



# NCUDPRB MINUTES OF MEETING

## NCUDPRB Board Meeting

Tuesday, July 18, 2023 – 10:00am

NC811 Event Center, Greensboro & Virtual via Microsoft Teams

**Board Members Present:** Jonathan Holt (Chair), Lisa D. Smith Perri (Treasurer), Larry Sanders, Ann Rushing, Daniel Robinett, Jacob Joplin, Whit Wheeler, Freddie Myles Young, Keith Holden, Amy Barron, Eric Lochner, Tony Konsul.

**Board Members Absent:** BJ Lanier

**Others Present:** Alex Ward (V) (board attorney), Katie Hertel (board administrator)

**Guests Present:** Marc Worth, Dominion Energy, Trever Green, Dominion Energy, both virtual

**Quorum Present?** ☒ YES ☐ NO

### Meeting called to order by Board Chair at 10:01am

Meeting chair took roll call and asked if there were any guests on the call. No guests were noted. Guests arrived after the meeting started

**April 18, 2023 Board Meeting Minutes Approved?** ☒ YES ☐ NO

**Motion by Jonathon Holt to approve April 2023 board meeting minutes as written.**

- Seconded by Freddie Myles Young
- Discussion – none
- Opposed – none

**Motion Carries**

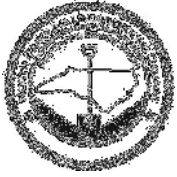
### Discussion around SB58

Attorney Alex Ward led the discussion on SB58 which was signed into law by Governor Cooper. The act is called the Protect Critical Infrastructure Act after the Moore County Substation attack in 2022. The bill increases the penalties for knowingly, willfully and intentionally damaging critical infrastructure. Conviction under this act is a felony offence and up to a \$250K fine. Alex does not believe this will impact the operations of the board because of the standard of intentionality, which doesn't tend to exist in cases before NCUDPRB. If the board did have a situation with intentionality, it is good to be aware this act exists to let the appropriate authorities know. It comes into effect December 1, 2023.

### Finance Report – Board Treasurer

**The financial reports are provided for April, May and June.**

- The balance sheet was reviewed. The board is in good financial condition. Collections are \$5,000 less compared to this time last year. Billing is up by \$20,000. \$264,000 of liabilities and equity as compared to \$246,000 last year.



# NCUDPRB MINUTES OF MEETING

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- The board should be at 50% of the budget spent at this time of the year and everything is running very close to that. Technology services was a lump sum payment for the year. The \$5k in contingencies is for additional technology or needs.
- Commerce remains behind in billing us.
- The board billed out 10K more this year than last year so we are doing quite well.
- Jonathan thanked Lisa and staff for helping to get the invoices paid and closed.

## **Communication Chair Update**

- Ann shared an update on the website and asked newer members to please provide headshot photos.
- She is still waiting to hear back about searching cases.
- The board decisions were audited by and Ann provided information about how many cases were heard, FIMSA, fines assessed. The board was rated as adequate, which means in compliance. The auditors appreciated that the board is consistent with cases, due to the use of the violation matrix. The board can demonstrate it is providing education, fines, etc, within parameters.

## **Case File Reviews**

### **Case # 477**

Recusals – None

Motion by Ann violation §87-122(a) for no one call ticket, with a penalty recommendation of PIPES Plus training for Steve Harris and a \$500 civil penalty to be paid by Queenscape, Inc for gravity and culpability.

- Seconded Tony Konsul.
- Discussion – Excavator failed to notify of the excavation. Photos showed the damage and sufficient information was provided within the report.
- Opposed – None

Motion Carries

### **Case # 483**

Recusals – None

Motion by Ann to dismiss the case for no violation, but recommends the contractor be referred to NC811 for education on the mapping.

- Seconded by Whit Wheeler
- Discussion – If you follow the description on the ticket without seeing the map, it appears it is okay. Looking at the map, there is confusion. They do not have a violation of not having a ticket. But we need to send this company back to ‘remote ticket entry’ to do refresher education on the mapping. There was no damage based on the complaint. It was picked up on an aerial inspection. A large tract of land makes locating difficult. As the landscape changed during construction, and road names changed, the tickets weren’t changed to reflect the work completed.
- Opposed – None

Motion carries



# NCUDPRB MINUTES OF MEETING

---

Freddie raised a procedural question: Why do we have discussion after the vote, as discussion should be before the vote.

