



TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
Meeting on October 18, 2016

MINUTES

The board meeting of the Tennessee Underground Damage Enforcement Board was called to order at 10:00 a.m. in the Ground Floor Hearing Room of 502 Deaderick Street, Nashville, Tennessee 37243 by Chairman Kevin Tubberville.

Board Members Present:

Kevin Tubberville, Chairman	Wayne Hastings
Rick Tunnell	Scott Niehaus
Eddie Hood	Kevin Raley
Craig Jensen	Steven Raper
Bob Lambert	Bob Lambert
Kenneth King	Bill Turner
Kevin Kruchinski ¹	

Board Member(s) absent:

Bill Hollin
Bobby Pitts
Thomas E. Suggs, Jr.

Staff Present:

Stacy Balthrop
Lisa Cooper
Kelly Grams
Ryan McGehee

¹ Due to traffic, Mr. Kruchinski was not present during rollcall, but he joined the meeting shortly thereafter.

Chairman Tubberville opened the meeting at 10:00 a.m. Roll-call was taken of the Board members. The Board considered the Minutes of the last meeting of August 25, 2016. There was one correction- Mr. Lambert's name was listed twice for attendance. The Minutes were approved, as corrected, on a voice-vote.

The Board moved out of session to hear an update from Stacy Balthrop, a TRA staffer, who showed a media story via video that discussed utility damage in the Nashville area.

I. Financial and RFI Update by TRA Staff

Ms. Balthrop explained that Mr. Chris Eaton, the TRA Financial Officer, could not attend the meeting to discuss the first quarterly invoice from the TRA to the Board and that there was not yet an invoice to provide; but she offered that Mr. Eaton would be available by phone to answer any questions. Ms. Balthrop provided an estimate of \$80,000.00 for the first quarter.

Mr. Bill Turner expressed his opinion that detailed financial information was needed. As president of Tennessee 811, the entity that collects funding from its members to fund itself and the Board, Mr. Turner expressed that he believed the cost of the Board was going beyond the fiscal note estimated for the legislation creating the Board. Craig Jensen, Chairman Tubberville, and Bob Lambert expressed that they believed detailed financial information was needed and should be reviewed by the Board.

Mr. Turner offered the estimate that \$80,000.00 on a quarterly basis could be a \$0.10 to \$0.15 increase on a per ticket basis. Based on volumes of tickets, the price could go up or down. Mr. Turner stated that Tennessee 811's budget is annually based and that he needs the Board to approve a financial budget for Tennessee 811 to include in its budget by November 3, 2016. Mr. Turner also discussed having received preliminary information from the TRA Consumer Services Division Staff, although he was unsure if such data was out of date. Mr. Jensen expressed that any information Mr. Turner received should be received and reviewed by all Board members. Ms. Balthrop clarified that the information provided to Mr. Turner had been an estimate.

Mr. Turner expressed that the Executive Committee should be charged with looking at the issue. The matter was tabled while Ms. Balthrop left the meeting to attempt to contact Chris Eaton regarding his availability.

The Board next heard a presentation by Mr. Ryan McGehee, a TRA staff attorney, regarding the results of the Request for Information ("RFI") issued by the Board for potential vendors to provide compliance training for violators of Title 65, Chapter 31 of Tennessee law

through a no-cost contract. Mr. McGehee discussed the conflict of interest issues present with Tennessee 811 having expressed interest in providing the compliance training. Mr. McGehee stated for the record that Mr. Turner and Mr. Jensen, a Tennessee 811 Board member, were screened off from the process, had not received the Staff memo concerning the RFI and would not be voting or deliberating on the matter. Mr. McGehee summarized the RFI replies of the responding vendors, Tennessee 811 and HB Next, a training provider based in Georgia. Following the presentation, Mr. McGehee presented two different options. The Board could elect to conduct more bidding through a Request for Proposal process or elect to have a special contract with either Tennessee 811 or HB Next, although a special contract must be reviewed by the State Chief Procurement Officer and the Comptroller of the State before it becomes effective.

Following the presentation, Mr. Bob Lambert expressed that the Board needed a training program in place as soon as possible and that Tennessee 811 is the only realistic choice for an effective training program to begin immediately. The discussion turned to how long the contract would run. Mr. Hastings expressed that he believed 12 months was reasonable.

Mr. Raper had questions as to how quickly either Tennessee 811 or HB Next could provide the training and the length of time needed for the special contract to be reviewed by state officials. Mr. McGehee expressed that, based on the RFI response, Tennessee 811 has personnel that already provide training across the State and also that it is unknown how long it would take state officials to review the special contract. Mr. King expressed his agreement with Mr. Lambert that it is logical to use Tennessee 811, as they have people in place to give the training now. Mr. Eddie Hood expressed that there may be criticism if Tennessee 811 provides the training rather than an independent contractor.

