

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
H.M. Miller Construction Co. for)	Case No. 17-1233-AU-UTC
Reconsideration of a decision by the)	
Underground Technical Committee.)	

**MEMORANDUM CONTRA RESPONDENT’S DEMAND FOR IMMEDIATE
DISMISSAL AND MOTION TO GRANT RECONSIDERATION AND
REJECT THE FINDING OF THE UNDERGROUND TECHNICAL
COMMITTEE
SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES
COMMISSION OF OHIO**

The Staff of the Public Utilities Commission of Ohio (Staff) files this Memorandum Contra in opposition to the Demand for Immediate Dismissal filed by H.M. Miller Construction Co. (Respondent) on July 5, 2023. It is Staff’s position that the grounds for dismissal cited by Respondent are without merit. In addition, Staff moves the Public Utilities Commission of Ohio (Commission) to grant Respondent’s Application for Reconsideration of the Underground Technical Committee’s (UTC) March 30, 2017 decision in Case No. 16-00024 and reject the finding of the UTC based on insufficient evidence. The reasons for this request are more fully explained in the attached Memorandum in Support.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Steven L. Beeler

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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

MEMORANDUM IN SUPPORT

Respondent's arguments referencing a speedy trial and a one-year statute of limitations are not applicable to this proceeding and should be rejected. The Staff agrees with Respondent that the UTC in its March 30, 2017 decision did not find Respondent guilty of a minor misdemeanor under R.C. 3781.99(C) and order Respondent to pay a fine, but rather the UTC ordered that Respondent shall: "submit an improvement plan and documentation for completion of training on this plan for all employees, management and third-party contractors within 60 days. This training shall include pre-marking and installation requirements when excavating near underground facilities."¹ Nowhere does the March 30, 2017 UTC decision include finding Respondent guilty of a minor misdemeanor and an order to pay a fine. Therefore, with no mention of minor misdemeanor, Respondent's arguments referencing a speedy trial and a one-year statute of limitations are not applicable to this proceeding.

Under Ohio Adm.Code 4901:1-2-15(D), the Commission's procedural requirements set forth in Ohio Adm.Code 4901-1 et seq apply to this reconsideration proceeding before the Commission and no time constraints apply. As a result, Respondent's speedy trial and statute of limitations arguments are without merit and should be denied.

¹ See Attachment A (UTC March 30, 2017 Meeting Minutes).

However, while Staff disagrees with the grounds cited by Respondent for dismissal of this case, Staff moves the Commission to grant Respondent's application for reconsideration of the UTC's March 30, 2017 decision in Case No. 16-00024 and reject the finding of the UTC based on insufficient evidence. After the prehearing/settlement conference held in this case on July 6, 2023, and upon further investigation of the facts, Staff concluded that there is insufficient evidence to support a violation of R.C. 3781.30(B) by the Respondent in this case. And, although R.C. 3781.99(B) provides for a fine of not more than \$100 for a violation of any rule of R.C. Chapter 3781, no fine was mentioned or ordered in the UTC's decision in this case. Accordingly, for the forgoing reasons, Staff recommends that the underlying case, UTC Case No. 16-00024, and the above captioned Commission reconsideration case be dismissed with prejudice and the record closed.

Respectfully submitted,

Dave A. Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Steven L. Beeler

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**On Behalf of the Staff of
The Public Utilities Commission of Ohio**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Memorandum Contra Respondent's Demand for Immediate Dismissal and Motion to Grant Reconsideration and Reject the Finding of the Underground Technical Committee** submitted on behalf of the Staff of the Public Utilities Commission of Ohio has been served upon the below-named party via electronic mail and/or United States mail, this 20th day of July, 2023.

/s/ Steven L. Beeler

Steven L. Beeler

Assistant Attorney General

Party of Record:

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5 Tek Park, 9999 Hamilton Blvd.