Jonathan will now ask for discussion after the first motion and before the second.

## **Case # 491**

Recusals – Dan, Amy, Eric

- Discussion – Alex stated this is the first case where complainant is alleging tickets are not marked in a timely fashion. There are a number of such cases today.

Duke acknowledges the locate wasn't done in a timely fashion. The locate was requested February 24, and was marked March 7. There is prior violation history from Duke. This is a second offence based on the matrix, taking it to the second step. They had 10 tickets, taking it to a major offence.

**Motion by Ann to find Duke in violation of §87-121(b)(1) late response with a recommendation of \$1,500 fine, due to prior history, circumstances.**

- Further discussion about the volume of tickets and the problem of timely marking. Board discussed whether locator should have followed up on Part E stating locator is overwhelmed and engaging in communication but determined being overwhelmed by tickets does not fit the definition of extraordinary circumstances outlined in the statute.
- Seconded by Freddie
- Opposed – None

**Motion carries**

## **Case # 492**

Recusals – Jonathan, Dan

- Discussion – This is the same type of alleged violation we saw in the previous case. Charter does not have history in the 18-month case file of this type of violation.

**Motion by Ann to find Charter in violation twice of §87-121(b)(1), circumstances: other. Penalty of \$500 fine, no training.**

- Motion seconded by Larry Sanders
- Opposed – None

**Motion carries**

## **Case # 493**

Recusals –

- Discussion – The complainant and alleged violator both appear to agree that Alvarez Brothers broke ground. Alvarez Brothers was a subcontractor of alleged violator Herbert Battle. The Board has a history that each excavator has to have their own ticket numbers. If the prime is not doing the digging, it's not a violation, therefore the wrong party is named.

**Motion by Freddie to dismiss the case due to wrong party named.**

- Motion seconded by Ann.
- Opposed – None

**Motion carries.**



# NCUDPRB MINUTES OF MEETING

---

## **Case # 494**

Recusals –

Motion by Ann violation of §87-122(a), no locate ticket, with recommendation of a \$500 fine for Gaylor, and PIPES Plus training for Charles Goodrich of Gaylor, due to gravity and culpability.

- Seconded by Jonathan.
- Opposed – None

Motion carries.

## **Case # 495**

Recusals –

- Discussion – This operator has called in a number of tickets that appear to be appropriate and not claimed as emergencies. NC811 does keep recordings of calls for four years so an operator re-listened to the call. The gentleman does have a South African accent so it might have been a barrier over the phone. The operator says it did appear he wanted a 3-hour ticket. The company attends the local UCC and is very active. There is no history of the company calling in emergency locates. The company is now a user of Remote Ticket Entry so they can directly access the type of ticket they are requesting.

Motion by Whit to dismiss due to language barrier.

- Motion seconded by Keith
- Opposed – None

Motion carries.

## **Case # 496**

Recusals – Jonathan, Larry

- Discussion – Homeowner alleges DOT did not call in a locate ticket. The law does exempt DOT for reshaping of ditches, 87-124.

Motion by Freddie to dismiss due to exemption and no violation of the law.

- Motion seconded by Ann.
- Opposed – None

Motion carries.

## **Case # 497**

Recusals –

- Discussion – Homeowner saw holes dug on someone else's property, but didn't see the digging take place.

Motion by Jonathan to dismiss the case due to lack of evidence.

- Motion seconded by Anne
- Opposed – None

Motion carries.



# NCUDPRB MINUTES OF MEETING

---

## **Case # 498**

### Recusals –

- Discussion – Homeowner versus City of Statesville. Statesville did not have a locate and hit a gasline. Board determined it was an exemption under 87-124-6 due to routine maintenance within the right-of-way.

Motion by Whit to dismiss the case based on exemption due to type of work performed under §87-124-(6).

- Motion seconded by Freddie
- Opposed – None

Motion carries.

## **Case # 499**

### Recusals –

- Discussion – Bowden Contracting has two violations against them, and have been assessed fines by the board. They still do not appear to be calling for locates.

Motion by Ann to find Bowden Contracting in violation of §87-122(a), no locate, recommending a \$2,500 fine, due to history, gravity.

- Jonathan asked to include PIPES Plus training for Dustin Bowden.

