

# Maryland Underground Facilities Damage Prevention Authority

## AUTHORITY MEETING Minutes Wednesday, January 6, 2016

Agenda Items 1 & 2

### **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 was present for the morning session.

In attendance were Authority members Kevin Woolbright, George Taylor, Matt Ruddo, Veronica Davila-Steele, Tom Hastings, Vince Healy, Jeff Garner, Art Bell and Marcia Collins for the meeting. Susan Stroud and Jim Barron were also present.

Guests Included: Dora Parks, Miss Utility; Scott Brown and Don Jones, Washington Gas; and Thurman Smith, Utiliquest.

Agenda Item 3: (Handout)

### **Approval of Minutes:**

A motion was made to accept the amended December 2, 2015 minutes was made, seconded and approved by acclamation. They will be posted on the Authority website.

Agenda Item 4: (Handout)

### **Authority Financial Report:**

The Executive Director provided financial statements as of December 31, 2015. He reported that the Operating Account has a balance of \$154,326.91 and the Education and Outreach Account has a balance of \$19,857.86. There are no outstanding bills at this time. The Executive Director also noted that legal fees for the Authority to-date are \$92,538.85. The budget for 2016 will be prepared and presented at the February meeting. There are expense categories that will need to be guesstimated since there is not a complete history available. A motion to accept the financial report was made, seconded and approved by acclamation.

Agenda Item 5:

### **Election of Officers:**

The Executive Director explained the roles of the four (4) elected officers; at which point the current Authority Chairman, Kevin Woolbright made a few remarks regarding his tenure as Chairman, thanking all that are or have served during his tenure. He then opened the floor to nominations. Tom Hastings was nominated for Chairman by Vincent Healy and seconded by Jeff Garner. A formal roll-call vote was taken; there were seven (7) votes to confirm; one (1)

abstention and one (1) absent. Mr. Hastings was duly elected as Chairman of the Authority. Next, Mr. Woolbright asked for nominations from the floor for Vice-Chairman of the Authority. Jeff Garner nominated Matt Ruddo for Vice Chair, but Mr. Ruddo declined the nomination. Mr. Ruddo then nominated Vincent Healy for Vice-Chair; which was seconded by Art Bell. A formal roll-call vote was taken; there were seven (7) votes to confirm; one (1) abstention and one (1) absent. Mr. Healy was duly elected as Vice-Chairman of the Authority. The Chairman then asked for nominations from the floor for Treasurer. The Chairman nominated Matt Ruddo for Treasurer and seconded by Jeff Garner; Mr. Ruddo accepted the nomination. A formal roll-call vote was taken; there were eight (8) votes to confirm and one (1) absent. Mr. Ruddo was duly elected as the Authority Treasurer. And lastly, the Chair asked for nominations for Authority secretary. This is a position which had not been filled in prior years.

The Executive Director explained the roll of the Secretary to the Board; which included the establishment of a quorum at the beginning of each Authority meetings and Executive Session of the Authority, as well as being responsible for the entire boards' ethical requirements with the State of Maryland. All of these duties could be delegated to staff if the Secretary chose to do so. The Chairman, Mr. Woolbright, nominated Ms. Veronica Davila-Steele for Secretary, which was seconded by Chairman-elect Tom Hastings. A formal roll-call vote was taken; there were eight (8) votes to confirm and one (1) absent. Ms. Davila-Steele was duly elected as Authority Secretary. Chairman Woolbright then presented the gavel to the new Chair, Mr. Hastings who ran the remainder of the meeting.

Agenda Item 6: (Handout)

### **Discussion of Current and Future NPV Review Procedures**

Kevin Woolbright and Matt Ruddo recounted the meeting they had with the Executive Director, Dora Parks and Susan Stroud regarding the NPV review process. They reported on the topic of purchasing ipads for the Board members to use as a tool when following the presentation of evidence during the review and hearing process. It was determined that the ipads could be used for the review process, but not during hearings, as their use could possibly be challenged by a defendant's legal counsel. The expense of purchasing the ipads was also an issue of concern.

