

Maryland Underground Facilities Damage Prevention Authority

MINUTES OF MEETING OF AUTHORITY

Wednesday, June 3, 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 9:00 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 (5) was present for the morning session. Note: Authority member Bell arrived late for the meeting, which made the quorum (6)

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; Vince Healy, Verizon; Mark Hamrick, Verizon; Jim Harwood, Decisive Communications and Will Gooch, Decisive Communications.

Agenda Item 4: (Handouts)

**Approval of Minutes:**

The May 6, 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 May. He reported that the General Account has a balance of \$57,729.69 and the Education and Outreach Account has a balance of \$28,505.62. There are no outstanding bills at this time. The Executive Director also noted that legal fees for the Authority to-date are \$46,401.73 (22% of operating budget). There will also be large outlays from the Education and Outreach fund in June for the Baltimore metro area media campaign

Agenda Item 6: (Handouts)

**Appeals:**

- Oral arguments for Pinpoint/WSSC (NPV's 316a, 316b, 408, 411a and 411b) are set for hearing in the Maryland Court of Special Appeals in October of 2015.
- 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 for the Authority. The Clerk of the Court has not yet issued a "Mandate", however, Reliable has filed a "Petition for Writ of Certiorari" on May 29, 2015
- Pinpoint/WSSC – NPV's 1216, 1834, 1841 & 1853 were appealed to the Circuit Court of Anne Arundel County on March 25, 2015.

Agenda Item 7:  
**Morning Hearings**

**NPV# 1765-1(-19) SMECO v. Decisive Communications**

1. 15700 Cheswicke Lane, Upper Marlboro, MD
2. §12-121 © Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

Chairman Woolbright opened the hearing for NPV# 1765-(1 thru 19) at 9:20 a.m., after the business meeting was concluded. 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. The Executive Director, Will Gooch and Tim Harwood of Decisive Communications, were sworn. Blaze Diggs of SMECO was expected to attend on behalf of the complainant, but did not attend.

The Executive Director introduced into the record a spread sheet outlining the 19 violations (16 different addresses) to use as a general guide for the hearing (Exhibit #1), since this was a bundled NPV. In addition, Mr. Barron introduced as general evidence for all violations the subsection of the Maryland Annotated Code that defines Emergency Excavation or Demolition (§12-121) (Exhibit #2). The Evidence Log and accompanying documentation for NPV#1765-1 was given 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 Executive Dir. told the board that due to the similarities of the violations, he sent a questionnaire all the addresses listed in the NPV. The form asked if this was a repair, new service or other. Eight (8) of the addressees responded.

The Executive Dir. stated that the ticket for this violation as well as the other 18 were for emergency repair. This was in fact a new service. In addition Fox Underground who was the contractor did not file the ticket. Decisive Communications both filed the ticket and gave themselves as the contact. Per the ticket, Fox Underground was doing the work for Comcast. SMECO the utility owner responded the same day and marked.

Will Gooch, of Decisive stated that they are the point of contact for the subcontractor and Comcast and that they call in all of the tickets for their clients. He went on to say that Comcast tells them when a job is considered an “emergency. The Executive Director stated that after SMECO filed the 19 NPV’s, Decisive Communications and Comcast asked for a meeting with the Authority. At the meeting processing and scheduling were discussed. Comcast agreed that they were over using the “emergency” status and that they would improve their scheduling. Tim Harwood stated that this will mean additional cost for Comcast and that Decisive has developed an App for them that will improve turn-around and duplication.

Board member Gainer questioned Decisive’s role as a “clearing house” for subcontractors and stated that the “digger” should be the one getting the ticket. Will Gooch said that they are agents and that part of their responsibility was to make sure there were no mistakes. Decisive has a fully automated system that sorts and flags “clear no conflict” status. That is a computer program not a person manually filing tickets. Gooch also stated that they are operating in Virginia as well.

Tim Harwood stated that they did not want to use the “emergency” status, but that Comcast was insistent. They have since pushed back on Comcast to change their process. Comcast maintains that no access to 911 is their chief concern. At, this point the Executive Director did remind the board that “hearsay” is admissible in administrative hearings; and added that SMECO has stated that there has been a big improvement in the number of “emergency” tickets.

Further discussion took place on the 911 strategy employed by Comcast. It was mentioned that this would not apply to new service and that most people have cell phones. Will Gooch did mention that some locators will not respond unless the job is statused "emergency". Chairman Woolbright called the hearing to a close at 10:21 and asked for a brief break in the proceedings. The recorder was turned off at that time.

