

Maryland Underground Facilities Damage Prevention Authority

MINUTES OF MEETING OF AUTHORITY Wednesday, January 8, 2014

The meeting was called to order by Tom Hoff at 9:00 am in the Miss Utility One Call Center, 7223 Parkway Drive, Hanover, MD 21076. In attendance were Authority members Tom Hoff, Art Bell, Walt Gainer, Tom Hastings, Bernard Cochran and Marcia Collins. Laura Olander and Jim Barron were also present. Guests included Dora Parks from Miss Utility, Susan Baker from Niles, Barton and Wilmer, LLP, Mark Hamrich from Verizon, Scott Brown with Washington Gas and Vince Healy. Authority members Kevin Woolbright, Tom Baldwin, and Cindy Flanders were absent. Bruce Bereano was also absent. Paul Kurlander from Kurlander Electric and Mary Ann Judith and her partner from First Class Plumbing were also present for their Hearings.

Tom Hoff opened the meeting and asked everyone to introduce themselves. There is a quorum.

The Minutes from November 16th were approved.

Report of the Treasurer: Treasurer has not been elected yet but there is a treasury report that was distributed. There was a question regarding the high legal bills and it was briefly discussed that Pinpoint and Reliable required legal guidance. Tom Hoff then introduced Susan Baker from the law firm of Niles, Barton and Wilmer, LLP.

Jim Barron discussed that since the Authority has waived the \$250 NPV fee, the merchant account is no longer necessary and costing the Authority over \$50 per month. Jim asked if a vote should be taken on this topic. Tom Hoff suggested this be done when the new officers come in and there's a new treasurer.

Scheduled hearings:

NPV #577 - BGE vs. Kurlander Electric, Inc. - The Hearing is being recorded. Paul Kurlander and Jim Barron were sworn in by Tom Hoff.

Plaintiff exhibit #1 is entered into evidence which was Jim Barron's research. Then Exhibit #2 was entered into evidence which was the results. Both pieces of research on NPV #577 were consistent with the complaint. The location was verified. Damage occurred in Perry Hall region and Exhibit #3, the map showing the location, is entered into evidence. Exhibit #4, the ticket search is now entered into evidence. There is no evidence of a ticket. Jim Barron showed how the search was expanded and entered Exhibit #5 into evidence. Exhibit #5 shows that this time he found 14 possible results. The incident date was January 15; there is a BGE call for Ballymahon Court but still no mention of Kurlander Electric. Next, Exhibit #6 is entered into evidence showing a Miss Utility emergency ticket for Ballymahon Court on January 15th and this is another BGE call. Still no tickets from Kurlander Construction. It's the position of the Authority that Kurlander Electric had no ticket.

Mr. Kurlander was asked if he had anything to say in his defense. Mr. Kurlander said he wasn't here to say he didn't call, but to ask for sympathy and state that his company will never have another incident with Miss Utility. He wanted the Authority to know that his company was under pressure and he is sorry they didn't call and did not have a ticket. He said his company has

been in business since 1976 and he asked for some lenience. Authority member Tom Hastings asked what principal type of work his company does. Mr. Kurlander said most of what they do is light commercial and residential digging and that they've never had an incident. Authority member Art Bell asked if this was really the first time they never called in a ticket. Paul kurlander replied that they call when necessary. Authority member Marcia Collins thanked Mr. Kurlander for his honesty and willingness to appear. Tom Hoff said the Authority will get back to him in writing once they make their decision.

Next on the schedule was NPV #675, Washington Gas vs. First Class Plumbing. Mary Ann Judith, President and owner of First Class Plumbing, and Jim Barron were sworn in by Tom Hoff. Jim Barron entered the NPV filed by Washington Gas into evidence as Exhibit #1. Next, Jim entered the review of the investigation into evidence as Exhibit #2. Jim said there was a ticket on this incident and then entered into evidence Exhibit #3 which is a map of where the incident occurred. The NPV did acknowledge there was a ticket for this incident - Ticket # 13264716 and it was an emergency ticket. This evidence was entered as Exhibit # 4. Washington Gas marked the facility. Exhibit #5, the damage investigation report; investigation #496406, was introduced into evidence. Exhibit #6 is a picture taken by Washington Gas and is also entered into evidence. Exhibit #7 is another picture of the excavation and is entered into evidence. Exhibit #8 is another picture of the damage in the trench and is entered into evidence. Exhibit #9 is a picture of one of the First Class Plumbing trucks showing they were present when damage occurred and is entered into evidence. This is the end of Jim Barron's presentation. Tom Hoff asked if anyone had any questions. There were none. Jim also said he has a letter from Mary Ann Judith showing she has been proactive in this. The letter was entered into evidence and marked as Exhibit #10.

Next, Mary Ann Judith had an opportunity to speak. She said they are not denying they hit the line. She believes that the three pictures she brought with her, and were entered into evidence as Exhibits #1, #2, and #3, show the line was hit with a spade shovel and was hit between 10 and 12 inches. Her argument was that the code says the line should be installed 18 inches below grade and was not deep enough. She also admitted they had a backhoe on site but they dug this trench with a spade shovel. She went on to say this is their first violation and they are working with Washington Gas for training scheduled on January 28th. Further, they meet with their technicians regularly and are adamant about staying on top of everything. She is asking for leniency.

Scott Brown from Washington Gas was sworn in. Scott brought two more pieces of evidence with him. The first was Washington Gas' Damage Report (which has already been entered into evidence by Jim Barron). Scott said the line was installed at the depth they were supposed to and has no way to control what happens to a line once installed properly. Someone could move a line and even climate change movement can cause a line to settle at a different depth. Scott provided Laura Olander with his evidence which was all marked as Evidence #1 from Washington Gas (Plaintiff along with the Maryland Authority).

