



**TENNESSEE UNDERGROUND UTILITY DAMAGE ENFORCEMENT BOARD  
Meeting on November 29, 2017**

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**MINUTES**

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The Board meeting of the Tennessee Underground Utility Damage Enforcement Board was called to order at 10:00 a.m. in the Ground Floor Hearing Room of 500 Deaderick Street, Nashville, Tennessee 37243 by Chairman Kevin Tubberville.

*Board Members Present:*

Kevin Tubberville, Chairman	Scott Niehaus
Jonathan Campbell, by telephone	Kevin Raley, by telephone
Wayne Hastings	Steven Raper
Bill Hollin	Rick Tunnell, by telephone
Charles Eddie Hood	Bill Turner
Craig Jensen	
Kenneth King	
Kevin Kruchinski	
Bob Lambert	

*Board Member(s) absent:*

Bobby Pitts  
Thomas Suggs (resigned)

*TPUC Staff Present:*

Ryan McGehee, legal advisor to the TUUDEB  
Sharla Dillon

*Also Present:*

Pat Miller

Chairman Kevin Tubberville opened the meeting at 10:00 a.m., and rollcall was taken of the Board members. The Board considered the Minutes of the last meeting of September 26, 2017. There were several corrections presented by Mr. Turner: Mingus, Team Construction and Paul Leath, from AGL Resources; 80,000 a month should be 80,000 a quarter. Also on page 8, second paragraph from the bottom, regarding the creation of the legislative subcommittee, Bill Hollin is a member of that subcommittee. Mr. Turner indicated Mr. Hollin's name had been

omitted. The motion was made and the Minutes were approved with those corrections on a voice vote.

### **Program and Updates by TPUC Staff**

Ryan McGehee provided the number of complaints during the month of November: 18. The next quarterly report is expected to be out in February. He stated that in the future all the recorded reports are going to end up being on the website for public review.

Mr. McGehee also discussed the RFP process. If approved by the members today, there would be an official trainer and the competitive bidding process would be avoided. At the same time, when a special contract was received, the Commission committed with the state's procurement staff to do an RFP bidding out process. That commitment needs to be honored. Mr. McGehee requested the board to either adopt these base requirements or something similar so the RFP process could begin. He stated that it would be advisable to go ahead and give the staff the authority to base requirements and start the RFP process and get that process going. He also requested consideration of a motion to grant authority to the commission. Updates would be provided and the executive committee would be made aware as to what is going on in that process as progress was made.

Mr. Hastings stated he felt there had been good discussion and conversation and that Mr. McGehee's memo sent via e-mail provided a good summary of that discussion. Mr. Turner thought the legislative committee meeting went well; and that one item that was not discussed was around adding a contract locate representative to this enforcement board. It would be adding another representative to this executive board, enforcement board; that would represent the contract locating industry. The appointment was assigned to the lieutenant governor of the senate to make that appointment and it will be included in the proposed language.

Mr. Tubberville inquired if the definition of a contractor located had to be passed first. Mr. Turner stated it would go hand in hand and that even if approval to add a contractor locator to this board was not received, he felt it was still important to define contract locator. Mr. Tubberville concurred.

Mr. Turner then inquired about the status of an update report on activity that was to come out in October. He stated that nothing had been received since April-June was the last written report that was received. Mr. McGehee stated he was under the impression that the July – September quarterly report had been sent. He received no response but did state that the report was available on the website.

Mr. Turner turned the discussion to the RFP process and asked what the cost would be if the board decided to move forward with starting this RFP process, which could be a six month process working with the CPO. He mentioned that it could possibly be April before a bill was signed. He stated as April 7<sup>th</sup> is the deadline, he had concerned that the legislative amendment would be passed.

Mr. McGehee stated that the special contract was a very resource intensive project. The Commission would be using a staffer that actually does procurement and the CPO would be handling the bulk of the procurement and would issue the RFP. This would result in a much lower financial impact as commissioned staff resources committed to it. He further stated that

the agency, the commission already pays an assessment just like every other agency to fund these types of processes.

Mr. Hood from Williamson County stated that he had some calls on what is going to be voted on, stormwater, including whether underground pipes are going to be required to join 811 in January.

Mr. McGehee stated he understood why the calls were received as the definition of an operator is very broad. He did not know if the legislative intent was to capture stormwater lines or not. He did not have a firm answer.

