



Maryland Underground Facilities Damage Prevention Authority
AUTHORITY MEETING
Minutes

Wednesday, November 6, 2019

Agenda Items 1 & 2:

Call to Order/ Welcome:

The meeting was called to order by Chair, Erik Phillips at 9:04 a.m. in the Miss Utility Call Center, Conference Room, 7223 Parkway Drive, Suite 200, Hanover, MD 21076.

Mr. Phillips welcomed all present, made a few introductory remarks and introduced the guests which included: Susan Sullivan, Miss Utility; Vladimir Ledesma and Greg Mason, Don Jones & Anna Parks Washington Gas; Phil Perry Concrete General; Kevin Woolbright, MD/DC DPC

Agenda Item 3:

Attendance Roll Call:

Secretary Ruddo conducted a roll call of the Authority members. A quorum was present. In attendance were Authority members: Erik Phillips, Kelly Ruddo, Bucky Taylor, Walt Gainer, Michael Jewel, and Derek Shreves were present. Joyce Brooks and Tamara Neal were absent. Doug Levine resigned prior to this meeting. Jim Barron and Susan Stroud were also present.

Agenda Item 4: (Handout)

Approval of Minutes:

Chairman Phillips continued the meeting, calling for the review and approval of the October 2, 20192 Open Session minutes. A motion to accept the minutes as written was made by member Jewell and seconded by member Taylor. The motion carried and the minutes were approved.

Agenda Item 5:

Hearing(s) Scheduled for Today:

NPV# 19551 – Washington Gas vs. Zavala Contracting, Inc., submitted 05/17/18
Alleged Violation occurred on 08/30/17 - §12-124 (a) – No Ticket – 1st Offense
The Authority’s recommendation was to impose a \$2,000 fine, which was reduced to \$1,675 using the SFM with a 50% discount of \$837.50 for completion of Damage Prevention Training netting a \$837.50 fine.

The hearing began at 9:08 a.m. in the Miss Utility Conference Room. Chairman Phillips read instructions and asked for representatives from both parties to come forward. Don Jones was present for Washington Gas; No one was in attendance for Zavala Contracting, Inc. An attendance roll call was conducted and recorded by the Recording Secretary. There were six (6) members present. The Chairman then swore in the Executive Director, Mr. Barron and Mr. Don Jones. Mr. Barron was instructed to present his evidence against Zavala Contracting, Inc. The recording secretary entered the official evidence package into the record and distributed copies to the Authority, Washington Gas, the complainant, and the defendant.

During the hearing, Mr. James Barron, Executive Director of the Authority presented evidence and entered it into record substantiated facts supporting the findings of the Authority Recommendation letter dated July 27, 2018; which was sent by USPS Certified Mail and returned unclaimed on August 6, 2018. A second recommendation letter was sent to a new address for Zavala Contracting, Inc. on August 28, 2018 via the USPS and was signed for on August 31, 2018. With no response to the August 28, 2018 letter a “Second and Final Notice” letter was sent by Regular US Mail on March 21, 2019. I received a phone call from Santos Bonilla-Zavala on 4/10/19 to discuss the matter. Through a series of emails, he agreed to pay the fine and schedule training. With no further response from Mr. Bonilla-Zavala, The Authority voted at their October meeting to move NPV 19551 to a Formal Hearing. A Notice of Hearing Letter was sent on October 4, 2019 by Certified & Regular US Mail to Zavala Contracting, Inc., 7 Pepper Mill Drive, Capitol Heights, MD 20743-2744 Attn: Santos Bonilla-Zavala establishing a Hearing Date with a Time and Location.

Neither the complainant nor the defendant offered any additional information or evidence when asked by the Vice-Chairman. With no questions or comments from the Authority, the Vice-Chairman closed the hearing at 10:00 a.m. Mr. Brown with Washington Gas, encouraged Mr. Faridi to inform his employers about the free training his company provides at their Virginia facility. He also stated that had the defendant's company had utilized the Enhanced Positive Response information provided by their contract locator, they would have clearly seen the path of the gas main. The hearing concluded at 10:00 and the Authority took a temporary adjournment.

Mr. Barron presented evidence that there was a damage to a Washington Gas ¼" plastic gas light service at 12901 Margot Drive, Rockville, Maryland on August 30, 2017, and that the damage was caused when the contractor was excavating with a post hole digger to install a fence at that address. Zavala Contracting, Inc. of Greenbelt, Maryland was the contractor that damaged the Washington Gas ¼" plastic gas light service at 12901 Margot Drive, Rockville, Maryland. Zavala Contracting, Inc. did not have an active valid Miss Utility Ticket for the date, time and location of the damage. Washington gas was asked if they had any further evidence to provide regarding this violation. Dr. Jones stated that they did not. With no further evidence or questions, the hearing was concluded at 9:36 and the recorder was turned off and the Authority took a temporary adjournment.