Mary Ann Judith again asked for leniency because they are a small company. Scott Brown added they have been very good about wanting training and communicating with them. Art Bell asked to see her pictures again and said that by looking at the picture marked Exhibit #2 from First Class Plumbing, it appears it was done by an excavator which would mean it was not dug with a spade shovel. Mary ann said she wasn't there and is taking the word of those who were.

Tom Hoff thanked her for her time and said the Authority will make a decision and let her know in writing.

NPV #892 was scheduled next; Washington Gas vs. Belfast Valley Contractors, Inc. Belfast Valley Contractors did not show up.

Formal hearings have been concluded.

Recorder was turned off as the Authority members began their meeting.

Tom Hoff asked what if anyone had any ideas about what to do regarding those who do not show for their Hearing. Attorney Susan Baker said this is a default judgment and they can be penalized. The Authority currently has three of these. However, Belfast Valley Contractors have been in touch with Jim Barron and have scheduled training. Jim is surprised they didn't show up today. It was voted on whether or not to proceed with fining them. All in favor. There will be a \$2,000 fine for no call violation since they did not come in and defend themselves and required training. Jim will send a letter out to them.

Next, NPV #577 was discussed. This was a no call and Mr. Kurlander did not deny the violation was made. The penalty for a no call is a \$2,000 fine and training. Tom Hoff made a motion to reduce fine to \$1,000 and training but only if he goes to training. All approved.

NPV #675 was discussed next. Everyone felt it was difficult to believe a shovel did all that digging and broke a line in two places with just a shovel. Jim Barron stated that the people on site said they were working with a backhoe. A motion was made to have the fine waived if the workers from First Class Plumbing go to training. Jim will send a letter to Mary Ann Judith.

Susan Baker gave a brief update on the cases with Pinpoint and Reliable. Pinpoint's brief was due Monday and they did not receive. Motion to clarify the record was received. Susan will send Laura the recordings/transcripts to identify the voices. Susan will file a motion to dismiss their appeal if nothing is received anything from them.

Niles Barton is preparing a response to Reliable's brief and will be complete next week. If there is a hearing it will be in Anne Arundel county. The Attorney General's office will support the Authority that it is a constitutional entity. This was Reliable's issue.

Post Hearing Updates:

NPV #282 - Washington Gas vs. BW Excavating. BW Excavating has not completed training and is no longer responding. Tom Hoff said the Authority will talk to the lawyers and see if they will go after the fines.

NPV #284 - Washington Gas vs. C&M Construction. C&M Construction never went to training. But the fine was paid which was at a discount but only if they went to training. Authority is giving them 30 more days to schedule training.

NPV #285 - Washington Gas vs. Village Concrete. There has been no response from them and there have been more NPV's filed against them. All are for no calls. It was suggested since they are ignoring all communication, to send them \$4,000 fines for each NPV. Jim Barron will

send letters. Tom said the Authority will talk to the lawyers to see if D.R. Horton should be cc'd on letters.

NPV #576 - Harris and Sons are ignoring all the letters from the Authority. Talk to lawyers about this one too.

NPV #578 - Hirsch Electric has been in contact with Jim Barron but nothing has been resolved. Jim will call them again.

NPV #579 - Dish network will pay the fine and they have called Dora and scheduled training.

NPV #1005 - R& D Construction has not responded to letters sent out.

NPV #1089 - There has been no response from Antenna Star.

NPV #1196 - Maryland Jockey Club will pay their fine.

NPV #1322 & 1323 - M&M Sediment Control - \$2,000 & \$4,000 for each and training. Motion was made. All in favor.

NPV #1199 - #1318 - #1319 - \$2,000 fine each. Motion was made. All in favor.

NPV #1320 - Matrix Service - Jim has been in contact with them and they are putting procedures in place so this doesn't happen again. Motion was made to fine them \$2,000 for no ticket and \$1,000 for damage and give them an opportunity for a Hearing. All in favor.

NPV #1198 - Centerline Utilities - Existing ticket for 3 addresses that were marked accurately but they hit facility with a backhoe. Duty of care and clear evidence are the NPVs. Motion was made to fine them \$1,000 for each (\$2,000 total) and training. All in favor.

Non-member updates:

Antietam Cable and Norfolk Southern Railroad - talk to lawyers about what to do.

MML & Municipalities - town of Friendsville - all facilities are owned by facility owners but sewer is owned and maintained by the county. However, there is a park (public property as well as government) with lines and they need to be a member of Miss Utility. Tom said this is a question for the Attorney General because the answer is not clear. A more defined definition is needed.

Town of Sykesville - They own the street lights but they are operated by BGE. Questions remain.

MACo & Counties - Still no response from Wicomico and Worcester County. Another letter sent certified mail is necessary.

There were changes made to the subpoena the Authority will eventually use. Motion to approve. All in favor.

PHMSA Grant - Ready except for letter to the Governor.

Officers for 2014 - Marcia agreed to be Vice-Chairman. Motion was made. All in favor. Need to get a new badge for her.

Treasurer - Bernie Cochran volunteered. Motion was made. All in favor. Need a new badge for him.

NPV recommendation procedures - motion to approve. All in favor.

Annual report - in progress.

Parr Recovery, Inc. - do not send a response.

Next Subscriber's meeting - Jim Barron is going to the meeting to request more money.

There being no further discussion or business of the Authority, the meeting was adjourned. The next Authority meeting is scheduled for Wednesday, February 5, 2014.