

Maryland Underground Facilities Damage Prevention Authority

MINUTES OF MEETING OF AUTHORITY

Wednesday, May 6, 2015

Agenda Items 1, 2 and 3:

**Call to Order, Attendance Roll Call & Welcome**

The meeting was called to order by Authority Chairman, Kevin Woolbright at 9:01 a.m. in the Miss Utility One Call Center, Conference Room, 7223 Parkway Drive, Hanover, MD 21076.

A roll call of the Board of Directors was conducted by Ms. Stroud. A quorum (6) was present for the morning session.

In attendance were Authority members Kevin Woolbright, Walter Gainer, Tom Hoff, Art Bell, Veronica Davilla-Steele and Tom Hastings were present for the morning session. Board Members Tom Baldwin, Bernard Cochran and Marcia Collins were absent. Susan Stroud and Jim Barron were also present.

Guests included: Dora Parks, Miss Utility; Matt Ruddo, One Call Concepts; Scott Brown, Washington Gas; Jack Sullivan, BGE; Thurman Smith, Utiliquest; E. Alexander Adams, ESQ; Jim Graham-Yooll; Robert Perky, Keith Leonard; Paul Augustine, Augustine Plumbing; Kirby Delauter and Garland Brian

Agenda Item 4: (Handouts)

**Approval of Minutes:**

The April 1, 2015 minutes were approved and will be posted on the Authority website.

Agenda Item 5: (Handouts)

**Authority Treasurers Report:**

The Executive Director provided financial statements for the two previous periods. He reported that the General Account has a balance of \$68,189.23 and the Education and Outreach Account has a balance of \$39,830.62. There are no outstanding bills at this time. The Executive Director also noted that legal fees for the Authority to-date are \$12,299.98 (20.50% of operating budget). There will also be large outlays from the Education and Outreach fund in May and June for the Baltimore metro area media campaign

Agenda Item 6: (Handouts)

**Cross Bore Issue:**

Bruce Bereano reported that that SB401 & HB341 were passed, enrolled and signed by Governor Hogan on April 14<sup>th</sup>. The measure will become effective October 1, 2015.

Agenda Item 7:

**Appeals:**

- Oral arguments for Pinpoint/WSSC (NPV's 316a, 316b, 408, 411a and 411b) are set for October 2015. These are primarily based on conflict of interest, however there has been

one (1) favorable ruling for the Authority. These arguments are appealing the lower court ruling.

- The Court of Special Appeals ruling on NPV# 283 (Reliable Contracting v. MD Underground Authority) was filed on April 30, 2015 and sent to the Authority on May 5<sup>th</sup>. This is the second favorable ruling on the constitutionality of the Authority. The Plaintiff has 30 days to respond to the ruling. There is only one more level of challenge in Maryland, which is the Maryland Court of Appeals.
- Pinpoint/WSSC – NPV's 1216, 1834, 1841 & 1853 were appealed to the Circuit Court of Anne Arundel County on March 25, 2015. The ruling of the court was favorable to the Authority. The plaintiff has filed an appeal.

**NOTE:** There are currently ten (10) NPV's under legal review.

Agenda Item 8:

### **Morning Hearings**

#### **8a) NPV# 2450 – Washington Gas v. RL Purkey Plumbing and Heating**

- Alleged Violation (s) – §12-124 (a) Notice to One-Call system  
§12-127 (e) Clear Evidence
- Recommendation – §12-124 (a) Notice to One-Call system - \$2k + training  
§12-127 (e) Clear Evidence – fine waived
- Location – 6426 Brookes Lane, Bethesda, MD 20816

Chairman Woolbright the hearing for NPV# 2450 to begin at 9:45 a.m. The recording system was started. A Roll Call vote was taken by Ms. Stroud and entered into the record. There were six (6) votes to proceed. Four (4) members were absent at the time of the vote. The Executive Director, Washington Gas representative Scott Brown, Robert Purkey and his two witnesses, Keith Leonard and Norman Graham-Yooll, Rembrandt Builders, were sworn.

