

Maryland Underground Facilities Damage Prevention Authority

AUTHORITY MEETING Minutes Wednesday, February 3, 2016

Agenda Items 1 & 2

Call to Order, Attendance Roll Call & Welcome

The meeting was called to order by Authority Chairman, Tom Hastings 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 the Board Secretary Veronica Davila-Steele. 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. Susan Stroud and Jim Barron were also present.

Guests Included: Dora Parks, Miss Utility; Scott Brown and Don Jones, Washington Gas; Keith Hinder, Niles, Barton and Wilmer; Jack Sullivan, BGE; Charlie McCadden, BGE; Jim DiPietro, AACo DPW; Kevin Brooks, Bartley Corp.; Andrew Bartley, Bartley Corp.; Richard Hartle, Diamond Electric; Luis Sanchez, Magnum Mango; Magno Sanchez, Magnum Magno; John Shuffler, Civil Construction; Bertolino Amaro; Civil Construction; Steve Didier, USIC; Vera Francisco, R&D Masonry; Fernando Santos, R&D Masonry.

Agenda Item 3: (Handout)

Approval of Minutes:

A motion was made to accept the January 6, 21016 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 January 31, 2016. He reported that the Operating Account has a balance of \$137,445.72 and the Education and Outreach Account has a balance of \$23,257.86. There are no outstanding bills at this time. The Executive Director also noted that legal fees for the Authority to-date are \$94,038.95. The preliminary budget for 2016 will be prepared and presented at the March meeting. There was discussion regarding the distribution of the Education and Outreach funds. A motion to accept the financial report was made, seconded and approved by acclamation.

Agenda Item 5:

Appeals:

- Reliable Contracting – NPV# 283 – Oral arguments were heard in front of the Maryland Court of Appeals on January 8, 2016. It could take up to 6 months to a year to receive the decision of the court.
- Pinpoint/WSSC – NPV#'s 1216,1834,1841,1853 – Oral arguments before the Anne Arundel County Circuit Court were scheduled for January 8, 2016, however a stay was requested and granted pending the ruling at the Court of Appeals on the Reliable case.

Agenda Item 6:

Scheduled Hearings - Morning

- NPV# 3918 – Washington Gas v. Diamond Electric – The Chairman asked the Recording Secretary to take a roll-call attendance prior to the hearing. There were eight (8) authority members present. Mr. Richard Hartle was present for Diamond Electric and Scott Brown was present representing Washington Gas. The recorder was turned on at 9:14 a.m. and the Chairman swore in Mr. Hartle, Mr. Brown and the Executive Director Jim Barron. The alleged violation was to §12-124(a) – Notice to One-Call System – 1st Offense. Mr. Hartle testified that he was not aware that you needed a ticket to hand dig. The Executive Director entered the Authority's evidence Exhibit #'s 1 through 11 into the record and distributed evidence packets to the Authority Board as well as Mr. Brown and Mr. Hartle. Mr. Hartle waived the presentation of the evidence. The recommendation of the Authority was to assess a \$2,000 fine and require training. Mr. Hartle admitted his guilt and stated that he was willing to take training and asked the Board to consider reducing his fine. Mr. Brown offered to work with Diamond Electric on safety issues. The hearing was closed at 9:30 a.m. and the recorder was turned off.
- NPV# 3921 - Washington Gas v. The Bartley Corporation – The Chairman asked the recording Secretary to take a roll call attendance prior to the hearing. There were eight (8) authority members present. Mr. Kevin Brooks and Andrew Bartley were present for Bartley Corporation. Scott Brown was present representing Washington Gas. The recorder was turned on at 9:34 a.m. and Mr. Brown, Brooks and Bartley as well as the Executive Director were sworn in by Chairman Hastings. The alleged violation was to §12-124(a) – Notice to One-Call System – 1st Offense. The Executive Director entered the Authority's evidence Exhibits #'s 1 through 17 into the record and distributed evidence packets to the Authority Board as well as Mr. Brown and Mr. Brooks and Mr. Bartley. Mr. Brooks stated that his client had a “demo letter” from the county which is a requirement but he failed to call in for a ticket. He stated it was Bartley's mistake and that they had initiated new protocols for safety within their company and had already participated in Miss Utility training. Mr. Barron indicated that he had the attendance log in his possession. Mr. Brown gave his safety and outreach statement and followed up with the fact that the Washington Gas “demo letter” includes instructions to call Miss Utility for a ticket prior to demolition. The hearing was concluded at 10:01 a.m. and the recorder was turned off.