The Executive Director did make some changes in his presentation process and also reconfigured the room to allow for better visibility for the Board when examining the NPV exhibits. A new higher definition projection screen was also purchased to make the images clearer. The Director has also made arrangements with the major NPV filers to obtain digital copies of their evidence which would be clearer than scanned documents. There was some discussion by the Board regarding setting minimum standards for submittals; which was met with general consensus by the Board. The Director will continue to look for ways to streamline the presentation of evidence, particularly the site photographs.

Additionally a colour flow chart was given to the Board showing the entire NPV process as practiced currently. This chart will be incorporated into the Annual Report to the General Assembly and the Governor.

## Agenda Item 7

### **Appeals:**

- Pinpoint/WSSC v. MD Underground Authority - (NPV's 316a, 316b & 408 - An "unreported opinion" was rendered by the Court of Special Appeals on October 22, 2015' which reversed the opinion of the lower court. Additionally, the Appellant formally requested that the "Unreported Opinion" be changed to a "Published" opinion which would have the force of case law. That request was denied by the Court. The documents were discussed in closed executive session of the Authority. At that session, the Board voted to not appeal the ruling.
- Reliable Contracting v. MD Underground Authority – (NPV# 283) - Oral arguments will be held on January 8, 2016 at 9:30 a.m. in front of the Maryland Court of Appeals. This case specifically addresses the constitutionality of the Authority. The former Chairman urged that Board members try to attend the hearing.
- Pinpoint/WSSC – (NPV's 1216, 1834, 1841 & 1853) were appealed to the Circuit Court of Anne Arundel County on March 25, 2015. Oral arguments were scheduled for January 4, 2016, however the plaintiff's attorney has asked for a stay pending the decision on the Reliable Contracting case. The Authority agreed to the request. The hearing is cancelled until further notice.

## Agenda Item 8:

### **Scheduled Hearings**

There are no hearings scheduled for January

## Agenda Item 9:

### **Requests for February Hearings**

Three (3) requests have been made for a hearing at the February 3, 2016 meeting to-date:

- NPV# 3921 - Washington Gas v. The Bartley Corporation
- NPV# 3923 – Washington Gas v. Magnum Mango Excavation & Construction
- NPV# 3924 – Washington Gas v. R&D Masonry, Inc.

## Agenda Item 10:

### **Post Hearing Updates:**

Please refer to the January 6, 2016 agenda for the disposition of the post hearing NPV's. Note: NPV# 2765 & 2896 determination on training should read REQUIRED.

## Agenda Item 11:

### **Accepted Recommendation and Waived Hearing:**

Please refer to the January 6, 2106 agenda for this information.

Agenda Item12:

**Post Review/Pre Hearing Updates**

Please refer to the January 6, 2016 agenda for these updates.

Agenda Item 13: (Handout)

**Collections**

Please refer to the January 6, 2016 agenda for these updates. Two (2) colour flow charts were given out showing the Collection Process for post review and post hearing. These charts will also be included in the Annual Report to the General Assembly and the Governor.

Agenda Item 114: (Handout)

