



TENNESSEE UNDERGROUND UTILITY DAMAGE PREVENTION BOARD
Meeting on December 16, 2016

MINUTES

The board meeting of the Tennessee Underground Damage Enforcement Board was called to order at 1:00 p.m. in the Ground Floor Hearing Room of 502 Deaderick Street, Nashville, Tennessee 37243 by Chairman Kevin Tubberville.

Board Members Present:

Kevin Tubberville, Chairman	Scott Niehaus
Wayne Hastings	Bobby Pitts
Eddie Hood	Kevin Raley
Craig Jensen	Steven Raper
Kenneth King	Thomas E. Suggs, Jr.
Kevin Kruchinski ¹	Rick Tunnell
Bob Lambert	Bill Turner

Board Member(s) absent:

Bill Hollin

TRA Staff Present:

Stacy Balthrop
Lisa Cooper
Chris Eaton
Kelly Grams
Ryan McGehee

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

Chairman Kevin Tubberville opened the meeting at 1:00 p.m. Rollcall was taken of the Board members. The Board considered the Minutes of the last meeting of October 18, 2016. There was one correction - Mr. Thomas Suggs stated he was listed twice, as both present and absent. He verified that he was absent. The Minutes were approved, as corrected, on a voice vote.

Fiscal Update

The Board moved out of session to hear a first quarter fiscal update from Mr. Chris Eaton, TRA Fiscal Director. He stated that he had sent everyone a copy of the invoice, totaling about \$77,000, in which he included as much information as possible so everyone could see and understand the type of charges which will typically be incurred.

There were four specific categories:

(1) division personnel costs, broken down as anyone assigned directly to the Underground Damage Prevention Division within the TRA (currently just one person – whose entire salary is charged to the Board) or

(2) employees of the TRA who devote a portion of their time to underground utilities damage prevention matters. The total cost for this category was \$57,000. That number will be adjusted quarterly and, depending on the amount of time spent on Board matters, will vary with each bill.

(3) direct costs, consisting of bills for Board matters which are paid by the TRA. During the first quarter, approximately \$1,800 was spent for staff to attend damage prevention training.

(4) allocated costs, consisting of costs the TRA incurs, such as rent, office supplies, etc. The Board is charged a percentage of those costs based on employee numbers.

Mr. Bill Turner stated he had looked very closely at this invoice and had met with Mr. Eaton about it, and he believes it is fair. Mr. Eaton reiterated that he is available at any time to go over things with Board members.

Mr. Eaton discussed the projected schedule of when he will have invoices available for the Board:

first quarter – November 7th

second quarter – February 7th

third quarter – May 7th

fourth quarter – September 1st, depending on the State's schedule of closing its books

Mr. Turner asked Mr. Ryan McGehee, TRA staff attorney, if the Board will be required to approve the financials. Mr. McGehee stated that the Board had asked and voted to approve an annual dollar amount at the last meeting.

Training Contract Update

Ms. Kelly Cashman Grams, TRA General Counsel, went over the steps taken since the October meeting for negotiating with Tennessee 811 to provide the violator compliance training services and for submitting a contract to the Central Procurement Office (“CPO”) and the Comptroller of the Treasury (“Comptroller”) for approval. Revisions requested by the CPO were made to the contract, and responses to a couple of questions were prepared. These were returned to the CPO for further review, and that is where the process stands at the moment.

Mr. Bobby Pitts asked if there was anything of consequence in the questions or were they general information in nature. Ms. Grams responded that the questions generally related to the Board’s rationale for choosing Tennessee 811 over the Georgia supplier. She stated the questions were answered using the transcript from the Board’s discussion. Ms. Grams stated that the CPO wanted to know how the Board would maintain oversight and control of the fees charged to the violators because the Board did not set a fee in that contract. She stated that another question was about the process that was used in the procurement for finding other companies that could provide training.