Agenda Item 6: The open meeting reconvened at 9:36

Authority Financial Reports:

The Executive Director provided financial statements for October 2019. He reported that the Operating Account had a balance of \$184,498.19. And the October Education and Outreach Account had a balance of \$52,493.48. There were \$5,797.50 in fines and \$200.00 in filing fees during this period. There no legal fees for the month of October. In addition, revenues from the 5 Cent ticket surcharge continues to improve. Mr. Barron stated that for the month of August, \$19,062.05 was received, which is a \$901.75 increase over August of 2018. Chairman Phillips Gainer made a motion to accept the October financial reports, which was seconded by Treasurer Gainer. The motion was approved by acclamation.

Agenda Item(s) 7&8:

Future Scheduled Hearings

December 4, 2019

- **NPV# 26611** – Verizon vs. SMI Services, LLC
Submitted 11/9/18; Alleged Violations – 6/20/189 - §12-124 (a) – Notice to one-call system – 2nd Offense: Recommendation- \$4,000 fine which remained at \$4,000 through the SFM with a 20% discount of \$800.00 for completion of Damage Prevention Training netting a \$3,200.00 fine

January 8, 2020

- **NPV# 18306** – Washington Gas vs. Arundel Excavation
Submitted 01/30/18; Alleged Violations – 08/02/17 - §12-124 (a) – Notice to one-call system – 1st Offense. Recommendation - \$2,000 fine reduced to \$1,675.00 through the SFM with a 50% discount of \$837.50 for completion of Damage Prevention Training netting a \$837.50 fine.
- **NPV# 27366** – Washington Gas vs. Arundel Excavation
Submitted 02/21/19; Alleged Violations – 02/19/18 -§12-124 (a) – Notice to one-call system – 2nd Offense: Recommendation -\$4,000 fine reduced to \$3,720.00 through the SFM with a 20% discount of \$744.00 for completion of Damage Prevention Training netting a \$2,976 fine.

Agenda Item 9, 10:

- **NPV's for Additional Review:**
- **NPV's for Authority Review:**

Note: All reviews will be conducted in closed Executive Session

Agenda Item 11:

New NPV's for Research and Review (please see Handout)

Please see 11/06/19 handout for updates on these cases. There are currently 11 NPV's awaiting review.

NPVs to Move to Hearing	
NPV#	There were no violations to be moved to hearing.
NPVs for Further Review	Case
NPV# 19577	<p>Gaines and Company vs. MCI/Verizon Business Alleged Violations – 05/07/18 -§12-126 (a) (1) – Failure to mark within 5 feet of underground facility: Recommendation - \$2,000 fine reduced to \$1,675 through the SFM with a 50% discount of \$837.50 for “MCI In House Training of the Locator on that Project with an Affidavit of Completion sent to the Authority” netting a \$837.50 fine</p>

NPV's Post Hearing Review	
NPV# 19551	Washington Gas v. Zavala Contracting, Inc §12-124 (a) – No Miss Utility Ticket – 1 st Offense
New NPV's for Review	
NPV# 28576	Wash Gas vs. United Excavation §12-124 (a) – No Miss Utility Ticket – 1 st Offense
NPV# 28577	Wash Gas V. Olney Masonry Corp §12-124 (a) – No Miss Utility Ticket – 1 st Offense
NPV# 28578	Wash Gas vs. E&R Services, Inc. §12-124 (a) – No Miss Utility Ticket – 1 st Offense
NPV# 28593	Gaines & Company v. BGE §12-126 (a) (1) – Failure to mark within 5 feet §12-126 (b) (1) – Failure to mark within 18 inches
NPV# 29083	BGE v. Earthscape Excavating, LLD §12-124 (a) – No Ticket – 1st Offense

Agenda Item 12

Old Business:

- Term Expirations (9/30/19) – Everyone has submitted to the Governor's Appointment Office for Re-Appointment. The Authority received acknowledgement letters for Doug Levine & Tamara Neal, however, Doug Levine has resigned from the Authority. MACo has been in touch and hopes to have a replacement by the end of December. Letters for Amber Brengel, Joyce Brooks and Erik Phillips are still pending.

- Warnings – The Deputy Director has developed a policy and standard letter for issuing warnings, which will be discussed and voted on during the closed executive session. There are currently three companies, that warrant warnings: Orkin, Down Underground & C&M Underground.
- The Authority participated in the 2019 Greater Chesapeake Damage Prevention Conference. The Authority once again provided a test case for the audience to judge.
- The Title 12 re-write draft document has been given to Legislative Services for Drafting. The Deputy Director is preparing a White Paper to be distributed to lawmakers and other interested parties.

Agenda Item 13:

New Business:

- The Delaware Public Service Commission has requested that the Authority provide them a copy of their Standard Fining Matrix – The request will be discussed during closed executive session.

Agenda Item 14:

Next Meeting Date:

- December 4, 2019 @ 9:00 a.m. – There will be an Open meeting, a Closed Executive Session and hearings.

Agenda Item 15:

Adjournment and Move to Executive Session

- The Chairman asked for a motion to adjourn the open meeting and go into closed Executive session the meeting at 10:14 a.m. A motion was made and seconded. The motion was approved and recorded via roll-call vote.

Respectfully Submitted By:
Susan A. M. Stroud
Recording Secretary/Deputy Director