



**TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
EXECUTIVE COMMITTEE MEETING
Meeting on October 18, 2016**

MINUTES

The Executive Committee meeting of the Tennessee Underground Damage Enforcement Board commenced at 12:30 p.m. in the Ground Floor Meeting Room of 502 Deaderick Street, Nashville, Tennessee 37243.

Executive Committee Members Present:

Bob Lambert
Steven Raper
Kevin Tubberville, Chairman

Board Members Present

Wayne Hastings

TRA Staff Present:

Stacy Balthrop
Lisa Cooper
Slayde Warren
Jaclyn Hammons
Kelly Grams
Ryan McGehee
Jim Layman

Stacy Balthrop opened the meeting with an overview of the TRA Consumer Services Division's ("CSD") role in supporting the Executive Committee. She stated that CSD will be responsible for investigating complaints of alleged violations of the Underground Utility

Damage Prevention Act (the "Act"). Ms. Balthrop introduced the investigative team – Slayde Warren and Jaclyn Hammons – and indicated that she is the manager of the Underground Damage Prevention Program. Lisa Cooper is the Chief of CSD.

Ms. Balthrop then presented an overview of the investigative process as outlined in the policies and procedures and stated that the results of the investigation will be provided to the Executive Committee. The Executive Committee will make an enforcement decision which will then be forwarded to the affected party.

Ms. Balthrop presented a format option for future meetings and reminded the committee that complaints cannot be discussed outside of the committee meeting. Mr. Tubberville stated that he thought the form had all the needed information, but he wondered if there should be a separate section for providing the name of the entity or person filing the complaint. There was a discussion about third parties filing the complaint and how the information is getting out to people who aren't in the industry.

Mr. Lambert pointed out that even though the investigation might determine that there was no violation, a utility would still charge the damaging party for the cost of repairs. Ms. Balthrop replied that was not an enforcement issue covered in the Act. Mrs. Cooper stated that the language of the alleged violation notice would include notification that the party may still be responsible for repair costs.

Next, there was a discussion about notification. Mr. Raper pointed out that there is sometimes a delay in realizing there has been a violation, but a complaint will typically come from a customer once a problem has been detected. Mr. Tubberville suggested a pattern might develop which could impact the notification process going forward. He stated that even with best practices accidents will happen, and investigators should gather as much information as possible to make sure the party really did do everything they could to avoid an accident. It will also be up to the Executive Committee to make that determination.

Ms. Balthrop indicated that there will be a lot of information gathering, and some incidents will be more complicated than others to investigate. Mr. Tubberville pointed out that complications definitely arise when you have several tiers of subcontractors and each is pointing a finger at the other. Ms. Balthrop stated that all efforts will be made to determine the responsible party and that investigators will also be educating the parties as they make inquiries.

Mr. Raper asked Mr. Warren about his investigative and educational process, and Mr. Warren indicated that his conversations with the parties have been very in-depth in terms of making sure they are aware of the Act and know who we are and what we do.

Mr. Raper indicated that he knew the process of determining what went wrong will be tough, that the committee will be basing its decisions on information provided to it, and that they will need as much detail as possible. Mr. McGehee pointed out that some of the complaints are going to be cold. Ms. Balthrop stated that the complaint form is long, but every effort was made to be as thorough as possible with information gathering.

Ms. Balthrop then presented the committee with a draft of a penalty scale for the purpose of spurring conversation about fair and consistent applications of penalties. She stated the penalty scale follows the scope of the Act, but the committee does not have to adopt it. The scale would simply serve as a guide to help in fairness and consistency. Mrs. Cooper stated that if the committee veered off the guideline, justification would need to be documented.

There were questions regarding whether the committee will be provided with information on the frequency of violations by a party and whether there will be a recommended penalty provided along with the investigative information. Mrs. Cooper stated that the committee would be provided with a recommendation based on whether it is a first, second or third violation, etc. She stated that the Executive Committee will be provided a packet of information in advance.

Mr. Tubberville had questions regarding companies that have offices in more than one location in the State and how possible multiple violations might be handled. Mr. Lambert stated that it will come down to whether it is the contractor or the operator, so it will be very important to determine who is responsible. Ms. Balthrop responded that tracking mechanisms are being put in place in the database, and it should be fairly easy in some cases to determine who was operating the equipment others will be more difficult. Because there are a lot of possibilities with employee turnover, it will have to be looked at case-by-case. Mrs. Cooper pointed out that the intention is for this process to act as a deterrent, to be rehabilitative, and to reinforce safety so that there will be a decline in actual hits.

Ms. Balthrop stated that the six current complaints may be ready for hearing by January, but she can contact the Executive Committee when something is ready so that there might be a case for hearing if the next Board meeting is scheduled in December.

Mr. Hastings inquired if the sole intent is to penalize the individual operator or if the company could also be penalized if it demonstrates a pattern of noncompliance. Ms. Balthrop responded that this would be a case-by-case issue, but it will ultimately be up to the Executive Committee to assess penalties. Mr. McGehee stated that the Act gives the committee a lot of discretion, so they may want to dig deeper to determine responsibility.

Mr. Hastings asked if the damage prevention form will provide detailed information in the findings and conclusions part. Ms. Cooper indicated that there will be a lot of detail in the investigation report, and Ms. Balthrop stated that there will also be citations to the statute which may be helpful.

Ms. Balthrop stated that committee members can contact her at any time but reminded them that they cannot discuss specific complaint investigations outside of an Executive Committee meeting.

Mr. McGehee reminded the committee members about ethics and conflicts of interest and stated that if they have a personal relationship with someone against whom a complaint has been filed, they need to recuse themselves from the case. He also discussed ex parte communications and stated that committee members, if contacted, are not to discuss with an individual a complaint which has been filed against them. Mr. McGehee further stated that if a committee member has a question about something included in an investigative report, he should not contact the party involved. Mr. Tubberville stated that because he works for and deals with contractors daily, he will have to be very careful about future conversations. Mr. McGehee emphasized that an appeals process could bring a complaint back to the committee later, so members should not even discuss complaints, with anyone or each other, after decisions are made.

Mr. Raper pointed out that he and the company for which he works are members of TAUD, and Mr. Hastings said that is an issue for him as well. Mr. McGehee assured them both that they were okay.

Ms. Balthrop asked if the committee members would like to have just the investigation form or all the background information before the next meeting. The consensus was that the form, which would be provided electronically, would be sufficient.

The Executive Committee meeting adjourned at 1:20 p.m.