The Executive Director presented the Evidence Log and accompanying documentation to the Board. The official evidence file was given to the Secretary to be entered into the record. A copy was also given to the defendant. The Director presented the research he conducted for NPV# 2450, which corroborated the alleged violation(s). Scott Brown introduced the Washington Gas exhibits to the Authority which included photo documentation of the damage.

Member Bell asked if there had been any ticket requests by Purkey in the past year. The answer was no. Purkey stated there was an active ticket for both 6426 and 6422 that was called in by Rembrandt Builders. He stated that always worked under their tickets and only worked for them and used their equipment; which was verified by Graham-Yooll. He also stated that there were marks for both houses, but none on the Street. Research showed that the ticket request was for only 6426. Purkey stated that the line was 5(five) feet off the mark so it didn't matter who called in the ticket.

Member Gainer asked if a test pit had been dug prior to the work. None had. The Washington Gas representative, Brown submitted further evidence (plaintiff's exhibit 16) that the markings

were correct. The Chairman explained the ticket process and onto who the responsibility rests. Gainer also asked if there were any pre-construction photos of the site. The answer was no. Member Bell asked Purkey if he had a copy of the thicket with him at the job site. The answer was no. After a few more clarifying questions, the Chair closed the hearing at 10:09 a.m.

**8b) NPV# 2547 – Town of Myersville v. W. F. Delauter & Son, Inc.**

- Alleged Violation(s)
  - §12-121 (c) – Abuse of Emergency One-Call
- Recommendation - §12-121 (c) – Abuse of Emergency One-Call - \$4k fine + training
- Location – 2870 Milt Summers Road, Myersville, MD 21727

Chairman Woolbright called the hearing to order at 10:16 a.m. and requested that representatives of Town of Myersville step forward. None were present. Kirby Delauter on representing the defendant was sworn in; as was the Executive Director Jim Barron. The Chair gave the floor to the Director who presented the Evidence Log and accompanying documentation to the Board and Mr. Delauter; the Secretary was also given the official Evidence file to be entered into the record.

The Director noted that there was a valid ticket pulled by Delauter for emergency electric repair; which was stasured “clear no conflict” by the Town of Myersville. The contract was in fact working on the Grindstone Run C900 sanitary sewer work for Dominion. Because Delauter was having problems getting marks from the town, it was suggested to him that he call in an emergency ticket in order to expedite the project. It should be noted that there was no damage. The Executive Director stated that in the statute, emergency is defined as a threat to life health or property.

Mr. Delauter stated that in the pre-construction meeting the town stated that they would not mark the line and that if any damage occurred, it would be WF Delauter’s responsibility to repair. As a result, the contractor was being overly cautious in calling in the emergency ticket. Being no further questions or comments, the Chair closed the hearing at 10:40 a.m.

**8c) NPV# 2743 – Washington Gas v. Augustine Plumbing**

- Alleged Violation(s)
  - §12-124 (a) – Notice to One-Call system
  - §12-127 (e) – Clear evidence
- Recommendation –
  - §12-124 (a) – Notice to One-Call system/\$2k fine plus training
  - §12-127 (e) – Clear evidence /no fine &training
- Location – 12502 Rustic Rock Lane, Beltsville, MD 20705

Chairman Woolbright called the hearing to order at 10:45 a.m. and requested that representatives of Washington Gas and Augustine Plumbing step forward. Scott Brown, Washington Gas and Paul Augustine, Augustine Plumbing were sworn; as well as the Executive Director Jim Barron. The Chair gave the floor to the Director who presented the Evidence Log and accompanying documentation the Board and Augustine. The official evidence file was given to the Secretary to be entered into the record. The Director noted that four (4) Augustine

employees have already attended training. In addition there was a ticket called in for this job, but it had not yet cleared.

