

# Maryland Underground Facilities Damage Prevention Authority

## AUTHORITY MEETING Minutes Wednesday, October 7, 2015

Agenda Items 1, 2 & 3

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

The meeting was called to order by Authority Chairman, Kevin Woolbright at 9:04 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, Matt Ruddo, Veronica Davila-Steele, Tom Hastings and Vince Healy for the meeting and hearings. Board Member Art Bell arrived at 9:30 a.m. Jeff Garner was absent. Susan Stroud and Jim Barron were also present.

Guests included: Dora Parks, Miss Utility; Scott Brown and Don Jones, Jack Ellison and Jim Hudson, Washington Gas Light; Brian Simmons, One Call Concepts; Mark Hamrick, Verizon; John Perl, B&P Utilities; Maurice Carlisle, J. Maurice Carlisle, Inc.; Gabe Lawson and Jordan Onderdonk, Gabe's Services, Inc. Charles McCadden, BGE.

Agenda Item 4: (Handout)

### **Approval of Minutes:**

It was noted that the date for the next Authority meeting was incorrect. The meeting date should be listed as 11/18/15. A motion was made to accept the amended September 2, 2015 minutes was made, seconded and approved by acclamation. They will be posted on the Authority website.

Agenda Item5: (Handout)

### **Authority Financial Report:**

The Executive Director provided financial statements for August. He reported that the Operating Account has a balance of \$135,780.68 and the Education and Outreach Account has a balance of \$27,474.62. There are no outstanding bills at this time. The Authority has received all of the 2014 PHMSA Grant monies and the final report for the 2014 grant is being prepared. The Executive Director also noted that legal fees for the Authority to-date are \$63,409.29. A motion to accept the September financial report was made, seconded and approved by acclamation.

## Agenda Item 6:

### **Appeals:**

- Pinpoint/WSSC - (NPV's 316a, 316b, 408, 411a and 411b) – Oral arguments are scheduled for October 13, 2015 at 8:00 a.m. The Chairman encouraged the Authority members to attend if they were able to.
- Reliable Contracting v. MD Underground Authority – (NPV# 283) Reliable Contracting filed a petition for a “Petition For Writ of Certiorari”; The Court of Appeals of MDs accepted the “Petition” on August 21, 2015. No date has been set for oral arguments at this time. This case specifically addresses the constitutionality of the Authority.
- Pinpoint/WSSC – (NPV's 1216, 1834, 1841 & 1853) were appealed to the Circuit Court of Anne Arundel County on March 25, 2015. No date has been set for Oral Arguments.

## Agenda Item 7:

### **Hearings:**

#### **NPV# 2765 – Washington Gas vs. J. Maurice Carlisle, Inc.**

At 9:20 the Chair called the hearing open and requested that the recorder be turned on. The violations to Title XII for NPV# 2765 were: §12-124(a) – Notice to one-call system; and, §12-127-(e) Clear evidence. The Chair swore in Maurice Carlisle and also Authority Executive Director Jim Barron and Scott Brown, the Washington Gas representative. Chairman Woolbright then explained the hearing process to the defendant.

Mr. Barron presented evidence pertaining to the case which included 9 plaintiff's exhibits, which were entered into the official record by the Secretary. After reviewing the record, it was determined that J. Maurice Carlisle did not have an active ticket at the time of the incident. There were no questions from the board and Mr. Carlisle was given an opportunity to state his case. He stated that he didn't dispute the findings, but said his company has been in business for 53 year and has a good safety record. He went on to say that this occurrence was a fluke, but mentioned he has experienced quite a few no-marks over the years.

There were some questions from member Ruddo regarding the date stamp on the evidence pictures that didn't jive with the time-line. Mr. Brown with WGL stated that perhaps the camera was not set properly. The Chairman stated that it was important to keep equipment set properly. Member Healy asked why this ticket was missed, Mr. Carlisle answered that he didn't know, that his secretary takes care of calling Miss Utility. Member Bell cautioned Mr. Carlisle that it is the person in the field's responsibility if there is clear evidence to follow up on the status of a ticket and that a copy of the ticket should always be with the crew in the field.

