

# Maryland Underground Facilities Damage Prevention Authority

## MINUTES OF MEETING OF AUTHORITY

Wednesday, October 8, 2014

### Agenda Items 1 & 2:

The meeting was called to order by Authority Chairman, Kevin Woolbright at 9:02 am in the Miss Utility One Call Center, 7223 Parkway Drive, Hanover, MD 21076. In attendance were Authority members Kevin Woolbright, Tom Hastings, Tom Baldwin, Tom Hoff, Art Bell, Walter Gainer, Marcia Collins, Veronica Davilla Steele and Bernard Cochran. Susan Stroud, Jim Barron and Bruce Bereano were also present. Guests included Scott Brown with Washington Gas, Mike Burns with Utiliquest, Vince Healy and Mark Hamerick, Verizon, Michael J. Hinkle, TBHE Law, Craig Zematitatis, Riggs Distler, Georgia Goslee and Matt Ruddo with Miss Utility.

A quorum was present.

### Agenda Item 3: (Handouts)

Approval of Minutes:

There were no minutes available for the August 6<sup>th</sup> meeting.

### Agenda Item 4: (Handouts)

Authority Treasurer Report: Financials were handed out and Jim Barron gave an overview. Motion made to approve. There were no questions from the board. Board member Baldwin motioned to approve, seconded by member Gainer. The motion carried unanimously.

### Agenda Item 5: (Handouts)

Cross Bore Issue:

Bruce Bereano, representing Washington Gas made a presentation on the proposed Underground Utility Damage Prevention – Location of Nonmetallic Sanitary sewer Piping legislation. The purpose of the bill would be to require the use of “tracer wire” for all nonmetallic sanitary sewer piping that discharges to public or private systems. The wire should be co-trenched with the sewer line and run from within 5 feet of the building wall to the point of disposal and terminate at an accessible above ground location.

Bereano explained that the proposed bill was based on Virginia statute and that the new policy would apply to new installations only. The bill would be introduced on behalf of the Authority (allowed by statute) by a member of the House of Delegates and/or Maryland Senate. The bill would be heard before the House Economic Matters and Senate Finance Committees. As previously directed by the Authority, Bereano has contact the AUC of MD, Maryland Homebuilders, WSSC, MD Minority Contractors and the State Plumbing Board.

Chairman Woolbright opened the floor to discussion:

Chairman Woolbright indicated that the WSSC has some issues with the language and has asked for a meeting on October 23<sup>rd</sup>, 2014 in order to seek further clarification. Member Collins had some concerns regarding the “public” and “private” system designations and “point of disposal” (language added by the State Plumbing Board per Bereano) and asked to re-refer the proposal to MACO. There was more discussion on the public portion participation and the need for a legal definition of “point of disposal” Members Bell, Collins and Bereano.

The Chairman asked for a motion to move forward. A motion was presented for the Authority to agree to present legislation based on the general concept of using tracer wire on plastic piping via a sponsor in the House of Delegates and/or Maryland Senate. Member Hastings offered the motion which was seconded by member Gainer. The motion to approve carried with 6 affirmatives, 1 abstention and 1 negative. Bereano was directed to seek more support and input from other groups as the process continues. Further discussion of the issue will occur at the November 5, 2014 meeting.

Agenda Item 6: (Handouts)  
Scheduled Hearings:

NPV #1589 – Washington Gas vs. Riggs Distler. The alleged violations included 1) no location request and 2) knowledge of existing facilities. The recording and hearing began at 9:31 a.m. Chairman Woolbright instructed the parties on the hearing process and swore in Scott Brown, Washington Gas and Mike Hinkle, counsel for the probable violator, and Craig Zematitatis, Riggs Distler. Executive Director. Jim Barron was also also sworn in.

The attorney for Riggs Distler waived making an opening statement, at which time the Authority Executive Director, Jim Barron introduced into evidence NPV#1589, August 6, 2014 Hearing, Evidence Log (exhibits #1 through #14) to the board and gave the exhibits to the recording secretary Susan Stroud to be entered into the record. The Executive Director presented the findings of his investigation into NPV#1589 and the accompanying evidence of violation to the board.

Barron stated that the damage occurred on December 30, 2013, before 9:58 a.m. during an auguring operation next to a telephone pole adjacent to 5605 Miles Drive, Oxon Hill, Maryland. Washington Gas dispatched emergency crews to the site of the incident at 9:58 a.m. to turn off gas and proceeded to call in an emergency ticket to repair the damage to the gas line. Evidence showed that remains of the gas line and tracer wire were wrapped around the auger and that clear evidence of gas service was visible in front of the 5605 Miles Drive dwelling as well as locator markings for gas service in the road and on the grass near the utility pole.

Further research showed that Riggs Distler called in for a standard ticket at 10:33 on December 30, 2013, after the damage had occurred. As a result the findings of no valid ticket and knowledge of existing facilities were the determination of the investigator, Barron.

Chairman Woolbright opened the floor to discussion:

Member Bell asked the Executive Director when the markings were made. Were they made after the fact? Barron responded that he did not know for certain. Bell asked that the date and time stamp on the exhibit be noted.

