

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
H.M. MILLER CONSTRUCTION CO. FOR
RECONSIDERATION OF A DECISION BY
THE UNDERGROUND TECHNICAL
COMMITTEE.

CASE No. 17-1233-AU-UTC

ENTRY

Entered in the Journal on October 4, 2023

I. SUMMARY

{¶ 1} The Commission grants H.M. Miller Construction Co.'s application for reconsideration of the decision of the Underground Technical Committee and dismisses this case.

II. DISCUSSION

{¶ 2} Pursuant to R.C. 4913, the Commission has authority to enforce the Underground Utility Damage Prevention Law. Consistent with R.C. 3781.36, the Underground Technical Committee (UTC) is directed to coordinate with the Commission in carrying out its duties under R.C. 4913 and shall provide subject matter expertise when requested during inquiries conducted under R.C. 4913.09. Further, Ohio Adm.Code Chapter 4901:1-2 establishes rules regarding the UTC and the protection of underground utility facilities.

{¶ 3} H.M. Miller Construction Co. (Respondent) is a utility as defined in R.C. 4913.01 and R.C. 3781.25 and is therefore subject to the jurisdiction of the Commission.

{¶ 4} On March 30, 2017, the UTC determined that Respondent violated R.C. 3781.30(B) and ordered Respondent to 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 would include pre-marking and installation requirements when excavating near underground facilities.

{¶ 5} Ohio Adm.Code 4901:1-2-15 provides that not later than 30 days after receiving notice pursuant to Ohio Adm.Code 4901:1-2-13, the person who requested the UTC inquiry or Respondent may file a written application for reconsideration, stating with particularity the grounds for reconsideration.

{¶ 6} On May 10, 2017, Respondent filed a written application for reconsideration of the decision reached by the UTC on March 30, 2017.

{¶ 7} Ohio Adm.Code 4901:1-2-15(D) provides that, in all other respects, the procedural requirements set forth in Ohio Adm.Code 4901-1 et seq, shall apply to the reconsideration proceeding before the Commission.

{¶ 8} Ohio Adm.Code 4901:1-2-15(C) directs that Staff may respond within 30 days to a pending application for reconsideration. On June 9, 2017, Staff filed a motion for waiver owing to the novelty of the case and its need for more time to formulate a response. By Entry issued June 9, 2017, the attorney examiner granted Staff's unopposed motion.

{¶ 9} By Entry dated June 2, 2023, the attorney examiner scheduled a telephonic prehearing conference to be held on July 6, 2023. Present at the prehearing conference were Staff and Respondent.

{¶ 10} On July 5, 2023, Respondent filed a motion for immediate dismissal of the case, on grounds that it was not granted a speedy trial and that a statute of limitations of one year had already elapsed. On July 20, 2023, Staff filed a memorandum contra Respondent's motion to dismiss, and a motion to grant Respondent's application for reconsideration and to reject the finding of the UTC on March 30, 2017. Staff states that, upon further investigation of the facts, it concluded that there is insufficient evidence to support a violation of R.C. 3781.30(B) by Respondent.

{¶ 11} Upon review of the aforementioned motions, and the representation of the parties that a violation did not occur, the Commission finds that Staff's motion to grant Respondent's application for reconsideration should be granted, and that this case should be dismissed with prejudice.

III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That Respondent's application for reconsideration be granted, and that the application for reconsideration be dismissed with prejudice. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

JMD/mef

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in

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

Summary: Entry that the Commission grants H.M. Miller Construction Co.'s application for reconsideration of the decision of the Underground Technical Committee and dismisses this case electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.