



Public Utilities Commission

Underground Technical Committee

Meeting Minutes

Friday, October 1st, 2021

- I. Meeting called to order 10:05 AM
- II. Roll Call
Igel, Jewell, Kelly, Motzer, Perry, Potnick, Reams, Snyder, Stewart, Ward, Woods in attendance. Requirements for a quorum met.
- III. Guests in attendance
Kevin Baxter, potential member representing designers and developers.
Kevin Schimming, OH811.
Liz Pyles, George Igel Co.
Greg First, Conie Construction Company.
- IV. Swearing in of Newly Appointed and/or Re-Appointed Members
None.
- V. Approval of Minutes from June 24, 2021 Meeting
Minutes were approved with no objections.
- VI. Cases to be Heard

21-00024 Pickaway County Engineer v. Frontier Communication

Alleged violation of R.C. 3781.29(A)(1), within 48 hours of receiving notice, each utility shall locate and mark facilities.

Recusals: None

Discussion: Stewart – moves there is a violation, Reams seconds.

Violation: Motion carries unanimously.

Penalty: Motzer – notes Frontier has not been before the UTC since August 2018. Moves to recommend Frontier re-evaluate PIP. Potnick seconds. Reams – wants to add evaluation of 004 code. Concern is third party subcontractor didn't understand the use of the 004 code and was using it as a place-marker. Potnick seconds. Motion carries unanimously.

21-00025 Pickaway County Engineer v. AT&T

Alleged violation of R.C. 3781.29(A)(1), within 48 hours of receiving notice, each utility shall locate and mark facilities.

Recusals: None

Discussion: Kelly – notes the case is similar to the last one, pleaded no contest. Some talk about the 001 no contest code not recognized early enough in the process.

Violation: Kelly moves to find a violation, Stewart seconds. Motion carries unanimously.

Penalty: Motzer – notes AT&T processes approximately 800,000 tickets a year. Moves to accept AT&T's proposed modification of their ticket screening program. Perry seconds. Motion passes unanimously.

21-00026 Pickaway County Engineer v. South Central Power

Alleged violation of R.C. 3781.29(A)(1), within 48 hours of receiving notice, each utility shall locate and mark facilities.

Recusals: Woods

Discussion: Ward – notes this is similar to the previous two cases.

Violation: Ward – moves to find the defendant in violation. Stewart seconds. Motion carries unanimously.

Penalty: Reams – first time the defendant has been before the UTC and she likes their proposed response. Moves to accept defendant response as a PIP. Ward seconds. Motion carries unanimously.

21-00027 Pickaway County Engineer v. Spectrum

Alleged violation of R.C. 3781.29(A)(1), within 48 hours of receiving notice, each utility shall locate and mark facilities.

Recusals: Ward

Discussion: Reams – notes Spectrum admitted the violation. Motzer – is this similar to AT&T's violation where a no conflict should have been marked. Igel – yes.

Violation: Reams – moves to find a violation, Ward seconds. Motion carries unanimously.

Penalty: Ward – notes they were before the UTC in April, 5 in 2019, 4 in 2018. Reams pointed out they acknowledged the misuse of the 004 code in their response. Motzer – Noted they process over 800,000 tickets a year. Reams – believes their response shows they are following their PIP took appropriate corrective action. Moves to accept response as a revised PIP. Stewart seconds. Motion carries unanimously.

21-00028 Pickaway County Engineer v. Frontier Communication

Alleged violation of R.C. 3781.31(B), if markings are destroyed or removed, excavator must notify the utility through OUPS for re-marking.

Recusals: None

Discussion: Igel – believes the more appropriate violation is 3781.29(A)(1) as it is the contractor responsibility to notify OH811. Also some talk about this being the same date but different location as previously discussed violation.

Violation: Motzer moves to find in violation, Ward seconds. Motion carries unanimously.

Penalty: Reams – proposes the same penalty as case 21-00024. Motzer seconds. Motion carries unanimously.

21-00029 Pickaway County Engineer v. South Central Power

Alleged violation of R.C. 3781.31(B), if markings are destroyed or removed, excavator must notify the utility through OUPS for re-marking.