Attorney Hinkle gave an explanation regarding the lack of a ticket indicating it was the result of miscommunication on the part of his General Foreman, Bill Tipton. Tipton had verbally asked an unidentified Utilquest employee to mark additional poles in the neighborhood that were recently added to their (Riggs Distler) contract's scope of work. In addition, the Riggs Distler office erred in calling in for a standard rather than emergency ticket.

Member Baldwin stated the call-in times did not jive with the events that occurred. Member Hastings asked if Riggs Distler could verify if the conversation between Tipton and the Utilquest

employee occurred and when. Member Bell again queried when the marks were made and if they were correct and why an experienced company would not apply the 18inch rule and hand dig. Chairman Woolbright asked if the Riggs Distler had received the "Excavator Guide" with your evidence packet and read the best practices section on when and where to dig a test pit? Zematitatis responded that they had received the book and that they had hand dug a test pit, but found no gas line. He did not know how deep they dug. Chairman Woolbright asked if they had called in a discrepancy ticket. Zematitatis responded that he did not know if they made the call. Member Hoff asked the Executive Director how far back had had researched the Riggs Distler ticket requests. He also opined that the marks did not look 30 days old. Having no additional comments the hearing moved on to the plaintiff's remarks.

Scott Brown representing Washington Gas gave a brief summary of the company's public safety policy. He also stated that no additional tickets had been requested by Riggs Distler for Miles Drive as of July 2013 and that there were no locate marks prior to repair. Hoff again remarked on the test pit and the assumption there was no utility. "You should have kept digging" Hoff said. Member Brown indicated that Washington Gas installation depths can vary from 12 inches to 12 feet. Member Bell asked if Riggs Distler had tickets for work in the area, not Miles Drive. Attorney Hinkle responded that they had tickets for other work in the area.

Chairman Woolbright requested a closing statement from Attorney Hinkle. Hinkle stated that Riggs Distler was not disputing the lack of ticket for Miles Drive. Riggs Distler has been proactive and in correcting situation so that this sort miscommunication does not re-occur. They have re-educated their employees on policies and procedures and on-site crews no longer fall in tickets. This is now a function of the home office. Hinkle asked that no fine be levied as this was a first offense.

Member Baldwin stated that it was important for the site crew to physically have the tickets in hand. Zematitatis responded that the crew chief in this instance acted incorrectly and that Riggs Distler had changed the process to prevent further miscommunication. Chairman Woolbright stated that the violator was very lucky there was no explosion and that the goal of the authority was to protect facilities and the public.

In closing the Chairman referenced the Miss Utility law page 32, title 12-113 – Hearing Process; Section (e) Letter of Decision. He noted that Riggs Distler had the right to appeal the decision within 30 days of receiving their decision. He also noted that the company should read the "Excavation Guide"

The hearing for NPV #1589 was concluded by the Chairman at 10:15 a.m., October 8, 2014 and the recording was stopped.

#### Agenda Item 7:

##### Hearing Discussions and Decisions:

NPV # 1589 - \$2000 fine, plus training was recommended. Chairman Woolbright stated that the bottom line was "no ticket". The Exec Director informed the board that Riggs Distler had 10,107 tickets in the system from 1/01/13 to 1/30/14. Member Baldwin commended the company for being proactive and had a good reputation. Members Bell and Baldwin suggested reducing the fine, but there was no consensus from other board members. Member Hoff stated that there was no ticket in place and the crew proceeded anyway. Member Collins stated that it appeared the crew had attempted to cover up the damage and obviously did not follow the law. There was

additional discussion on the Authority's ability to reduce fines or modify punishment. The Chairman stated that the Authority needed to be consistent in its findings and recommendations. A motion was made to adhere to the recommendation of a \$2000 fine and training. The motion was seconded. The vote was five (5) in favor, one (1) abstention and two (2) against. The motion carried.

Agenda Item 7 (cont'd)

Revisit: NPV #1724 – Dominion Transmission vs. Beuchert Excavating. The original finding at the September 3, 2014 was for \$1500 fine and training, a reduction of \$500 for mitigating circumstances. At the request of a board member, the issue of adjusting the fine further was placed on the agenda. Member Baldwin made a motion to revisit which was seconded. The Executive Director indicated that the probable violator had not been sent the decision letter, but that any further action on this NPV could set a bad precedent. There was protracted discussion regarding the degree of the offense, the proactive actions of the violator after the fact and the precedent set by any additional actions by the Authority. It was noted that by not calling for a ticket the violator was clearly in the wrong. No motions to further reduce or increase the fines carried. The Chairman called for a final motion regarding the disposition of the fine. A motion to leave the fines as previously decided was made, seconded. The motion carried.

General discussion followed regarding setting minimum fines, hearing procedures, to revisit or not, when voting should occur (that day or another day). The Executive Director noted that the Authority was bound by the Administrative Hearings Act. He stated that he would confer with the Authority's attorneys regarding what ability the board may or may not have to adjust how hearings are conducted.