Ann amended the motion to add PIPES Plus training for Dustin Bowden.

- Motion seconded by Jonathan.
- Opposes – None

Motion carries

## **Case # 500**

### Recusals –

- Discussion – This is similar to other tickets not being acted upon in a timely manner. There are two codes for the City of Charlotte. One is marked and one is not marked. They allude to this in the ticket.

Complainant submitted a three-hour request for Charlotte Water within the designated timeframe. They did not respond to the original ticket on time but did respond to the three hour ticket. Each alleged violation is separate. The law says that if there's been no response, the excavator can request a three-hour ticket and Charlotte Water did respond to that three-hour ticket.

Motion by Ann to find in violation of §87-121(b)(1), not responding within the three full working days; penalty recommendation is PIPES Plus training for Carl Wilson, City of Charlotte Water.

- Motion seconded by Jonathan.

Motion by Ann to amend the first motion to say there was no violation on the three-hour ticket.

- Opposed – None

Motion carries.

Lunch break. Will reconvene at 12:30 per Jonathan.

Back from lunch 12:34



# NCUDPRB MINUTES OF MEETING

---

## **Case # 501**

Recusals – Eric Lochner

- Discussion - Same complainant from #500, Queen City Hardscapes, naming PNG. Based on the ticket PNG did not respond within the three working days so they did not meet the intent of 87-121-b-1 which is the three day response. The second violation is 87-122-6-c which is the three-hour response. No prior history for Piedmont Natural Gas.

**Motion to find violations under §87-121(b)(1) and §87-122(6)(c), recommended penalty of \$500 fine to Duke Energy and PIPES Plus training for James Collins of PNG, due to circumstances history.**

- Motion seconded by Freddie
- Opposed – None

**Motion carries.**

## **Case # 502**

Recusals –

- Discussion – The homeowner called in a ticket for Everitt’s Tree Service but Molina did the work. There are no tickets for Molina’s Tree Service. Dominion sent the homeowner called in a ticket for Everitt’s Tree Service, but Molina did the work. Dominion sent Molina a bill.

**Motion by Jonathan to find Molina Tree Service in violation of §87-122(a) for not calling in a locate with a penalty of \$500 fine to Molina’s Tree Service and PIPES Plus training for Leonel Molina due to gravity.**

- Motion seconded by Ann
- Opposed – None

**Motion carries**

## **Case 503**

Recusals – Eric, Jonathan, Amy and Dan

**Motion by Ann to find Duke Energy in violation of §87-121(b)(1) no response and §87-122(c)(6) no response, with a penalty of \$2,500 due to circumstances and history.**

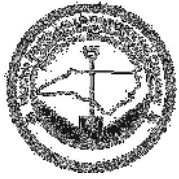
- Motion seconded by Keith Holden
- Opposed – None

**Motion carries.**

**This completes the case reviews for this quarter.**

Jonathan would like to remind those whose terms are ending to let him know if they plan to leave the board. Freddie and Tony’s terms end 1/1/24. There are currently no plans for them to leave. Jonathan will check with BJ Lanier about his plans and reach out to Hayes regarding filling the position held by Marcus.

Freddie would like to consider a letter to violators who have consistently late locates, noting the board’s concern in this trend. Alex informed the board they can craft a letter and send it out. Ann reminded the board there is the Locate Resolution Partnership Committee (LRPC) where they talk about a lot of this information. The locaters cannot control the volume and there is no money for locaters. There are two entities providing data for no one-call tickets. A letter goes out from Louis Panzer asking why they aren’t



## NCUDPRB MINUTES OF MEETING

---

placing a locate so NC811 can determine what education is needed. The LRPC has no enforcement ability. The NCUDPRB is the enforcement piece.

NC811 tries to encourage contractors to only enter tickets if they are actively digging. Dan stated that USIC emphasizes that locators should decide the importance of a ticket, i.e., is it the 107<sup>th</sup> update of the ticket or a new one.

NC811 records the number of times a ticket is updated and follows up to find out why it is continually updated and can sometimes get it removed.

The board is interested in determining if it should meet more often. Jonathan asked the board administrator to research how many cases have been heard in the last six meetings, and include the start time and closing time of each meeting.

**Comments from the public – No comments from the public.**

**Motion by to adjourn the meeting at 1:46pm.**

- Seconded by Ann

**Motion Carries**

Approved