The floor was then turned over to Scott Brown with WGL. Brown praised Mr. Carlisle for his company's safety efforts and a 53 year history of good practices. He offered any assistance WGL could provide regarding working around gas lines. Member Ruddo also mentioned that safety training was available on a quarterly basis at the One-Call center free of charge. The Chairman explained what would occur post hearing.

The hearing was concluded at 9:50 p.m.

#### **NPV# 2897 – Washington Gas vs. Gabe's Services, Inc.**

At 9:59 a.m. the Chair called the hearing open and requested that the recorder be turned on. The violations to Title XII for NPV# 2897 were: §12-124(a) – Notice to one-call system; and, §12-127-(e) Clear evidence. The Chair swore in Gabe Lawson and Jordan Onderdonk, the excavator on this job for Gabe's Services; and, also Authority Executive Director Jim Barron and Scott Brown, the Washington Gas representative. Chairman Woolbright then explained the hearing process to the defendant.

Mr. Barron presented evidence pertaining to the case which included 10 plaintiff's exhibits, which were entered into the official record by the Secretary. After reviewing the record, it was determined that Gabe's Services, Inc. did not have an active ticket at the time of the incident. There were no questions from the board and Mr. Lawson was given an opportunity to state his case. He stated that he disputed the findings, thought the One-Call system was flawed; and that he felt he had a valid ticket at the time.

Lawson said his company has been in business for 30 years and has a good safety record. He went on to say that Gabe's Services is a preferred contractor in Frederick County and has a contract to respond to emergencies in the county as well. He also mentioned that even though they had a death on one of their projects, the MOSH investigator felt they had done everything they could safety-wise; and that his company has won many safety awards.

Mr. Lawson stated that the marks were disturbed or destroyed by all the trades using the same area for entrance to the site. At this point Mr. Lawson introduced a Miss Utility website printout showing that his company did have a valid ticket for the area. The excavator felt the site was marked and there was clear evidence, but that traffic caused the marks to be destroyed. The Executive Director responded that it was the duty of the operator to restore the marks or call to have them restored. Gabe's Services had been on the site many times doing different tasks over several months. Executive Director Barron stated that his research showed no active ticket for the area in question, but Mr. Lawson disagreed.

Scott Brown with WGL was given the floor. He asked why Mr. Lawson had not informed the Authority earlier that he had a valid ticket. Brown stated the "safety is a partnership" and that if the excavator was not sure about a facilities location, he should not proceed with the dig. Mr. Lawson stated that his company respects marks. Member Bell pointed out that there seemed to be a discrepancy between the WGL pictures of the damage and their report.

Mr. Lawson again, stated that they should not be charged for a no-ticket or damage to the marks. There was a protracted discussion about the photographs, with Mr. Lawson pointing out that it was a townhouse project that had no grass or trees and that the WGL photos showed grass and shade from trees. It was suggested that in future the WGL photos include a larger view of the site. At this point the Chairman asked if there were any additional questions or comments. There being none, he explained the post hearing process.

The hearing was concluded at 11:10 a.m.

**NPV# 3789** – Washington Gas vs. Eastern Hospitality Advisors/Then B&P Utilities (alleged ultimate violator).

At 11:25 a.m. the Chair called the hearing open and requested that the recorder be turned on. The violations to Title XII for NPV# 3789 were: §12-124(a) – Notice to one-call system; and, §12-127-(e) Clear evidence. The Chair swore in John Perl, President of B&P Utilities and Scott Brown with WGL; and, also Authority Executive Director Jim Barron. Chairman Woolbright then explained the hearing process to the defendant. There was no one present from Eastern Hospitality.

Mr. Barron presented evidence pertaining to the case which included 11 plaintiff's exhibits, which were entered into the official record by the Secretary. After reviewing the record, it was determined that B&P Utilities, Inc. did not have an active ticket at the time of the incident. The Chairman opened the floor to questions from board members. Member Ruddo wanted to know if Eastern Hospitality was present on the site. Mr. Perl responded that there was a EH trailer on the site with a superintendent, and that EH would bring operators to the site on a piecemeal basis. Perl stated that he had worked on the site previously and had tickets for those instances. When this violation occurred they were in a rental agreement with EH and there was a misunderstanding as to who needed to call in the ticket. Perl went on to say that his company will no longer do rental agreements.