**NPV's for Authority Review:**

PV#	Case	Status
NPV# 4196	Wash. Gas v. T.E. Wood Farms, Inc.  §12-124(a) Notice to One-Call System – 1 <sup>st</sup> offense §12-127(e) - Clear Evidence	9-0 approved  <ul style="list-style-type: none"> <li>\$2k fine+training for no ticket; reduce fine \$1k upon completion of training.</li> <li>Clear Evidence – no determination</li> </ul>
NPV# 4197	Wash. Gas v. Luey's Excavation & Plumbing  §12-127(c) – Duties of Excavator §12-127(e) - Clear Evidence	8-1 approved  <ul style="list-style-type: none"> <li>\$2k fine+training for failure of duties of excavator; reduce fine \$1k upon completion of training.</li> <li>No fine for clear evidence.</li> </ul>
NPV# 4205	Wash. Gas v. Marcia Construction  §12-124(a) Notice to One-Call System – 1 <sup>st</sup> offense §12-127(e) - Clear Evidence	9-0 approved  <ul style="list-style-type: none"> <li>\$2k fine+training for no ticket; reduce fine \$1k upon completion of training.</li> <li>Clear Evidence – no determination</li> </ul>
NPV# 4206	Wash. Gas v. M&M Excavating, Inc.  §12-124(a) Notice to One-Call System – 1 <sup>st</sup> offense §12-127(e) - Clear Evidence	9-0 Approved  <ul style="list-style-type: none"> <li>\$2k fine+training for no ticket; reduce fine \$1k upon completion of training.</li> <li>Clear Evidence – no determination</li> </ul>
NPV# 4207	Wash. Gas v. Luna Concrete, Inc.  §12-124(a) Notice to One-Call System – 1 <sup>st</sup> offense §12-127(e) - Clear Evidence	9-0 approved  <ul style="list-style-type: none"> <li>\$2k fine+training for no ticket; reduce fine \$1k upon completion of training.</li> <li>Clear Evidence – no determination</li> </ul>
NPV# 4274	Wash. Gas v. Schuster Concrete  §12-124(a) Notice to One-Call System – 1 <sup>st</sup> offense §12-127(e) - Clear Evidence	9-0 approved  <ul style="list-style-type: none"> <li>\$2k fine+training for no ticket; reduce fine \$1k upon completion of training.</li> <li>Clear Evidence – no determination</li> </ul>
NPV# 4329	BGE v. Civil Construction, LLC  §12-127(c) – Duties of Excavator	6-3 approved on second motion  <ul style="list-style-type: none"> <li>\$2k fine+training</li> </ul>

Note: At 12:00 p.m., the Authority Board broke for lunch. They resumed the business meeting at 1:00 p.m.

Agenda Item 15:

**New NPV's for Research and Review (35 reviews):**

Please refer to the January 6, 2016 Agenda for a listing of the new NPV's

Agenda Item 16:

**Non-Member Updates:**

- MML & MACo
  - Letters were sent to the Executive Directors of both MML and MACo reminding them of the new tracer wire/cross bore law which went into effect on October 1, 2015. The Authority has not received a response to those letters to-date.
  - Baltimore County – A follow-up letter was sent to Baltimore County regarding their response.
  - Montgomery County – A follow-up letter was sent to Baltimore County regarding their response.
- Municipalities Membership – Still in process

Agenda Item 17:

**Old Business**

- Fining Matrix – In process
- Revised NPV review process – In process, waiting for matrix.
- Revenue Stream – Legislation will be introduced at the 2016 session of the Maryland General Assembly to add \$0.05 to each outgoing ticket (MML & MACo will be exempted). Delegate Derek Davis and Senator John Astle will be the bill sponsors.
- Authority Member Terms Status–Tom Hastings has been approved by the Governor for re-appointment. The Authority is awaiting confirmation of Marcia Collins' replacement, Jim Dipietro; the re-appointment of Veronica Davila-Steele, the public member who is seeking a second term; and, the appointment of Scott Brown who will replace Kevin Woolbright as the second facility owner member.
- PHMSA Grant Status – The first \$50,000 payment of the 2015 grant has been deposited.

Agenda Item 18:

**New Business:**

- The 2016 PHMSA grant is due on January 29, 2016. Staff has begun work on the budget and narrative for the application.
- The Fifth Annual Report to the Governor and General Assembly has been completed and currently being reviewed before going to press. It will be presented to the Governor and members of the legislature in early 2016.
- CGA Membership Renewal. The Board voted unanimously to renew the Authority's membership with the CGA at a cost of \$1,000. The four (4) representatives for the Authority will be the Executive Director Jim Barron; Chairman Tom Hastings; Vice-Chairman Vince Healy and Secretary Veronica Davila-Steele.

Agenda Item 19:

**Next Meeting Date:**

- February 3, 2016

Agenda Item 20:

**Adjournment and Move to Executive Session**

- The Chairman called for a motion to adjourn the meeting at 2:05 p.m. The motion was approved by acclamation.
- There was no Executive Session called for at this meeting

Respectfully submitted by:  
Susan A. M. Stroud  
Recording Secretary