After reviewing the evidence with the Board, the Chair asked Mr. Augustine to speak. Augustine stated that he is not disputing their guilt in this matter, but there to ask for leniency. He also stated that Washington Gas had damaged the water line he had installed when they were making repairs. The Chair asked Augustine if he wanted to proceed with a full hearing since he had admitted guilt. The defendant and plaintiff both agreed to suspend the hearing. Scott Brown with Washington Gas stated that he was willing to provide no cost training to Augustine. The Executive Director asked Augustine how many employees they had, he responded fifty-five. Augustine works in multiple jurisdictions. Member Bell asked if there were marks when they began digging, Augustine responded there were. Having no more questions or comments, the Chair closed the hearing 11:01 a.m.

Agenda Item 9

### **MOVE TO EXECUTIVE SESSION**

**Hearing Discussions and Decisions:** NPV# 2450, 2547, 2734

The Chairman made a motion for the Authority Board to go into Executive Session. The Secretary conducted a recorded roll-call vote on the motion which passed with five (5) votes). It was noted that Member Hoff was excused at 11:05 a.m. but would return for the 1:00 session.

Agenda Item 10:

### **LUNCH BREAK**

Agenda Item 11:

### **Afternoon Hearings**

At 1:00 p.m. the Chairman reconvened the open portion of the meeting. The secretary conducted an attendance roll-call. There were five (5) members in attendance which constituted a quorum.

**11a) NPV# 2738** - Washington Gas v. Garland L. Brian, Sr.

- Alleged Violation(s)  
§ 12-124 (a) Notice to One-Call Center – 1<sup>st</sup> offense
- Recommendation - \$ § 12-124 (a) Notice to One-Call Center/\$2k fine and training.
- Location: 7800 Cross Street, Lanham, MD 20706

Chairman Woolbright called the hearing to order at 1:05 a.m. and requested that representatives of Washington Gas and Garland L. Brian to step forward. Scott Brown, Washington Gas and Garland L. Brian, Sr. were sworn. Also E. Alexander Adams, the defendant's attorney was present. The Executive Director Jim Barron was also sworn. The Chair gave the floor to the Director who presented the Evidence Log and accompanying documentation to the Board and Garland Brian. The official evidence file was given to the Secretary to be entered into the record.

Mr. Brian stated that he had received and reviewed the packet sent by the Authority regarding the violations. The Chair pointed out to Mr. Adams that as the defendant's attorney he was not to make statements on behalf of his client. Brian claims that there were two (2) tickets called in for this job by Berman Enterprises. The Executive Director looked under Berman and found a ticket which had expired four (4) days prior to the damage. Mr. Brian stated that he has done

work on an hourly basis for Berman through three (3) generations. He has no contract with them and has always worked under Berman's tickets. Brian stated that they had paid Washington Gas to abandon the lines for the entire project. While excavating he stated that they came across a lateral that had no gas.

Mr. Adams stated because Washington Gas had been paid to abandon the lines, the case was moot. Member Gainer stated that there was no valid ticket at the time of damage, which constitutes a violation of the statute. Mr. Adams thinks the statute contains vagaries, however will stipulate that his client did not file the appropriate tickets for the project.

At this point in the hearing Brian's attorney asked in the interest of time that the two (2) other NPV's for the same job be folded into the same hearing. The Chairman and board members agreed.

**Additional NPV's:**

**11b) NPV# 2739** - Washington Gas v. Garland L. Brian, Sr.

- Alleged Violation(s)  
§ 12-124 (a) Notice to One-Call Center – 2<sup>nd</sup> offense
- Recommendation - \$ § 12-124 (a) Notice to One-Call Center/\$4k fine and training.
- Location: 7800 Cross Street, Lanham, MD 20706

**11c) NPV# 2740** - Washington Gas v. Garland L. Brian, Sr.

- Alleged Violation(s)  
§ 12-124 (a) Notice to One-Call Center – 3<sup>rd</sup> offense
- Recommendation - \$ § 12-124 (a) Notice to One-Call Center/\$4k fine and training.
- Location: 7800 Cross Street, Lanham, MD 20706