The Board remained out of session and took up the financial update information issue again. Mrs. Lisa Cooper, head of the TRA Consumer Services Division, explained that she had provided estimate numbers to Mr. Turner at his request, while copying the Chairman and Vice-Chairman. Mrs. Cooper explained the nature of the costs that are entailed in starting a new board, costs that are expected to reduce over future quarters. Mr. Lambert questioned when final financial numbers could be provided in view of Mr. Turner's deadline with the budget of Tennessee 811 of November 3, 2016. Mrs. Cooper predicted final numbers could be expected the first of November, 2016. Mrs. Cooper described the cost allocation process utilized by the TRA staff, although she expected future expenses would reduce.

Mr. Jensen stated that he believed that \$200,000.00 had been set aside for enforcement and expressed concern that it was unresolved how much discretion the Board has with respect to the TRA's proposed expense or budget for the Board. Mrs. Cooper explained that the fiscal note was not \$200,000.00 but rather stated that the cost would exceed \$50,000.00. Mrs. Cooper

explained how the TRA is audited and the due diligence the Staff has exercised in arriving at the proposed costs.

Mr. Tubberville expressed a desire to see an invoice breakdown as soon as possible in order for the Board to have an opportunity to review it and then stated that he did not believe the Board could wait until the first of November to provide Mr. Turner with the information he needs. Mr. Lambert said he believed the Board had enough information to proceed, based on the estimate, and Mr. Turner indicated he could go back to his membership with an annual estimate of \$320,000.

Mr. Hood expressed a desire to have something in writing. Mrs. Cooper said the first and second quarter billings should be available by the next Board meeting, and the TRA would do a true up of the costs at the end of the year. She explained that the TRA has stringent audit requirements, and the billing will be quarter to quarter until costs are leveled out.

Mr. Tunnell asked if the Board would be receiving information on the number of complaints received to date, and Stacy Balthrop indicated she would discuss that later in the program. However, she stated that six complaints have been received and are under investigation. Mr. Tunnell inquired about future updates, and Ms. Balthrop answered that there would be program updates at every meeting.

The Board went back into session and continued with the issue of the financials. Mr. Hastings made a motion to move ahead with the amount of \$320,000 as an estimate for the budget for the next fiscal year, and it was seconded by Mr. Lambert.

Mr. Lambert expressed the desire to have the Board involved in any decision making which could cause the final billing to exceed \$320,000, especially if it is determined that additional staff is needed. Mr. Hastings said he thought it was decided at the last Board meeting that the Executive Committee would have input on hiring or any out of the ordinary expenditures. Mr. McGehee stated that the way the TRA statute is structured, the TRA's Executive Director is in charge of hiring and firing, but he assured the Board that the TRA will be open to discuss any issues the Board may have at any time. Mr. Turner stated it was his understanding from the last meeting that the Board can ask for explanation of any charges on a quarterly invoice about which it has questions.

Mr. Tubberville re-stated that the motion, which had been seconded, was to set a budget for next year of \$320,000 of operating expenses, based on the estimated quarterly invoice amount of \$81,000. The motion was passed by unanimous vote.

Mr. Tubberville stated that a discussion had already taken place regarding responses to the RFI and the options of moving forward, and he asked for a motion regarding the training. Mr. Lambert made a motion, stating that due to time issues and the expertise of Tennessee 811 inside the State, that the Board enters into a special one-year contract with Tennessee 811 to provide training for the violations. Mr. Tunnell seconded the motion. Mr. Tubberville reiterated that there were concerns regarding transparency and that he would like to amend the motion to include the RFI specifications. He also wanted to make sure the special contract includes language to insure monthly updates. Mr. Lambert amended his motion to include these things, and Mr. Tunnell seconded.

A discussion ensued about anticipated training costs for HB Next and Tennessee 811, and Mr. Tubberville then called for a vote on the motion. Subject to the approval of the Comptroller of the State and the State Chief Procurement Officer, the motion was passed, as amended. Mr. Turner and Mr. Jensen abstained, and Mr. Hood voted opposed.

Mr. McGehee offered a generic contract for the Board's perusal, and Mr. Tubberville stated that the Board could review it or delegate negotiation of the special contract to the TRA, based on the RFI in the motion that just passed. Mr. Raper suggested that since the contract would need approval of both the State Comptroller and Chief Procurement Officer it would be a good idea to authorize the TRA to negotiate it. After some discussion, and reassurances that it would be a 12-month special contract, Mr. Tubberville made a motion to delegate the special contract negotiation and execution to the TRA. It was seconded by Mr. Raper, and the motion passed by unanimous vote. Mr. Hood requested that a copy of the contract be forwarded to all the Board members when finalized.

II. Program Updates by TRA Staff

Following a brief recess, the Board moved out of session to hear a program update by Stacy Balthrop. Ms. Balthrop stated that PHMSA had notified the TRA that an audit of the damage prevention program would take place on November 3, 2016. She reminded the Board that she had provided the members with a copy of the audit questions and TRA staff responses and stated that because of the newness of the program, the Board should be prepared for an "inadequate" rating.