The Chairman then gave the floor to Scott Brown, the WGL representative who made the WGL statement of safety policy. Member Bell asked if there was clear evidence. Brown stated that there was clear evidence in the manner of meters across the street from the site. Member Healy asked Jim Barron why Eastern Hospitality wasn't present. Barron stated that they had been sent a notice of hearing by certified mail, but they chose to ignore it. He went on to say that the Authority cannot compel people to attend the hearings and that in order to do so a subpoena would be required. Healy also asked if EH had a ticket, the response was no. Walter Gainer asked Scott Brown who was billed for the damage to the facilities; Brown stated that EH got the bill. Mr. Perl stated that he thought it was unfair that he got the fine and training requirement if EH got the damage bill. Mr. Gainer stated that "the guy on the backhoe needs the ticket. At this point the Chairman asked if there were any additional questions or comments. There being none, he explained the post hearing process.

The hearing was concluded at 11:55 a.m.

Note: At this point in the meeting the Chairman called for a lunch adjournment and made a motion to enter into an Executive Session to deliberate on a number of issues. A roll-call vote was taken and was unanimously approved. The Board reconvened the general meeting at 2:10 p.m.

Agenda Item 8:

**NPV's for Authority Review:**

<b>PV#</b>	<b>Case</b>	<b>Status</b>
NPV# 3918	Wash. Gas v. Diamond Electric 1st Offense – No ticket/Clear Evidence	7-0 approved (reduce to no ticket) \$1k fine + training
NPV# 3921	Wash. Gas v. The Bartley Corp. 1 <sup>st</sup> Offense – No ticket/Clear Evidence Note: Equipment rental issue.	7-0 approved \$2k fine + training
NPV# 3923	Wash. Gas v. Magnum Mango Exc. & Constr., LLC §12-227 (b) Maintenance of marks §12-227(c) (1),(2),(3) Duties of excav. §12-127(e) Clear Evidence	7-0 approved pulled for further investigation
NPV# 3924	Wash. Gas v. R&D Masonry, Inc §12-124(a) Notice to One- Call system §12-127 (e) Clear Evidence	7-0 Approved \$2k + training
NPV# 3925	McGee Fence & Deck Co. §12-124(a) Notice to One- Call system §12-127 (e) Clear Evidence	7-0 Approved No fine for no call \$2k + training for clear evidence
NPV# 3926	City Concrete Corp. §12-124(a) Notice to One- Call system §12-127 (e) Clear Evidence	7-0 Approved \$2k fine + training (no call) No fine for clear evidence

Agenda Item: 9

**New NPV's for Research and Review (November meeting)**

Note: Please refer to the October 7, 2015 Agenda for a listing of the new NPV's

Agenda Item 10:

**Non-Member Updates**

- MML & Municipalities
  - Baltimore County – Multiple letters and messages have been sent to Ed Adams, DPW Director with no response. Suggest a letter be sent to County Executive Kevin Kamenetz asking for assistance. Motion made and approved 7-0 to send a letter.
  - Montgomery County – A letter is being sent to County Executive Isiah Leggett asking for assistance with their marking issues.
  - Municipalities – Ms. Stroud has taken over the registration project for the remaining non-member municipalities. She will be working with Candace Donoho with MML to finish up the project.

Agenda Item 11:

**Old Business**

- Fining Matrix – In process
- Revised NPV review process – In process, waiting for matrix.
- PIA Request – On hold
- Presentations – Four different presentations have been made over the past 60 days. All were well received.
- PHMSA Grant – Have received the 2015 PHMSA grant in the amount of \$100,000. The Final report for the 2014 grant is being prepared for the October 21, 2015 due date.

Agenda Item 12:

**New Business**

Note: There was no new business to report

Agenda Item 13:

**Future Meeting Dates**

- November 18, 2015 – Meetings and Hearings (moved due to conflict with CGA meetings)
- December 2, 2015 – Meetings and Hearings (if needed)

Agenda Item 14:

**Adjournment**

The Chairman called for a motion to adjourn the meeting at 2:55 p.m. The motion was approved by acclamation

Respectfully submitted by:

Susan A. M. Stroud

Assistant to the Executive Director