- NPV# 3923 – Washington Gas v. Magnum Mango Excavation & Construction - The Chairman asked the recording Secretary to take a roll call attendance prior to the hearing. There were eight (8) authority members present. Luis Sanchez and Magno Sanchez were present representing Magnum Mango and Scott Brown was in attendance for Washington Gas. The recorder was turned on at 10:13 a.m. and Mr. Brown, Luis Sanchez, Magno Sanchez and the Executive Director, Jim Barron were sworn in by Authority Chairman Tom Hastings. The alleges violations were to §12-127 (b) Maintenance of marks, §12-127 (c) Duties of Excavator; (1) Due Care; (2) No Test Pit; (3) Mechanical Equipment within 18” of exposed utility & §12-127 (e) Clear evidence. The Executive Director entered the Authority’s evidence Exhibits #'s 1 through 21 into the record and distributed evidence packets to the Authority Board as well as the representatives from Magnum Mango and Mr. Brown with Washington Gas.

The Executive Director went through the evidence individually and noted that there was an active ticket at the time of the incident. There was damage to a 4” gas main. There was a lot of discussion regarding where the excavation took place; which was not clear according to the photographs submitted as evidence. Mr. Luis Sanchez stated that the large pile of dirt evident in the photographs was not there when they were doing their work and that they did not see any red marks on the silt fence indicating gas service, which he stated was normally the case. He went on to say that the marks were confusing and that they always hand dig around utilities.

In the prior review of the NPV the Authority had recommended a \$1,000 fine and training as well as a \$1,000 fine for Clear Evidence. Mr. Luis Sanchez stated that they had installed sewer service to the house next door to where the damage occurred and that they saw marks for electric and for gas. They test pitted for electric but not for gas. Luis Sanchez introduced Plaintiffs Exhibits #1 through 6 into the record. Board member Bell noted that pictures were not of the job site under discussion, but the of the house next door. Mr. L. Sanchez stated that there were introducing the evidence to show how examples of mismarks. Mr. Brown with Washington Gas objected to the evidence, stating that they were not germane to the case. He also stated that the 4” line was an operating gas main with 20psi pressure. He also stated that silt fences are not normally marked and asked to introduce exhibits #24-32. Washington Gas believes there were marks at the site. The hearing was closed at 11:11 and the recorder was turned off.

Agenda Item 7:

Scheduled Hearings – Afternoon (Note: The Authority broke for lunch prior to the afternoon hearings) Chairman Hastings reconvened the Authority meeting at 12:50 and resumed the scheduled hearings.

- NPV# 3924 – Washington Gas v. R&D Masonry, Inc. - The Chairman asked the Recording Secretary to take a roll-call attendance prior to the hearing. There were eight (8) authority members present. Ms. Vera Francisco and Mr. Fernando Santos were present for R&D Masonry and Scott Brown was present representing Washington Gas. The recorder was turned on at 1:00 p.m. and the Chairman swore in Ms. Francisco and Mr. Santos as well as, Mr. Brown and the Executive Director Jim Barron.

The alleged violations were to §12-124(a) – Notice to One-Call System – 1st Offense and §12-127 (e) – Clear Evidence. The Executive Director entered the Authority's evidence Exhibits #'s 1 through 19 into the record and distributed evidence packets to the Authority Board as well as the representatives from R&D Masonry and Mr. Brown with Washington Gas. The Executive Director went through the evidence individually. Some of the photo evidence was sent in by R&D Masonry when they responded to the NPV letter sent on June 30, 2015. Those photos showed the depth of the punctured gas line.

The Executive Director indicated that there were two (2) tickets for this address, but that they were listed in the name of Rolling Acres Landscaping, who R&D Masonry was working for at the time. Ms. Francisco stated that she was not aware that they needed the ticket in their name. The initial ticket had expired and the second ticket was called in on the day of the damage. Ms. Francisco also stated that they found the gas line at a depth of 6", which she felt was not allowable. Mr. Brown stated that there is not set rule for the depth of gas lines because there are many variables. The damage occurred when R&D drove a form pin into a ¾ inch (20 psi) gas line. There was also a gas meter in clear sight where the work was being performed. Mr. Santos stated in his testimony that he didn't see any marks, but saw the gas meter. He thought that the gas line would be deep enough that the form pin would not hit it. Both Santos and Francisco were not aware that pounding in form pins constituted excavation. The hearing was called to adjournment at 1:36 p.m. and the recorder was turned off.

- NPV # 4329 – BGE v. Civil Construction - The Chairman asked the Recording Secretary to take a roll-call attendance prior to the hearing. There were eight (8) authority members present. Present for Civil Construction were John Shuffler and Bertolino Amaro. BGE was represented by Steve Didier and Jack Sullivan. The recorder was turned on at 1:40 p.m. and the Chairman swore in Jack Sullivan and Steve Didier from BGE and John Shuffler and Bertolino Amaro with Civil Construction. The Executive Director Jim Barron was also sworn in. The alleged violation was to §12-127(c) — Duties of Excavator. The Executive Director entered the Authority's evidence Exhibits #'s 1 through 10 into the record and distributed Evidence packets to the Authority Board and the witnesses. The Executive Director stated that Mr. Shuffler visited the Authority office on 10/9/15 regarding the NPV and that there was a valid ticket at the time of the event. The Executive Director proceeded to explain the Authority's evidence. The floor was turned over to Mr. Shuffler, with Civil Construction at which time he indicated that he had additional evidence to read into the record.