Recusals: Woods

Discussion: Igel – states the citation should be 3781.29(A)(1).

Violation: Stewart – notes response shows no contest. Motzer seconds. Motion carries unanimously.

Penalty: Reams – moves to accept response from the defendant as a valid PIP. Ward seconds. Motion carries unanimously.

21-00030 Dominion Energy Ohio v. Micon Construction

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: None

Discussion: Reams – notes the respondent says no contest. Stewart – notes the defendant states they don’t call 811.

Violation: Reams – moves to find in violation. Stewart seconds. Motion carries unanimously.

Penalty: Reams – notes there was damage that could have created fatalities. Nothing in the response makes her think the defendant will call in the future. Moves to \$100 fine and training. Stewart – the defendant clearly doesn’t understand the law. Advocates a fine that is waived if they comply. Reams – we have done it with other excavators and contractors. Notes this case resulted in a damage. Potnick – should we consider making them attend the local damage prevention council for training and waive the penalty if they attend. Discussion about the appropriate amount of the monetary penalty. Reams – moves to assess a \$500 fine, waivable if training is completed and a PIP submitted within 60 days. Stewart seconds. Motion carries unanimously.

21-00031 Dominion Energy Ohio v. Lockhart Construction Co

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: None

Discussion: Reams – notes the defendant pleaded no contest.

Violation: Reams – moves to find in violation, Ward seconds. Motion carries unanimously.

Penalty: Reams – fist time the defendant has come before the UTC. Looks to her like they are educated but made a mistake. Moves to accept their response as an adequate PIP. Ward seconds. Notes they tried to piggy-back off another locate. Igel - believes the defendant mistakenly thought the marks were theirs when they were not. Motion carries unanimously.

21-00032 Dominion Energy Ohio v Landscape Creations Nursery

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: None

Discussion: Igel – defendant was setting rebar, clear they did not call.

Violation: Motzer – moves to find the defendant in violation. Jewell seconds. Motion carries unanimously.

Penalty: Ward – notes Staff tried to get clarification from the defendant on their response and did not get an answer. Reams – recommends training and a PIP. Ward seconds. Motion carries unanimously.

21-00033 Dominion Energy Ohio v. BBC Electric Co

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: None

Discussion: Motzer – notes the defendant pleaded no contest.

Violation: Motzer – moves to find they are in violation. Stewart seconds. Motion carries unanimously.

Penalty: Ward – notes they did not have a ticket, assumed the gas lines were marked but not on their ticket. Reams – recommends a \$500 penalty waived if the defendant gets training and submits a PIP. Potnick – does not see the same “cavalier” attitude in defendant response. Potnick – moves to require training and a PIP with no conditional penalty. Reams seconds. Motion carries unanimously.

21-00034 Dominion Energy Ohio v. Maintenance Plus Group

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: None

Discussion: Reams, Igel – noted the submitted ticket was called in after the date/time of the second line hit.

Violation: Reams – moves to find the defendant in violation. Jewell seconds. Motion carries unanimously.

Penalty: Reams – moves to require training, PIP. Jewell seconds. Motion carries unanimously. Motzer – points out that he believes DEO is using the UTC process as intended and their efforts are appreciated. Reams, Igel agreed.

21-00035 Kinder Morgan v. Miley Fencing

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: None

Discussion: Igel notes no response from the defendant.

Violation: Reams – moves to find a violation. Stewart seconds. Potnick notes the dates on the call ticket are outside the 90 day window. Reams – notes there is no date on when the violation was found. Potnick – notes June 29th, 2021 was when KM notes they found it. KM’s complaint states the defendant says the work was completed August 2020. KM put in date of violation of 8/17/20. Reams withdraws motion. Igel – moves to postpone consideration of the complaint until Staff confirms date of discover with KM. Ward seconds. Motion carries unanimously.

Penalty: N/A

21-00036 Majaac, Inc v. Centurylink

Alleged violation of R.C. 3781.29(A)(1), within 48 hours of receiving notice, each utility shall locate and mark facilities.

Recusals: Motzer

Discussion: Igel - Centurylink didn’t mark but did respond that they had no active utilities in the area. Reams agrees, not sure it is a violation. Jewell – agrees.