Mr. Adams was given time to review the evidence for the other NPV's; which all occurred at the same job site on the same day. Mr. Adams then asked to introduce three (3) Exhibits into the record on behalf of his client. The Secretary recorded them as Defendants Exhibits one (1) through three (3). The exhibits apply to all of the NPV's in question. Defendants Exhibit one (1) is an unexecuted "work order" between Washington Gas and Masters NC Station, LLC (Berman) to abandon ~1280' of 2" WRPD #20 gas main. The owner paid Washington Gas \$30,580.00 to abandon the line. Defendant's Exhibit two (2) is a cash receipt and copy of the check for \$30,580 paid Washington Gas. Defendant's Exhibit three (3) is an email from Chip Stehle, Berman project manager for the Cross Street job. The email is to the defendant's attorney E. Alexander Adams which contains a timeline of events concerning the gas line breaks, and a statement that Brian hand dug the entire main.

The Executive Director then introduced an additional Exhibit which will apply to the three (3) NPV's. The exhibit contained a photograph of Cross Street showing the elevation change to the road and two schematics showing where the gas service had been capped. Mr. Adams inquired if you need a ticket if the utilities are abandoned. Mr. Barron read the portion of the statute regarding excavation activities and the requirement of a valid ticket. It was noted by member Gainer that the gas main was live and that service to the existing houses were abandoned. Had the proper tickets been called in the, the lines would have been marked.

Mr. Gainer asked Mr. Brian if when he hand dug the main and observed a stub sticking out, why did damage occur further down the main? Mr. Brian admitted that he only dug a test pit and did not had dig the entire main. Having no more questions or comments, the Chair closed the hearing 2:19 p.m.

Agenda Item 11(d):

**Hearing Discussions and Decisions:** NPV# 2738, 2739 & 2740

Moved to Executive Session

Note: The Business portion of the meeting was conducted before the lunch break

Agenda Item 12:

**New NPV's for Research and Review**

- NPV# 3165 – Washington Gas v. Civil Construction

*Still under review.*

Agenda Item 13:

**Non-Member Updates**

- Norfolk Southern - Will be removed from future agendas.
- MML & Municipalities
  1. Town of Funkstown – Working with Shannon again.
  2. City of Rockville- Up and running as of May 4, 2015
  3. Montgomery County – Signed an agreement on May 6, 2015 to mark all lines. No need for a letter to be sent.
  4. Baltimore County – Jim Barron will set up a meeting with Ed Adams.
  5. Aero Energy – A letter will be sent under the Chair's signature.

Agenda Item 14:

**Old Business**

- Fining Matrix - The Director is working with someone from B. Frank Joy to create the matrix.
- Revenue Stream – No meeting scheduled as yet.
- Education – Successful presentation was given to the HOCO Maintenance Section on April 16, 2015.
- Authority Appointments – No change.
- Revised NPV review process – Awaiting the matrix.
- 2014 PHMSA Grant – The interim report has been sent. The budget can be altered to reflect administrative cost changes.

Agenda Item 15:

**New Business**

- 2015 Greater Chesapeake Damage Prevention Training Conference Request – The Board agree unanimously to take a \$3,000 sponsorship. The theme will again be the Fall season & Halloween.

Agenda Item 16:

**Future Meeting Dates**

June 3, 2015; 9:00 a.m. – 19 hearings, limited business meeting if necessary.

The Director handed out a schedule for the rest of the year. There was discussion about the schedule and the issue of members schedules. The Chair directed Mr. Barron to keep the schedule as planned, but to notify the board well ahead of time if there are any changes.

Agenda Item 17:

**Adjourn meeting and move to Executive Session**

- A formal roll-call to adjourn to Executive Session was conducted and recorded by the Secretary.
- The May 6, 2015 Authority meeting was adjourned at 2:30 pm.

Respectfully submitted by: Susan Stroud