Damage Prevention Program Update

Ms. Stacy Balthrop, a TRA staffer, indicated that there are currently 66 complaints, all under investigation, and that she will contact the Executive Committee after the first of the year to schedule the first meeting to hear complaints. She stated that the database is still being developed but is functional.

Mr. Kenneth King asked about the composition of the complaints – were they from different sectors or companies, all from one company or source, etc. Ms. Balthrop stated that the report lists them by facility operation type and facility distribution type, with 21 cable, 20 gas, 2 electric, 5 telecom, and 3 complainants did not report. Mr. King asked if the operation is the complainants, and Ms. Balthrop responded yes, that was the information provided from the complainants.

Mr. Tubberville asked if the database will be functional enough to determine repeat offenders when the Executive Committee meets again, and Ms. Balthrop responded that it is possible. However, she stated that because the complaints are still under investigation, she is not sure there will be any repeat offenders at that point. Also, Ms. Balthrop stated that until the Executive Committee determines someone is in violation, there cannot be a repeat violator.

Mr. King asked again about the operation type – is that the operation that was the offender or the operation that filed the complaint. Ms. Balthrop responded that it is the operation that filed the complaint.

Mr. Craig Jensen asked if it has been established yet what training will be required for the first offense, who will be required to go to the training, how that process will work, if training will be mandatory and, if so, for whom it will be mandatory. Ms. Balthrop responded that the Executive Committee will look at that when they evaluate the complaint.

Mr. Jensen inquired if it has been determined yet exactly who will be required to do the training – the entity, the foreman, the individual, etc. Mr. McGehee responded that during the Executive Committee meeting in October they went through a step-by-step process of what a complaint might look like, and it was obvious that it will be a case-by-case, factual determination every time. Mr. Jensen asked if that means it will be left up to the Executive Committee to determine who/how many people will go to training, and Mr. McGehee stated that, yes, the Executive Committee will determine who is the violator.

Mr. Bob Lambert stated that there are many different scenarios, and it is not going to be easy in some cases to determine who will be required to be responsible for the damage. Mr. Tubberville stated it is a popular consensus to avoid just naming a company representative because that might not benefit those who need the training the most; therefore, the current leaning is toward the actual people in the field rather than somebody sitting in an office. Mr. Jensen stated that he agrees with that approach.

Mr. Turner asked if there had been any discussion about the minimum or maximum number of people that would go through training, as that could obviously have an impact on the cost associated with it. Mr. Tubberville stated that goes back to the case-by-case issue, coupled with whether a certain organization has operations spread out across the State. We need to make it beneficial for that organization and for the prevention of damages.

Mr. Lambert said he believes it would be beneficial to share the minutes of the Executive Committee meeting with the Board, as that would answer some of their questions. Mr. McGehee stated that the Executive Committee has not adopted the minutes yet, but everyone could possibly look at the transcript. Mr. Jensen asked if the Executive Committee meeting minutes would be made available to the Board in the future, and Mr. McGehee responded that the minutes could be made available for informational purposes.

Mr. Pitts asked, with all the underground cabling activity going on in the Nashville area, if there is any idea yet of what that might do to the level of complaints out of Nashville. Ms. Balthrop stated that she has not looked at the geographic area of the data but can do so going forward, and Mr. Pitts indicated he thinks that should be done. Mr. Suggs asked if the current 66 complaints is considered a lot and if the process will be able to keep up and be administered in a timely manner. Ms. Balthrop responded that the process is moving along quite quickly.

Mr. Turner asked Ms. Balthrop to explain the complaint process, start to finish. Ms. Balthrop stated that when a complaint is entered on the website, it is transferred electronically to the TRA's system. She receives an e-mail that a complaint has been received, and she then downloads that information into the database. Mr. Slayde Warren analyzes the complaint and starts gaining facts. An e-mail acknowledgement is sent to the complainant. Mr. Warren contacts the parties, looks for an 811 ticket, and goes through the facts, investigating anything he feels warrants a closer look. A notice of alleged violation is sent to the alleged violator advising them that a complaint has been filed and requesting a response within 30 days. The alleged violator is informed that the complaint will be heard before the Executive Committee and that

the information we obtain will be presented to the Executive Committee so they can make an informed decision.