Violation: Reams – moves to find no violation. Ward – seconds, although finds the defendant response “very wordy”. Motion carries unanimously.

Penalty: N/A

21-00037 Texas Eastern Transmission v. Ronnie Milosavljevic

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: None

Discussion: No defendant response. Staff states they spoke to the defendant by telephone.

Violation: Reams – moves to find a violation, Ward seconds. Motion carries unanimously.

Penalty: Reams – wished to see landowner training language. Kelly – points out that TET spoke to the landowner and indicated that he committed to calling in the future.

Motzer – asked about past precedent. Reams – notes industry spends a lot of money to provide free training programs to landowners such as this. Stewart – we need to ensure defendant understands their obligation under the law. Reams – is documentation of what TET went over with the individual adequate. Motzer – with no e-mail address for the defendant, should not expect much documentation. Some discussion on whether TET consultation is acceptable, and that the UTC should not require facility owners to provide training. Potnick – moves to require training and accept documentation of consultation by TET with the landowner as valid training, or otherwise require the landowner to obtain training. Kelly seconds. Motion carries unanimously.

21-00038 Texas Eastern Transmission v. Washington Electric

Alleged violation of R.C. 3781.28(A), failure to contact OH811 before excavating.

Recusals: Wood

Discussion: Potnick – believes this is a similar scenario as 21-00037. Reams – this is a company not a landowner. Potnick – true but training and consultation similar.

Violation: Potnick – moves to find an violation. Reams seconds. Motion carries unanimously.

Penalty: Discussion about the defendant – electrical generator. Potnick – consultation with TET should be adequate. Reams – also wants to see a PIP. Stewart – notes the response written by the Director of Safety and Compliance, with no one call. Reams – moves to require a PIP and documentation of training. Stewart seconds. Motion carries unanimously.

21-00039 Summit Excavating v. Aqua Ohio

Alleged violation of R.C. 3781.29(A)(1), within 48 hours of receiving notice, each utility shall locate and mark facilities.

Recusals: None

Discussion: Reams – points out the size of the located area, locator assumed the company was working only one side of the street and the excavator worked both sides. Potnick – there was an assumption made that resulted in the violation.

Violation: Reams – moves to find a violation, Potnick seconds. Motion carries unanimously.

Penalty: Reams – moves to require a PIP. Potnick seconds. Motion carries unanimously.

VII. Status Update

Commission Staff reports there are 9 new cases ready for a decision from the UTC since the finalization of the August 26, 2021 meeting agenda.

VIII. Old Business

Open (PIPs & Education):

20-00017 Payne Enterprises Inc
\$250 fine paid, training not complete.

21-00012 Micronet Solutions
\$100 fine paid, training not completed.

21-00013 Todd Burdette
\$250 fine paid, training not completed.

21-00015 Wide Open West
PIP (penalty backup)—Received, acceptable.

21-00020 Jose Alcala
Training not completed

Discussion about how to approach defendants who choose to pay the fine without completing training. Resolution is for Staff to send out letters reminding entities who have paid a fine but not completed training that if they do not complete training, the UTC will review their case at their next meeting and may assign additional penalties up to and including \$10,000 as described in the Ohio Revised Code.

Attorney General Show Cause Orders:

20-00004—Cornerstone Basement.
\$250 fine referred to collections, pending.

20-00011—John Collins.
\$100 referral in progress, pending.

20-00015—Cornerstone Basement
\$1,000 fine referred to collections, pending.

20-00024—TBI Lawn Sprinkler

\$100 fine paid. Move back to Open cases.

21-00001—Cornerstone Basement

\$2,500 fine referred to collections, pending.

IX. New Business

Overview of 5-Year Rule Review Process by Legal Department. PUCO must host an open public meeting to discuss any proposed changes to the portions of the Ohio Administrative Code covering the function of the UTC. Staff attorneys recommend this meeting take place before the next scheduled UTC meeting and will forward proposed dates.

- X. The next meeting of the UTC will be held Friday, October 1st, 2021 at 10:00 AM. This meeting will be held virtually through WebEx.

- XI. Adjourn at 12:35 PM.