Mr. Tubberville asked what the inadequate designation would mean to the Board at this time, and Ms. Balthrop stated that because of federal funding for the TRA Gas Pipeline Safety Division, there could possibly be an effect in several years. Lisa Cooper stated that the Board members might receive questions about an inadequate rating and urged the Board to familiarize themselves with the report in order to respond to those inquiries. She confirmed that this is an

annual audit. Mr. Lambert suggested that the Gas Safety Division should be able to give a detailed recommendation on how to obtain an “adequate” rating.

Mr. Tubberville asked about a timeline for making improvements since the first investigation has not yet been completed, and Ms. Balthrop responded that the lack of historical data is part of the problem with the audit. Mr. Tubberville asked about a couple of questions which had not been answered on the audit questionnaire, and Ms. Balthrop indicated that those responses would hopefully be decided during the Executive Committee meeting later in the day.

Ms. Balthrop informed the Board of a sunset/sunrise hearing for the Board, which is scheduled for December 13th or 14th, and provided the Board with a draft of staff responses to the questions provided to the TRA. She also noted that she had provided members with a draft of policies and procedures, which can provide guidance for Board operations and serve as a framework for future drafting of the rules.

Ms. Balthrop stated that the TRA began processing complaints at the beginning of October and has received six complaints thus far. She requested that Board members provide contact information for their organizations to aid in compiling a contact list for processing complaints and reminded the Board that they cannot be involved in those complaints.

The Board was provided with a proposed letterhead, and Mr. Turner requested that “Tennessee” be added to the top.

Mr. King asked if the Board would receive a summary of the complaints being received, and Ms. Balthrop replied that the Board will receive aggregate data at Board meetings. The Executive Committee will receive more detailed information because it will hear the complaints. Mr. Tubberville asked if complaint information is available on the website, and Ms. Balthrop replied that the complaint information is not currently on the website.

Mr. Jensen inquired whether the Executive Committee or the Board had been given an opportunity for input or review of the complaint form and stated that he would have had some suggested additions and/or changes. Lisa Cooper stated that the form could be amended, and the Executive Committee would probably be the best place to present suggested changes. Mr. McGehee requested some advance notice of suggested changes in order to give IT enough time to enter them into the system.

Mr. Tunnell stated that the complaint form is based primarily on gas pipeline, and he would like to see other utilities included. Mr. King asked where to access the complaint form, and Mr. Tunnell stated that he thought it was hard to find. Mr. Turner stated that there is a link at the top of Tennessee 811’s website.

Mr. Tubberville asked if there were any more questions or comments about the policies and procedures draft and, hearing none, called the meeting back into session. Mr. Tubberville then made a motion to approve the policies and procedures as drafted and presented to the Board, and Mr. Hastings seconded. The motion passed by unanimous vote.

Mr. Tubberville made a motion to approve the letterhead, with the addition of "Tennessee" in front of "Underground," and Mr. Hastings seconded. The motion passed by unanimous vote.

III. Schedule and Discuss Future Topics for Next Board Meeting

Mr. Tubberville stated that the question had been raised as to the frequency of the Board meetings, and he asked for input as to whether to meet again in November, December or January. Mr. Turner indicated that because there are a lot of open items, he would suggest a December meeting, and Mr. Tubberville agreed and asked Stacy Balthrop about possible December dates. Ms. Balthrop said she would check on availability of the meeting room.

Mr. Tubberville suggested a few items for the next agenda: (1) review of the first quarter invoice, (2) further examination of the complaint form, (3) findings from the PHMSA checklist, (4) possibly the sunset hearing, and (5) updates on the complaint program and investigations. Mr. Hood suggested discussing the contract for 811.

Mr. Turner asked if anyone had received a status report regarding the cable Tennessee representative reappointment, and Mr. McGehee responded that he had not. Mr. Turner also inquired if there could be any accommodation made for parking during future meetings, or if the meetings could be held elsewhere. Mr. McGehee responded that some investigation into parking options could be made, and Mrs. Cooper discussed the possibility of that being an expense paid through the Board.

Mr. McGehee then asked for confirmation of the Board's instruction regarding staff negotiating the contract. He indicated his understanding was that TRA staff would put together a contract, have it signed by the Chairman and Mr. Turner, and then start the process for approval by the State Comptroller and Chief Procurement Officer. Mr. Lambert and Mr. King agreed with that assessment.

After additional discussion on parking, Mr. Tubberville reminded everyone to send Ms. Balthrop any known conflicts for scheduling a December meeting. Mr. Tubberville stated that the Executive Committee would be meeting immediately following the Board meeting and that it was open to the public. The Board meeting was adjourned at 12:23 p.m.