Mr. Turner had asked for legal opinion from their attorney and the attorney reads it that stormwater would meet the definition of a utility and be required to join. Stormwater has been a hot topic in the industry for many years but even though it's hard to locate, it should not be damaged either. He stated it causes problems if it's damaged. In his opinion, if the owner of the stormwater or storm sewers really wanted to protect it, if it being damaged was an impact to their business, then they would want to join to protect it, but he was not sure. He was going to look through some of his old notes. He felt that as the legislative process began, there were some potential changes that were going to be introduced and felt it was good to have more discussion about this.

Mr. Tubberville stated that as far as locate type concern, a tracer could not be put on as it could be with duct wire pipe. Concrete pipe, corrugated metal yes but concrete pipe in the ground would pose its own unique challenges. Either the statute needs to be tightened a little bit to make it clearer or the industry as a whole will have to adjust.

Mr. Tubberville then returned to the RFP discussion, inquiring whether a motion and vote was necessary on moving that to the CPO or to the staff. Mr. McGee would ask for a motion that the base requirements as the basis for an RFP and the process began and then in a month or two to check status of the legislation. Mr. Tubberville clarified for those on the phone that the document being discussed was the memo Mr. McGehee had e-mailed right before the meeting this morning, titled "Proposed Board Requirements for the Training Contract." Mr. King made a formal motion that the staff be granted permission to go ahead and at least begin what is needed on the RFP process, so the board would not be behind if something falls through on the legislative. Mr. Hastings seconded. The motion passed without additional discussion.

### **Topics for the Next Board Meeting**

Ms. Dillon indicated the next topic was schedule and discussion of future topics for the next board meeting. Mr. Tubberville referenced another handout "2018 Available Dates for the Board Meetings." He recommended these dates be used because the room is available and the resources are there. Mr. Hollin questioned December 19 and after discussion, the meeting was moved to December 12. Mr. Tubberville suggested quarterly meetings and the November would be the last quarter of next year. He stated that attendance at all of the meetings was not mandatory. Mr. Hollin countered that it appeared that if as many as two were missed, there was

automatic removal from the board. Mr. McGehee stated that the stated said if more than fifty percent was missed yes. But by law you're only required to meet twice a year.

Mr. Tubberville stated that one of his concerns was the legislative process and the April deadline. If the first quarter meeting was March discussion on any topic could be held prior to that deadline. In his opinion, it also gave January and February the time that might be needed to make sure everything is prepared. Mr. Turner felt that March 14 would be the time to say it had been approved. Mr. Tubberville stated that he would like to get a motion to approve the legislative concept that was discussed at this meeting. In that manner, sponsors could be found, legislative committee in place and could certainly call the group and have and have discussion in addition to electronic dissemination of information to the enforcement board. He did not see the need to organize the next enforcement board meetings around the legislative process. Mr. Hastings noted that March 14 in East Tennessee is spring break and he would probably not to be there, except perhaps by phone. Mr. Tubberville asked for any other potential date conflicts and Mr. Turner mentioned June 20 that he and Mr. Lambert were scheduled to attend a Tennessee Gas Association annual meeting.

Mr. Hood required further discussion about the stormwater issue and possible scheduling of a meeting with the legislative people about maybe exempting stormwater. Mr. Tubberville requested clarification as to whether the subcommittee. Mr. McGehee said it was the will of the board. Mr. Hollin stated the cities are already working on it. Chattanooga has it on the agenda to vote on stormwater changes and everything. Mr. McGehee said since it was a public meeting it would have to be given ten days' notice.

Mr. King stated that meeting dates proposed could be February, May, August and November. After some discussion, Mr. Tubberville proposed February 14, May 16, August 15 and November 14, all in 2018 and those dates were set.

Mr. Turner made a motion that forward movement with the information that was presented from the legislative subcommittee on legislative process understanding that there may be some additional language related to stormwater, storm sewer. Mr. Tubberville added the additional discussion of the position for a locator on the board be included and Mr. Turner concurred. Mr. Hood seconded the motion.

Mr. McGehee did want to put one item on the record. He stated that four people called in at this meeting and there was some technical difficulty. Mr. McGehee was going to try and make sure he's actually counted as presented because the attendance policy is rather strict. Mr. Tubberville stated that he knew the technical difficulties after the meeting began as the connections had been checked and were in working order prior to that.