Agenda Item 8:

Appeals:

The Executive Director gave updates on pending appeals cases NPV #316a, 316b, 408, 411a & 411b (Pinpoint/WSSC) hearing postponed to October 20, 2014 @ 9:00 a.m., AACo Circuit Court.

Reliable Contracting NPV #283 has been moved to the MD Court of Appeals, no hearing date has been set.

Agenda Item 9:

Post Hearing Up-dates:

NPV #285 – Have signed up for additional training in November.

NPV #1089 – Have assured staff that money is coming soon.

NPV #1199 – Motion made to remove discount on fine. Motion carried unanimously.

NPV #1304 – Have signed up for additional training IN November.

NPV #1310 - " " " " " " "

NPV # 1311 – " " " " " " "

NPV #1318 - Dora to be contacted re: training. Fine not yet paid.

NPV #1322 – Called 9/25/14, upset about fine but will pay and take training.

NPV #1323 - " " " " " " " " "

NPV #1449 – Closed 9/30/14

NPV #1599 – Wants to complete training during slow time.

NPV #1677 – Claims to have paid fine, never received, out of business and will not do training.  
NPV #1723 - Need a bi-lingual trainer, not scheduled as yet.  
NPV # 1799 – Closed 9/17/14  
NPV #1872 – Closed 9/30/13

Agenda Item 10:

Post Review/Pre hearing updates:

NPV #1005 – Board recommends subpoena.  
NPV #1216 – Hearing scheduled for November 5, 2014.  
NPV #1446 - Still trying to make contact.  
NPV #1438 - Closed 10/18/14  
NPV#1497 – Subpoena  
NPV #1834 – Hearing Scheduled for November 5, 2014  
NPV #1841 – In contact with violator 10/1/14. No hearing scheduled to-date.  
NPV #1853 – Hearing scheduled for November 5, 2014.  
NPV #1864 - 3<sup>rd</sup> and final letter sent certified on 10/6/14  
NPV #1870 – Closed 9/30/14  
NPV #1873 - Scheduled for November training, fine paid.  
NPV #1874 – 3<sup>rd</sup> letter sent certified 10/6/14 to resident agent.  
NPV #1954 – Closed 9/30/14.  
NPV #1955 - 3<sup>rd</sup> & final letter sent certified 10/6/14  
NPV #2130 – 2<sup>nd</sup> recommendation letter sent certified 10/6/14  
NPV #2292 – Recommendation letter sent 9/15/14, Certified letter not yet signed.

Agenda Item 11: (Handouts)

NPV's for Review and Findings by the Authority:

NPV #2446 – \$2000 + \$2000 + Training - Unanimous  
NPV #2447 - \$2000 + \$2000 + Training – Unanimous  
NPV #2450 - \$2000 + Training – Unanimous  
NPV # 2459 - \$2000 + Training – Unanimous  
NPV #2460 - \$2000 + Training - Unanimous

Agenda Item 12:

Still Investigating:

NPV #1765  
NPV #1871 – Motion to close, unanimous 10/8/14  
NPV #1993 – Hold until evidence is obtained.

Agenda Item 13:

New NPV's for Research and Review:

Please refer to October 8, 2014 Agenda for list of new NPV's

Note: NPV – 2540, 2459, 2460 were listed in error.

Agenda Item 14: (Handouts)  
Non-member Updates:

Norfolk Southern Railroad:

Motion to table issue until January meeting was unanimously approved. 10/8/2014.

MML & Municipalities:

- Town of Myersville - Motion to ask Authority attorneys to respond to the Myersville attorneys letter; motioned and approved 10/8/2014
- Town of Pocomoke City – Non-issue.
- Town of Funkstown – Joining Miss Utility.

Agenda Item 15: (Handouts)

Old Business:

- Fining Matrix – Executive Director Barron recommended the Authority seek out an economist or statistician to take the fining matrix to the next step. Barron does not feel equipped to execute the matrix properly. Member Hoff suggested that this would be an excellent graduate student project. He will contact the head of the Loyola MBA program and a group of accountants to see if it can be *done pro bono*.
- Revenue Stream – Awaiting the outcome of the 10/9/14 stakeholders meeting.

Agenda Item 16:

New Business:

- GCDPTR – Approve Gold Sponsorship for the conference. Motion to approve was seconded and carried unanimously. A conference registration package is available for two days if any board member is available to attend.
- Next Steps – Executive Director Barron informed the board that the Authority is outgrowing its space and needs more support staff, due to the success of the program. Barron also informed the board that he will be seeking an employment contract with the Authority rather than remain as a consultant.
- Minutes and other issues – The Executive Director stated that in the interest of economy he would prefer to rely on electronic agenda and minutes and provide only a few hard copied for convenience.

Agenda Item #17:

Future Meetings:

- 2015 Meeting Schedule – The board tabled approving the 2015 schedule and asked the Executive Director to cross check with the CGA and other pertinent organizations for conflicts.

The next meeting is November 5<sup>th</sup>. Three (3) NPV hearings are currently scheduled (1216,1834 &1853)..

There being no further discussion or business of the Authority, the meeting was adjourned at 12:40 pm.

Respectfully submitted by: Susan Stroud