Mr. Jensen said he has a concern about the notification, stating that he has been contacted by several people who have received one. The notification does not list any type of violation, so the alleged violator has no idea what violation they have committed or how to respond within the 30 day window. Ms. Balthrop stated that the problem is being addressed but that the current format is not one that can be easily understood. Mr. Jensen asked if there is a timeline for addressing this issue, and Ms. Balthrop responded that the target is approximately six weeks for a usable format.

Mr. Turner asked about the complaint form itself, stating that he had submitted some suggested changes. He stated that he had suggested making the form more utility neutral and less toward gas, and he wondered if others had made similar suggestions. Ms. Balthrop said she had not received any other comments, and Mr. Turner asked if others thought the form leans too much toward gas.

Several Board members agreed, and a discussion ensued regarding the need for more input and the possibility of forming a subcommittee to look at possible changes to the form. Mr. Tuberville stated that the form was modeled after some gas utility forms, and changes can certainly be requested; however, any changes must go to the Executive Committee for approval. Mr. Jensen asked if a subcommittee of volunteers can meet to discuss possible changes to the form without violating the Sunshine Act. Mr. McGehee responded that any time someone meets to discuss the business of the Board, the meeting must be noticed. He suggested such a meeting should probably take place on the day of the Board meeting for the convenience of the Board members present, but it would have to be noticed.

Mr. Jensen asked if anyone present was willing to serve on a subcommittee on this matter, and Mr. Wayne Hastings, Mr. Rick Tunnell, Mr. Turner, and Mr. Jensen volunteered. Mr. King questioned whether this subcommittee would fall under the Sunshine Act if they are not taking any action, and Mr. McGehee stated that because they would be conducting the business of the Board, the meeting would need to be noticed. Mr. Turner asked if Ms. Balthrop could also serve on the subcommittee, and Mr. McGehee responded that staff could participate. Mr. Tuberville pointed out that requests could be made but might not be doable from a programming standpoint.

Mr. Pitts asked if a motion was needed for the voluntary subcommittee, and Mr. McGehee stated that the Board would need to go back into session and do that before adjourning. Mr. Hastings stated that his involvement in the committee would be for water and wastewater expertise; Mr. Jensen stated that his expertise would be for telephone and telecommunications; and Mr. Tunnell stated his expertise would be electric. Mr. Kevin Raley stated his expertise is gas, and he is fine with the form.

There were no further questions regarding the program updates, and Mr. Tuberville stated the Board would go back into session later to vote on the subcommittee.

PHMSA Audit

Mr. Tubberville stated that on November 3, 2016, he, Mr. Turner and TRA staff participated in the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) audit for the year 2015. The responses to the questionnaire, which was discussed at the October 18, 2016 meeting, were reviewed. As expected, because the audit was for a period before this board was created, it was deemed inadequate since there was no action taken on violations in 2015. The audit went very well, however, and suggestions were made on things to improve going forward. The final letter should arrive by the end of the year, but since it is a yearly audit, there will be an audit next year for 2016.

Ms. Lisa Cooper, head of the TRA Consumer Services Division, stated that the 2016 audit will also be inadequate because no enforcement actions have been taken in 2016. There was some discussion about what inadequate ratings might mean for the Board, as well as concern about the impression the ratings might have on outside parties. Everyone was encouraged to explain the ratings to their constituents. It was noted, however, that despite the rating, the auditors were impressed with what has been done so far.