**NPV# 1765-2** SMECO v. Decisive Communications

- 1.15717 Cheswicke Lane, Upper Marlboro, MD
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

Chairman Woolbright reconvened the hearing at 10:31. The Executive Director introduced the evidence log into the record, stated that this was new service and identical to NPV# 1765-1. The Decisive representatives had no comment. The hearing concluded at 10:35.

**NOTE:** Due to the similarity of all the violations, the Chairman suggested that the tape be kept running as the evidence was introduced. Please refer to the previous discussion of NPV# 1765-1 for details.

**NPV# 1765-3 thru 9** SMECO v. Decisive Communications

1. §12-121(a) Abuse of the Emergency One-call
2. \$2,000 fine and training recommended

**NOTE:** These violations were identical to the previous ones therefore there was nothing to add.

**NPV# 1765-10** SMECO v. Decisive Communications

1. 1404 Saint James Road
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

After review of the evidence, board member Hoff stated that this was not a violation. The board agreed.

**NPV# 1765-11, 12 &13** SMECO v. Decisive Communications

1. 15302 Pocopson Creek Way, Brandywine, MD
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

It was noted by the Authority board that a discrepancy ticket should have been filed. Decisive again stated that it was Comcast that listed it as an emergency. I was also noted that Miss Utility can't refuse a ticket if it's a legitimate emergency.

**NPV# 1765-14 &15** SMECO v. Decisive Communications

1. 5458 Hallowing Point Road, Prince Frederick, MD
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

This was a mobile home park and there was an issue with the water service, which caused a delay in marking. Again Comcast insisted on this being an emergency ticket.

**NPV# 1765-16** SMECO v. Decisive Communications

1. 763 Dan Bowen Road, Prince Frederick, MD
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

There were two standard tickets and one emergency filed for this address. It should be noted that the 763 address was an in-law apartment to the main dwelling #761; which could cause some confusion.

**NPV# 1765-17** SMECO v. Decisive Communications

1. 11240 Hickok Lane, Lusby, MD
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

This issue included service to the wrong utility pole. Service was then moved to another pole. Board member Hoff stated that the 2 tickets for this address were proper and that the emergency request was not an issue. The board agreed that this was not a violation.

**NPV# 1765-18** SMECO v. Decisive Communications

1. 1700 Edinburgh Lane, Dunkirk, MD
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

Will Gooch stated that the ticket was called in a second time because of the “clear/no conflict” status from SMECO who is the electric provider. There was a two week gap between requests.

**NPV# 1765-19** SMECO v. Decisive Communications

1. 1629 Cannery Road, Owings, MD
2. §12-121(a) Abuse of the Emergency One-call
3. \$2,000 fine and training recommended

Decisive admitted guilt for this violation

In their closing remarks Tim Harwood asked “if phone service was considered life-threatening?” He stated he needed to take the answer back to his client. Member Hoff stated that it is not in the statute and that outside access should be available, he also stated that Decisive is doing a good job. Will Gooch stated that they are working to reduce “emergencies”. The Chairman stated that they (Decisive) obviously have a plan and commended what they were doing so far. The Executive Director also commented that it is not the Authority’s job to interpret the law. The courts must do the interpreting. The Chairman called the hearing to a close at 11:56 p.m.

Agenda Items 8 & 9:

- **LUNCH BREAK**

- **MOVE TO EXECUTIVE SESSION**

***Hearing Discussions, Decisions and Reviews:***

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 six (6 votes).

Agenda Item 10: *(Note: The entire business meeting was conducted prior to the morning hearings)*

**New NPV's for Research and Review** (will review at July meeting)

- NPV# 3165 – Washington Gas v. Civil Construction  
Alleged Violations:
  - §12-124 (a) Notice to One-Call System – 1<sup>st</sup> offense.
  - §12-127 € Clear evidence.

Agenda Item 11:

**Non-Member Updates**

- MML & Municipalities
  1. Baltimore County – Jim Barron has sent a letter Ed Adams, Baltimore County DPW Director requesting a meeting. Will follow up with a phone call..

Agenda Item 12:

**Old Business**

- Fining Matrix – In process
- Revenue Stream – A meeting has been set for June 9, 2015 at 1:00 p.m. at Miss Utility.
- Authority Appointments – No change.
- Revised NPV review process – In process.

Agenda Item 13:

**New Business** – *(There was no new business discussed)*

Agenda Item 14:

**Future Meeting Dates**

- The next Authority meeting will be held on July 8, 2015, this meeting is scheduled for business only.

Agenda Item 15:

**Adjournment**

- The June 3, 2015 Authority meeting was adjourned at 11:59 a.m.
- The Lunch/Special Session was concluded at 1:00 p.m.

Respectfully submitted by: Susan Stroud