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Underground Technical Committee

Meeting Minutes

March 30, 2017

- I. Call to Order 10:00 AM
- II. Roll Call & Declaration of Quorum 2 minutes
Present: Jim Callan, Tom Stewart, Frank Ward, John Kelly, Joe Igel, Dave Celona, David Losinski, Michael Perry, Jennifer Reams, Todd Willis

Teleconference: Mark Potnick, Shaun Corrin

Not Present: William Hocevar, Joshua Motzer, David Slatzer, Ed Cain
- III. Approval of Minutes from January 12, 2017 Meeting 1 minute
- Minutes have been approved and attached.
- IV. Cases to be Heard:
a. 16-00024 12 minutes
Complainant: Buckeye Partners
Respondent: H.M. Miller Construction Company
o 3781.29 (D) - No violation occurred / No enforcement action
o 3781.30 (A)(4) - No violation occurred / No enforcement action
o 3781.30 (A)(6) - No violation occurred / No enforcement action
o 3781.30 (B) - Non-Compliant
▪ Penalty: **Violation** - After review of all submitted documentation, The Underground Technical Committee (UTC) finds the Respondent violated obligation under ORC 3781.30 (B) (3). Respondent did not adhere to underground facility separation requirements while installing a new facility near an existing facility. Respondent shall submit an improvement plan and documentation for completion of training on this plan for all employees, management and third party contractors within 60 days. This training shall include pre-marking and installation requirements when excavating near underground facilities.
- Jim Callan – abstained

Underground Technical Committee

- b. 16-00030 2 minutes

Complainant: Village of Bethel

Respondent: Gary Alsept

- 3781.28 (A) - Complaint withdrawn
 - UTC accepted the Village of Bethel's request to withdraw the complaint.

- c. 16-00034 2 minutes

Complainant: Intelliwave

Respondent: AT&T

- 3781.29 (A)(1) - No violation occurred / No enforcement action
 - UTC decided based on evidence provided, no violation occurred.
 - **Non-Violation**-After review of all submitted documentation, The Underground Technical Committee (UTC) finds that the Respondent was not in violation of obligations under ORC 3781.30 (A) (1). Complainant was asked to provide supporting documentation for this alleged violation, as respondent denied the allegation. Complainant failed to provide or respond to requests for documentation. The UTC must render recommendations based on the documentation available and found no support for the alleged violation.

Shaun Corrin – abstained

- d. 16-00035 7 minutes

Complainant: Intelliwave

Respondent: Frontier Communications

- 3781.29 (A)(1) - No violation occurred / No enforcement action
 - Upon reviewing the provided information, The Underground Technical Committee finds No violation.

Shaun Corrin – abstained

- e. 16-00036 9 minutes

Complainant: Marty Mongold (Kent Power)

Respondent: Kent Power

- 3781.28 (A) - Not a valid complaint
 - The underground Technical Committee finds that the actual complainant was not an employee of Kent Power at time of alleged incident and does not meet the definition of an aggrieved party. Complaint invalid.

Underground Technical Committee

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|-------|---|------------|
| V. | Status Updates | 3 minutes |
| | <ul style="list-style-type: none">- 1 case ready to be submitted to UTC- 2 cases have been cancelled due to invalid complaints- 5 cases that are waiting on respondent response | |
| VI. | Old Business | |
| | a. Follow-up on cases already decided | 2 minutes |
| | b. 16-00017 | 3 minutes |
| | <ul style="list-style-type: none">- Table consideration until additional information is available- PUCO will continue investigation to find correct respondent | |
| | c. UTC Document Portal discussion | 5 minutes |
| | <ul style="list-style-type: none">- Add previous meeting minutes, agendas, & UTC member handbook | |
| | d. Electric Cooperative UTC member | 3 minutes |
| | <ul style="list-style-type: none">- Reminding Speaker on March 30 about vacant position | |
| VII. | New Business | |
| | a. Supporting documentation | 7 minutes |
| | <ul style="list-style-type: none">- Discussion on how to inform Complainant/Respondent about supporting documentation.- Possible information on what's considered an 'aggrieved person' | |
| | b. General Assembly Report | 4 minutes |
| | <ul style="list-style-type: none">- Discussion on what was included in the report | |
| | c. UTC Participation | 16 minutes |
| | <ul style="list-style-type: none">- UTC members discussion on the term 'Conflict of Interest' | |
| VIII. | Next Meeting | 2 minutes |
| | <ul style="list-style-type: none">- June 1, 2017- 10:00 AM- PUCO Hearing Room | |
| IX. | Adjourn | 11:20 AM |

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

7/20/2023 2:46:22 PM

in

Case No(s). 17-1233-AU-UTC

Summary: Memorandum Contra Respondent's Demand for Immediate Dismissal and Motion to Grant Reconsideration and Reject the Finding of the Underground Technical Committee, Submitted on Behalf of The Staff of The Public Utilities Commission of Ohio electronically filed by Mrs. Kimberly M. Naeder on behalf of PUCO.