



NCUDPRB MINUTES OF MEETING

NCUDPRB Board Meeting

Tuesday, October 19, 2021 – 10:00am

Location – Virtual via Microsoft Teams

Board Members Present Via Teams: Megan Riley (Chair), Rick Gould (Vice Chair), Lisa D. Smith Perri (Treasurer), BJ Lanier, Chris Russ, Fred Young, Greg Puckett (not present for case reviews), Hope Morgan, Jonathan Holt, Louis Panzer, Rufus Jackson (dropped from 12pm-12:30pm), Tony Konsul, Tom West, William Wheeler

Others Present Via Teams: Juliane Bradshaw (legal), Cyndi Sosa (board administrator)

Guests Present Via Phone: Doug Hayes (AT&T), Daniel Bear (Duke), Ann Rushing (NC811), Howard Corey (NC811), Trevor Green (Dominion Energy), Richard Walsh (Dominion Energy), James Collins (Piedmont Natural Gas), Joel Calabrese (Duke), Mark Worth (Duke), Eric Lochner (Duke)

Quorum Present? ☒ YES ☐ NO

Meeting called to order by Chair at 10:11am

Roll call, board members, guests and others noted.

Introduction of new board member, his title and role at the NC DOT.

July 2021 Board Meeting Minutes Approved? ☒ YES ☐ NO

Chair briefly reviewed minutes from July board meeting

Motion:

- Chris Russ motion to approve July 2021 board meeting minutes
- Motion seconded
- Opposed – None

Motion Carries

FINANCE-

Finance Reporting by Board Treasurer

- Treasurer gave update on balance sheet and update on profit & loss budget. We might have to update our on the expenses and we need to check on payments for legal services, no invoices have been received yet.
- Board asked about 2022 billing as far as timing. Chair suggests closing out this year and take a look at where we are in January.

DISCUSSION ON COMMUNICATION CHAIR

- Chair would like to skip this item for now and circle back around if we have time after the case review files.



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ETHICS REMINDER

- Annual ethics training reminder. Board members should check to make sure their Ethics training records are correct with the State. You can be fined for not completing the training so make sure your training is complete and keep your certificate. When your certificate is received, the notification will tell you when you are due to renew again.
- Larry needs link for Ethic's training. **Chair will follow up.**

CASE REVIEW PROCESS SURVEY DISCUSSION

- Chair reviewed the results we received from the case file review survey.
- Reporting on the progress over the last 7 years. The financial penalty is broken out into 5 classes. Penalties can be up to \$2500. The law also changed over the years to allow NC811 to provide us with ticket search information. Now with the new website and the structure of the case management system we are able to easily receive information as well as pull history on past cases. Having the minutes will be helpful for new members to review.
- Can current board members share information with those being recommended for the board? The minutes are public knowledge as well as the board meetings.
- Key to understanding case review process is being familiar with the law, its intent and the exemptions. As far as penalty & fines imposed, the gravity of the situation is key.
- Board feels it would be helpful to get your replacement identified and have them sit in on board calls before becoming active.
- NC811 also has great information a board member can request to help them understand the law. Information can be requested here:
<https://www.emailmeform.com/builder/form/dtV1b29lbcT>
- Chair reminded, when ruling on a case, we need to make sure we have the information needed by NCUC to be able to impose the penalty. If the complainant is missing the name of the violator it must go back to them to complete the report.
- Board thanked legal counsel for giving legal advice and assisting them with moving the cases forward.
- As a board we have been offering pipes plus training as a penalty however the board can recommend other training if they feel there is something else the violator would benefit from.
- Chair appreciates the board members for completing the survey and for providing comments. Many members will be leaving in 2022 and newer members will be left to carry on. Chair would like to ensure that new members are prepared to review the cases and make a fair determination and ruling based on the law.
- Should we change our case review process? And if so, is a motion needed?
- Legal Counsel suggests a motion to come up with a process today and then we can put together a process for discussion and vote during next board meeting.
- Legal Counsel offered to provide information on how her other boards are handling case reviews. A committee is a good idea because if everyone is voting on every case and we end up having a hearing, everyone would need to recuse themselves because they were previously involved. The more fines we issue the more requests for hearings we might have. When the committee makes a decision, the case moves forward, and the board hears about the case by an update.