Sunset Hearing

Mr. Tubberville stated that there was also a sunset hearing before the legislative joint subcommittee on government operations. The joint subcommittee will be making a recommendation to the full committee to extend the Board for another two years. The only concern the joint subcommittee had was with regard to the vacant position on the Board and when that position might be filled. Mr. Pitts asked who will make that appointment, and Mr. Tubberville indicated that it is Speaker Harwell’s appointment. There was some discussion about whether there is a need to contact Speaker Harwell regarding the vacancy. Mr. Tubberville noted that the joint subcommittee offered to send a letter to the Speaker regarding an appointment.

Executive Committee Meeting Update

Mr. Tubberville stated that the Executive Committee had its first meeting after the October Board meeting. Ms. Balthrop discussed the role of the TRA in supporting the Executive Committee and introduced the TRA staff. There was discussion regarding what to expect throughout the complaint and investigative processes. Mr. Tubberville stressed that the Executive Committee will have to be diligent in its handling of each case so that each one will stand on its own merit.

Mr. Turner asked if there was any discussion during that meeting about frivolous complaints. Mr. Tubberville stated that is something about which he is concerned, and the database will be very crucial in seeing how often the same name appears, not only the alleged violator, but also the person making the complaint.

Mr. Turner stated that he understands the Executive Committee has full power to operate on behalf of the enforcement board, but he inquired if there is anything that restricts the Executive Committee from sharing information on a regular basis. He wondered if there could

be regular updates on the progress of complaints. Mr. McGehee responded that cases the Executive Committee is still discussing and deliberating will not be shared, but once rulings are made, that information can be provided. Mr. Turner stated that he thinks everyone would like to know how many complaints are being put into the system, and wondered if monthly updates might be possible. Mr. Tubberville responded that the Executive Committee has not set a meeting schedule yet, but he does not expect much change in the information until after a meeting has taken place.

Mr. Jensen asked if there could be a timeline for information sharing following an Executive Committee meeting. Ms. Cooper stated that reports will be issued, and since it is public record, the TRA is considering putting that information on the website. Mr. Jensen stated he would like to know about the decision – the training required – and not solely information on the violation part. Ms. Cooper stated that the transcripts will be available for the Board.

Mr. McGehee stated that he thinks there's some misconception regarding the powers and duties of the Board. The TRA does not read Tenn. Code Ann. § 65-31-115 as allowing the Executive Committee to have full power of the Board. The Executive Committee has the enforcement arm and the Board considers rulemaking, contracts, etc. Therefore, the training decision will be made by the full Board, the special contract, etc. The Executive Committee will handle enforcement, the violations, etc. The Executive Committee cannot provide information about an ongoing investigation or ongoing case before a decision is made, and Mr. McGehee reminded the Board not to contact other members to ask about investigations.

Mr. Tubberville pointed out that the Executive Committee has had one informal meeting, and no investigations were discussed. Mr. McGehee encouraged the Board members to attend an Executive Committee meeting to observe it in action. Mr. Turner inquired if the Executive Committee plans to schedule out those meetings for 2017, and Mr. Tubberville responded that with the number of complaints already being investigated, they will need to meet regularly. He pointed out that because the complaints are in different stages of investigation, some months may have more items to consider than others.

Mr. Pitts asked if the Board has the authority to impose a fine on a frivolous violation complaint, and Mr. McGehee responded that it does not. Mr. Pitts then asked if we know for sure that we do not have that authority. Mr. McGehee stated that the Legislature was very specific on the things for which a fine can be imposed. He stated that initially every complaint will be brought to the Executive Committee, but those considered without merit may eventually be weeded out. He pointed out that sometimes it will be impossible to tell if a complaint is frivolous until it is heard.