Mr. Turner indicated that he had a few additional items. He stated that the training report was going to be a normal item on the agenda and it didn't make this one. He did want to provide an update as he gives updates at all the executive committee meetings when they're hearing the cases and wanted to give an update to the entire enforcement board today. Year-to-date, 86 individuals have been trained, which represents 58 organizations that have been found in violation. 43 individuals have been assigned training, representing 36 organizations that have not made contact yet. Also, the last Wednesday of each month training at Tennessee 811 was conducted in a morning session and afternoon session. Eight people were scheduled training today and five in a class this morning. Four additional people were already scheduled for December and January. Training is getting a very positive response and people are finding it very informative. No adversarial type situations yet. The off-site training is that when they can't come to Nashville and trips are made to go to them, the expenses related to those trips are

presented to the executive committee and they give us approval. He felt it had been a really good impact on those that have been found in violation.

Mr. Turner said that another items was discussion about the budget for this fiscal year. He needed a budget number for the membership billing which was provided but did not know if it had been shared with the board. He stated it was an e-mail with several attachments from the different departments on project expenses.

Mr. Turner stated finally that Tom Suggs had resigned from this enforcement board. He requested status on any possible replacement. Mr. McGehee stated that Mr. Suggs was requested to go ahead and inform the speaker about his decision and follow up was conducted to ensure that was done and that the information went through appropriate channels. No updates have been obtained.

Mr. Turner requested also the last quarterly billing and asked if there was a fill in while Chris Eaton is out. Mr. McGehee stated it was an unusual situation with someone out for an extended period of time and stated that the staff would provide that information as quickly as possible.

Mr. Tubberville said the next meeting agenda should include that discussion. Also to be included would be the update by the TPUC staff, and the RFP as well as the roll call, the reviewing and adoption of the minutes. Mr. Jensen requested some discussion of the reporting the content of that reporting and desired frequency. Mr. King requested a report by the subcommittee meeting on the stormwater issue. Mr. Tubberville expressed a desire to have a discussion with either Mr. Eaton or someone in TPUC to discuss budget and billing. Mr. McGehee stated that Mr. Eaton was available via e-mail should there be any questions, although the response time would be a little slower.

Mr. Turner shared that one other members Trenton Light & Water actually included in their company policy, policy on damages caused by not calling.

Mr. Turner also stated that November 1, 2017 a new positive response system was put up and running dually with the old positive response.

Mr. Hollin inquired if that, at the last meeting, a discussion was held regarding the executive board terms and whether the term endings would be staggered. Mr. McGehee stated that they presently were all set to step down in August. Mr. Hollin said that in the bill it is to be rotated. Mr. McGehee discussed the process on the table by which the staggered rotation could occur. Mr. Hastings said they were working on that language now.

Mr. Tubberville stated that the next meeting was scheduled for February 14, 2017. Notice will go out ten days prior. He expressed appreciation with those traveling to come and stated that it provided a valuable resource and made a difference.

Mr. Hastings inquired whether anyone on the board had specific comments on Eddie Hood's comments earlier as far as the legislative subcommittee meeting's deliberations regarding the consideration of stormwater systems being exempt. Mr. Turner stated he would bring this up at the legislative committee. A lot of what has been done with this legislation is to be in compliance with the federal regulations, including the nine elements. He stated Tennessee

had been found to be inadequate and that the federal government doesn't like exemptions, especially exempting a group. Mr. King had one question that if they were exempt were they also saying they were assuming any risk in liabilities. Not being a member, they would not get notification. Mr. Hood additionally commented that some counties have policies in place. Mr. Tuberville reminded everyone that stormwater isn't necessarily life-threatening. Mr. Raper commented that sanitary sewer is not exempted and has issues with locating. And he does not consider it valid to exempt for sanitary sewer. Problems that are discovered are borings that go through plastic pipe which are very common part of the wastewater business on the collected system. Whether there has been a problem or not, the discovery typically happens later. Mr. King also spoke for other electric utilities that they are not a part of the contract group that is getting bonds and other items. Poles are being set on right-of-ways all the time and there is no way to know where some of the storm drains, storm sewers are. He stated that they not being part of that process would definitely have a negative impact on most electrical utilities.

Mr. Jensen clarified that Mr. Hastings and Mr. Jensen would have a subcommittee right now.

Mr. McGehee extended an invitation for anyone who wanted to stay and watch the executive committee meeting when it began shortly after.

A motion was made to adjourn the meeting, and it unanimously passed on a voice vote. The meeting was adjourned at 10:55 a.m.