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- Can we have a committee to review the case and then the committee will bring the case back to the full board for vote? Legal said the committee should not be disclosing information to the board about the review process because if this goes to a hearing all board members will need to be recused because all board members have seen the information.
- Some members are leery about a few board members making the decision on case files on behalf of the entire board. All stakeholders should be involved in the discussion or else the process is going to be diluted.
- Legal Counsel mentioned the other issues we have is board members having to recuse themselves from cases. This would also apply if a case goes to a hearing. They want to have people that are impartial and have no prior knowledge to move forward with a hearing.
- Legal Counsel can do some research on similar boards / commissions and will report back to see what options we have.
- Board is curious how the NCUC handles hearings. Legal Counsel gave a brief description. The board provides all information they have, NCUC receives the information from the other party as well. The information is reviewed, and a decision is made. If something is kicked back from the utilities commission then we might have to review the file or take another look.
- Alleged violators have 30 days after the boards initial ruling to request a hearing, not send in additional information. Legal Counsel suggests letting the alleged violators send in additional information (if they believe it will change the decision) within the 30 days after the boards initial ruling for the board to review again to see if the penalty stays or if the new information changes the boards initial decision.
- Chair said if we are going to change that process, then we should update the process in the Visio document for the board to review/vote on.
- Legal said we would review those cases separately from the regular case file reviews.
- Hearing process is already in the Visio, it just needs to be updated.
- Chair would like to summarize this discussion and then take a break before getting into case reviews. We need to update the Visio for the back-and-forth process. For review of cases, we need to keep all members voting unless recused due to parties involved. (a) to keep the forum and (b) to make sure all parties are represented.
- Action item to put together an updated Visio flow and then discuss.

11:30am – 12:00pm - Break for lunch, then begin case file reviews

12:02pm – Roll call

Case #289 (case reviewed in July, alleged violator sent in additional information for consideration)

Recusals - none

Violation-

July 20, 2021 - Original Motion by Louis for violation of 87-122C9B and 87-122C9a1 without establishing a penalty at this moment. If there is a fine, he would like to see it as a separate motion.

- Motion seconded
- Suggestion for Louis to amend motion for \$500 gravity and \$500 culpability with pipes plus training. Report does not name an individual.
- Suggestion for dropping training and add additional fine of \$500 other.



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Motion by Louis to amend his original motion for violation of 87-122(c)(9)(b) and 87-122(c)(9)a(1) to \$1500 without pipes plus.

- Motion seconded
- Opposed – none
- Motion carries

Penalty- Total penalty of \$1,500

- Fine Allocation
 - o History – 0
 - o Gravity - \$500
 - o Circumstance - 0
 - o Culpability - \$500
 - o Other - \$500

October 19, 2021- New Motion by Louis to send the new information received by Mighty Services to Brian Weatherman of Dominion Energy, allow 30 days for response and then review case at next board meeting.

- Motion seconded
- Opposed – none
- Motion carries

Case #290 (case reviewed in July, alleged violator sent in additional information for consideration)

Recusals- Megan, Chris Russ, Rufus

Rick facilitating

Violation-

July 20, 2021- Original Motion by Louis of violation of 87-122(a) with pipes plus training and a financial penalty of \$1000; gravity of \$500 for the risk and \$500 for circumstances

- Motion seconded

Discussion- Are they exempt? They are not. Also noted there was no response received to the initial letter sent out.

- Opposed – none
- Motion carries

Penalty- Total penalty of \$1,000

- Fine Allocation
 - o History – 0
 - o Gravity - \$500
 - o Circumstance - \$500
 - o Culpability - 0
 - o Other - 0

October 19, 2021- Board agrees with reviewing this case again with the new information.

Motion by Freddie for Legal Counsel to type up notes of her conversation with Ham Farms and send to complainant with documentation received from Ham Farms. Give complainant 30 days to reply then review the case file again.