Mr. King said it would be helpful if the Board could get a summary of the complaints – the date it was made, the violation, and a small summary. Ms. Cooper stated that as long as the complaint is under investigation, the information has to be closely held until the Executive Committee makes a determination about the violation - or Board members can attend Executive Committee meetings. Mr. Turner asked if the Board can get information like that provided for the Board meeting, and Ms. Cooper responded yes, that they will get the aggregate total. Mr. Turner asked if that can be divided out by region – East, West or Middle. Mr. Tubberville stated

that this information is important because it helps gauge how the information is being spread and received and whether there is a need to concentrate efforts in certain areas of the State. Ms. Cooper stated IT will check into whether that information can be broken out, possibly by adding that field to the complaint form. Mr. Turner asked if the complaint form contains the county of the complainant since he believes that would be all that is needed. Ms. Cooper stated that since it is on the summary sheet, we already have the county. Mr. Turner asked if that information could be available by the end of the day.

Mr. Tubberville indicated that he would be happy for everyone to sit in on Executive Committee meetings. Further, he stated that transcripts will be available, and he supports having the minutes being available for the full Board. Ms. Grams stated that the minutes are available on the website after they have been adopted.

Complaint Form Suggestions for Executive Committee

Mr. Tubberville pointed out that complaint forms had already been discussed.

Schedule and Discuss Future Topics for Next Board Meeting

Mr. Tubberville stated it would be beneficial for the Board to meet at least quarterly, but if it is determined that another meeting is needed sooner, that can be addressed. With the general timeline for invoices on the 7th of the month, he suggested looking at meeting dates after that. It was agreed that 10:00 a.m. central time was the most convenient time for everyone. The following meeting dates were agreed upon:

Monday, February 27
Wednesday, May 24
Tuesday, September, 26
Wednesday, November 29

Executive Committee meetings were lined up for the same dates following the Board meetings.

Mr. Pitts asked about the frequency of Executive Committee meetings given the number of complaints that have been filed. Mr. Tubberville stated that the Executive Committee will meet monthly, the first one scheduled in February 2017.

Mr. Tubberville stated that the agenda for the next Board meeting will include an update from the Executive Committee on progress with complaints and any findings on investigations at that point, as well as progress on other complaints, updates, etc. Also included will be the invoice and the training contract topics. Mr. Tubberville pointed out that if the contract is not finalized and in place, the Executive Committee may be able to make a ruling but be unable to enforce it. A sunset update was added to the agenda. Mr. Tubberville stated that everything on today's agenda will be on the next agenda as well.

Mr. Hastings asked what the deadline is for the complainant to report an incident once it has occurred. Ms. Balthrop responded that the deadline is 90 days from the date they are aware

of the damage. Mr. Hastings asked if the complainant must appear at the Executive Committee meeting, and Ms. Balthrop responded no.

Mr. Turner asked if once the special contract is approved and accepted does the enforcement board have to meet again before training begins. Mr. McGehee responded that it is assumed that the authority invested in the TRA to negotiate the contract and get it going was an approval in itself; however, if the Board wants to look at it again before it is signed, that can be done. Ms. Grams pointed out that if changes are made after approval by the CPO and Comptroller, the contract will have to go back through the process again.

The Board went back into session, and Mr. Lambert made a motion for the implementation of a subcommittee to review the complaint form and make changes as necessary. Mr. Jensen seconded, and the motion passed by voice vote. Mr. McGehee stated that a public notice will need to be posted 10 days in advance of a scheduled meeting of the subcommittee. The members will decide on a date and let the TRA know when they plan to meet. Mr. McGehee will determine if the meeting must take place at the TRA. Mr. Hastings asked for anyone who has comments about the complaint form to pass them along by forwarding them to Ms. Balthrop. Mr. Tuberville suggested going to the complaint form on the website and working through it without hitting "submit" in order to get an idea of possible suggestions for improvement.

Mr. Turner asked if a motion is necessary to share the transcript from the Executive Committee meeting with the Board. Mr. McGehee stated that there are probably portions of the transcript that can be shared, but because the transcript actually belongs to Nashville Court Reporters, he cannot just hand out full copies of it. He stated that information about Executive Committee meetings will be shared as quickly as possible and suggested that any member can also come to the TRA and read the transcript.

The Board meeting was adjourned at 2:27 p.m.