing preventing them from doing so. Vice Chairman Wayne Hastings asked if the data would be available for review and whether requiring operators to self-report monthly and not excavators would be potentially discriminatory. Mr. Keener advised that the data is available on the PHMSA website. He further responded that because we are looking at the data from the locating aspect, it could only fall on the operator and the decision to file a complaint rests on the excavator. Mr. Keener added additional commentary regarding data collection on ticket volume and damages before Chairman Tubberville concluded the discussion.

V. Outstanding Civil Penalties Update

Aaron Conklin, Senior Counsel gave an update regarding the unpaid civil penalties list distributed to the Board prior to the meeting. He specifically mentioned that we now have a contact for Taylor Plumbing, a company with multiple outstanding civil penalties. Mr. Bill Turner asked what happens to outstanding penalties after a certain amount of time and Mr. Conklin relayed advice from the Attorney General regarding the enforcement and collection

procedures, which do not expire. Mr. Conklin further relayed that any decision to write off a bad debt could be brought to the Board but multiple entities, such as the financial department will need to be involved.

VI. Legislative Proposals and Training Program Updates by Tennessee 811

Aaron Conklin presented three items for proposed legislation which were sent to the Board prior to the meeting. The first item is the statutory definition of “emergency”. Currently, there is a distinction between “emergency” and “impending” emergency. The proposal is to have the legislature rewrite the definition to eliminate the difference and make it more concise. There was discussion about whether to keep “impending emergency” as a separate definition and how it would be applicable in each emergent situation. Brittany Shaw from TPUC noted that the recent issues involving the emergency statute involved the language regarding repair or restoration of service, rather than whether the emergency was impending or not.

The next item dealt with revision to the penalty structure. The proposal aims to allow violators to be subject to civil penalties for the first violation, rather than mandatory compliance training, which is currently required under the statute. Any revision to the language would need to leave discretion for the Executive Committee to order training and would allow for those traditionally not subject to civil penalties under the statute to be handled accordingly. The proposal also includes language that will allow investigators to make offers of settlement, which may include an order to training in lieu of full payment of civil penalties. Mr. Conklin noted that these procedural changes would necessitate a change to the Memorandum of Understanding (MOU) between 811 and TPUC and any settlement would be on a case-by-case basis. Vice Chairman asked whether these changes would create a problem with PHMSA who claimed the State was not penalizing enough to which Mr. Conklin responded that they are more concerned about violation count and equitability between the parties who are getting those violations, i.e., operator/locators versus excavators. Milton Henderson noted that if we are discussing making changes to the penalties, we need to discuss how to enforce them as well, which was mentioned in a prior meeting.

Item three involves a revision to the language on how funds from the Underground Damage Prevention Fund can be used. Currently, there are two uses: 1) Helping small utilities come into compliance with the law; and 2) issuing grants for education, outreach, public awareness...etc. Given that only one grant application was received last year, Mr. Conklin looked to other states to see how their funds were being utilized. The revision would involve adding language that allows the Board discretion in the allocation of the funds which could include offsetting the Board costs or otherwise directing the use of the funds elsewhere. Mr. Conklin noted that these changes would require an amendment to the MOU as well. A few Board members asked questions regarding how allocation decisions would be made, and Mr. Conklin reminded them that the focus of the revision would be to allow the Board discretion in general.

Mr. Conklin noted that the Tenn. Code Ann. § 65-31-120 needs to be corrected to update a definition that has been renumbered in Section -102. The addition of a definition in prior legislation caused the renumbering of the definitions, leaving the reference in Section -120 to be incorrect.

Next, Bill Turner discussed potential legislation regarding the extension of locate ticket life. Discussion ensued regarding whether a longer ticket life increases safety and prevents damage to underground utilities. Several questions were raised regarding the difference between 15-day and 30-day tickets, what other states have implemented, and the benefits of keeping ticket life as is. Vice Chairman Hastings noted that a 15-day ticket provides opportunity to have marks refreshed which makes damage less likely. Lance Sledge, a representative of AT&T provided insight on the damage rate amongst various ticket lives based on data collected. Alabama practices were used as a point of reference throughout the discussion. Chairman Tuberville noted that he is in favor of a shorter ticket-life given that it forces excavators to be proactive and aware. Mr. Earl Bolin was in favor of shorter ticket life due to weather and terrain changes and expressed his opinion that extension would be a mistake. Mr. Tim Settles noted that if extension is being discussed, would it also be possible to ensure the locators are going to come out and re-mark the lines during a long-term project? He noted that issues don't arise with marking at the beginning of the project, but rather when it is time for renewal. Mr. Sledge replied that extending ticket life would free up locator resources so that they would then be available to re-mark the lines when requested. Mr. Earl Bolin suggested that there be a separate process for a large project regarding extended ticket life. Discussion on this matter winded down with a plan to revisit during the January 9, 2024, meeting. Mr. Bob Pitts made a motion to approve the previously discussed four legislative amendment items presented by Mr. Conklin which were approved unanimously following a roll-call vote.

Craig Ingram from TN 811 provided the TN 811 training program update reporting that the time from complaint to citation has decreased from 60 to 59. Additionally, 2023's number of individuals trained per month is trending ahead of 2022 since June 2023. Craig shared a story about an excavator with multiple violations who invited to TN 811 to come out and offer training on a voluntary basis in conjunction with Atmos Energy. He estimated there were about 50 to 75 people. The excavator scheduled a future training for the same time next year. Craig was impressed that the group appeared to be taking the training seriously and remained engaged during demonstrations despite a language barrier.

VII. Grant Program Update

Ryan McGehee, Senior Counsel gave the grant program update. During the August meeting, Mr. McGehee proposed posting the grant materials earlier to encourage more people to apply. Regarding grant processes (i.e., renewal, starting, the timing...etc.), Mr. McGehee provided that the format, application, and instructions are still the same, but are being posted earlier. The materials were set to be posted on December 1st. Mr. McGehee sought guidance on the maximum amount of grant funding which is currently set at \$40,000. Chairman Tuberville and Mr. Bob Pitts responded they were in favor of it and a motion was made and approved.

VIII. Future Topics and Meeting

Mr. McGehee requested information from Bill Turner and TN 811 regarding money collected and money allocated to 811 pursuant to an MOU. Mr. McGehee noted the State has not received this information for the last three years. Mr. Turner replied that they have not billed for any of what they have paid to TPUC and will start doing so this year. He notes that

it has been a struggle due to the fiscal years of the State and 811 not being aligned. He further noted that they have had a surplus of money from the last three years and that he would be happy to share that information with the Board.

Before closing, Mr. Turner requested paper copies of the Program Update and Quarterly Report given by TPUC with more financials. Mr. Bob Pitts noted that the Quarterly Report is already emailed, and Chairman Tubberville suggested that instead of printing hard copies, we can put it on the screen in the meeting room.

No public comment was made. Mr. Bob Pitts moved to adjourn with was seconded and passed. The meeting concluded at 12:08pm.