- Motion seconded
- Opposed- none
- Motion carries



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Case #387

Recusals – None

Violation –

Motion by Rick Gould of violation of 87-122a with \$100 fine and training

- Motion seconded for purpose of discussion

Discussion – We have never gone below \$500 on a fine. The reason for a fine is they have been talked to by the HOA but they are homeowners so \$500 seems high. We have never given a fine to an alleged violator without history, unless they received a warning from our board and not sure if we want to set that precedence. Can we send a warning letter?

Motion amended by Rick Gould to violation of 87-122a with a penalty of pipes plus training.

- Amended Motion seconded

Opposed – None

Motion Carries

Penalty – Pipes Plus Training for homeowners

Case #388

Recusals – Rick, Chris, Jonathan

Violation –

Motion by Louis to bundle case 388 with 393 for a violation of 87-121(b) and \$1000 penalty

- Motion seconded

Discussion – Are we sure we want to start bundling cases? We thought that was only for the rare occurrence of when all the reports were placed by the same complainant for the same alleged violators for the same violation.

Motion by Louis to withdraw original motion, with a new motion on penalty of 87-121(b) and \$500 penalty

- Motion seconded

Full board is not in agreement of the \$500 penalty. Are we taking only this case into consideration or are we assessing the fine based on the thought of bundling?

Motion by Louis to withdraw his previous motions and enter new motion of violation of 87-121(b) with \$250 penalty for this case only.

- Motion seconded

Discussion – There is concern, from a utility perspective they have more exposure and they have only had one violation which was in 2018. Not sure a financial penalty should be given.

Agreed but then what would the penalty be? Do you assign training again or no penalty when a violation occurred? What about sending a warning letter asking them to address this issue. The bigger issue is that a fine is not going to be a deterrent for a larger utility and PIPES plus would be more of a punishment than an education.

Motion by Louis to rescind his last motion on the penalty and only leave the motion of a violation of 87-121(b) occurred based on the facts.

- Motion seconded

Discussion - none

Opposed – none

Motion Carries for violation



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Penalty-

Motion by Freddie for Pipes Plus Training for Jonathan Holt

- Motion seconded

Discussion – What about the subcontractors and others involved?. It is the responsibility of the facility operator to ensure the work gets completed even if the work is given to a subcontractor. Ticket information shows which facility operators did not mark on time.

Action Item: Megan wants to check meeting minutes to see how the board previously voted on possibly adding alleged violators to a report based on information gathered in NC811 ticket search process.

Motion by Louis to suspend his original motion of violation on case # 388 until processes and procedures are established.

- Motion seconded

Motion by Freddie to withdraw his motion of penalty on case # 388 until processes and procedures are established.

- Motion seconded

Opposed – Whit (everyone else in favor)

Motion Carries to suspend motions on this case until processes and procedures are established

Motion by Louis to stop hearing cases now and schedule a full board meeting to establish process and procedures so everyone feels comfortable reviewing the cases going forward. Then resume with case # 388.

- Motion seconded

Opposed – none

Motion carries

Survey for board availability will be sent out to gather information so we can schedule an off-cycle board meeting to discuss process and procedures.

Board would like the following items discussed in this meeting:

- Minimum fine
- Reset time on how far we go back on history
- Discuss warning letters and what they might include

Case Review Paused.

Final comments from the board – None

Comments from the public –

Mark from Dominion Energy. I appreciate you going back and looking at the tickets.

Trevor from Dominion Energy thanked the board, this is not an easy job and he appreciates all of their efforts. Utilities are well aware of what the laws are and they have a much larger responsibility to uphold them than a homeowner would. He would encourage the board to not shy away from penalties even if there are multiple violations. Without accessing the penalties, the actions will not change. He does not believe a letter will change behaviors, but a monetary penalty will.



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Is the process & procedures meeting open to the public? Legal Counsel said all meetings are open to the public, but the board can go into closed session if they need to during the meeting.

Next Regularly Scheduled Board Meeting is January 18, 2022.

Look for survey coming out soon for process and procedures availability.

Meeting Adjourned – 3:02pm

Approved