The Chairman instructed the recording secretary to record the items. A brief recess was called at 2:14 p.m. so that the recording Secretary could tag and number each item. The hearing resumed at 2:21 p.m. at which time the reoder was turned back on. Mr. Shuffler proceeded with the description of each item (Defendant's exhibits #1-8; 9-10;11&12,13,14 &15). BGE's representatives were given the opportunity to review the items. Mr. Jack Sullivan with BGE objected to Defendants exhibit #15 owing to the fact that the document was created after the date of the event. The document was officially withdrawn.

Steve Didier, with USIC who was the at the site at the time of the event, pointed out where the two (2) 115kv line ran and the marks signifying the path of the lines; and also stated that the duct bank for the electric lines was 4 (four) feet wide.

At this time, Mr. Barron cited Plaintiff's exhibit # 7 the "Excavator Operator Sheet" which was signed by Mr. Amaro that stated that he would not be using mechanized equipment w/in the tolerance area of area of the facility. There was much discussion regarding the marks, test pitting and the position of the mechanized equipment over the facility. It was noted that Civil Construction was asked to stop digging by a BGE representative. When they refused MOSH was called and the job site was shut down. No damage occurred however the evidence showed insufficient test pitting and the presence of mechanized equipment over the 2 (two) 115kv lines. Jack Sullivan with BGE stated that the Defendant's Exhibit #1 clearly shows concrete saw cuts over the facilities prior to excavation; which is clear violation of the Miss Utility law. The Chairman asked for further comments or questions, there being none the hearing was concluded at 2:50 p.m. and the recorder was turned off.

Agenda Item 8:

Requests for Hearings on March 2, 2016:

NPV# 3793 – Washington Gas v. LCS Site Services

Agenda Item 9:

Post Hearing Updates:

Please refer to the February 3, 2016 agenda for the disposition of the post hearing NPV's.

Agenda Item 10:

Accepted Recommendation and Waived Hearing:

Please refer to the February 3, 2106 agenda for this information.

Agenda Item11:

Post Review/Pre Hearing Updates

Please refer to the February 3, 2016 agenda for these updates.

Agenda Item 13:

Collections

Please refer to the February 3, 2016 agenda for these updates.

Agenda Item 14:

NPV's for Authority Review:

Note: Reviews will be conducted in closed Executive Session

NPV#	Case
NPV# 4330	BGE v. Mark Austin Building and Remodeling §12-124(a) Notice to One-Call System – 1 st offense
NPV# 4331	BGE v. ARI Concrete Construction §12-124(a) Notice to One-Call System – 1 st offense
NPV# 4333	BGE v. Knox Enterprises, Inc. §12-124(a) Notice to One-Call System – 1 st offense
NPV# 4334	BGE v. Brandon Smith Contractors, Inc. §12-124(a) Notice to One-Call System – 1 st offense

Agenda Item 15:

New NPV's for Research and Review (32 reviews): (Handout)

Please refer to the February 3, 2016 handout for a listing of the new NPV's

Agenda Item 16:

Old Business

- **Fining Matrix –**
The Chairman formed a sub-committee to work on the fining matrix. Tom Hastings, Matt Ruddo, Art Bell, Scott Brown, Kevin Woolbright and the Executive Director will serve on the sub-committee.
- **Revised NPV Web Application –**
The Chair also formed a sub-committee to review the on-line NPV application form. Those members will be Tom Hastings, Kevin Woolbright, Scott Brown, Joe Shelton and the Executive Director.
- **Revenue Stream –**
Legislation was be introduced at the 2016 session of the Maryland General Assembly to add \$0.05 to each outgoing ticket.
- **Authority Member Terms Status–**
The Authority is awaiting confirmation of Marcia Collins' replacement, Jim DiPietro with AACo DPW; the re-appointment of Veronica Davila-Steele, the public member who is seeking a second term; and, the appointment of Charlie McCadden of BGE who will replace Kevin Woolbright as the second facility owner member.
- **PHMSA Grant Status –**

The 2016 PHMSA SDP Grant application was submitted on January 20, 2016

- Fifth Report to the Governor and General Assembly –
The report was presented to the Governor and Legislature on January 18, 2016

Agenda Item 17:

Next Meeting Date:

- March 2, 2016

Agenda Item 8:

Adjournment and Move to Executive Session

- 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
Recording Secretary