



**Damage Prevention Enforcement
Annual Report to the General Assembly
for the 2020 Calendar Year**

Contents

Introduction.....3

Committee Membership Activity3

Table 1. Underground Technical Committee Members4

Underground Facilities Protection Administrative Fund – Registration .5

Underground Facilities Protection Fund – Fines5

Investigations.....6

Reports of Inquiry.....6

UTC Decisions6

Introduction

Beginning on January 1, 2016, pursuant to Ohio Revised Code (ORC) 4913.01 et seq. and ORC 3781.25 - 3781.38, the Public Utilities Commission of Ohio (PUCO) was given the authority to enforce Ohio's utility damage prevention laws in conjunction with a newly-created panel of experts called the Underground Technical Committee (UTC).¹ Damage prevention laws are designed to maintain public safety when excavating around utility facilities and to ensure the reliability of those facilities. With the authority provided to the UTC and PUCO, entities such as utilities, excavators, developers, and designers, who have duties and obligations under Ohio's damage prevention law, have a venue to report alleged compliance failures and seek enforcement of those safety laws.

Committee Membership Activity

The UTC is a 17-member panel of experts in the subjects of excavation and utility protection. See Table 1 for a list of the members, the industries that each represents, and each of their appointing authorities.

The law requires that the UTC meet as often as necessary, but not less than once every three months. In 2020, the UTC met four times² and decided 31 cases.

¹ Am.Sub.S.B. No. 378 of the 130th General Assembly.

² March 19, June 25, September 3, and December 3.

Table 1. Underground Technical Committee Members³

Appointing Authority	Industry	Representative	Term Expires on December 31:
Senate President	Commercial Excavator	Mark Potnick	2022
Senate President	Natural Gas Transmission	Vacant	
Senate President	Oil & Gas Producers	Tom Stewart	2021
Senate President	Cable Service Providers	Frank Ward	2023
Senate Minority Leader	Commercial Excavator	John Kelly	2021
Speaker of the House	Commercial Excavator	Joe Igel (Vice-Chair)	2022
Speaker of the House	Natural Gas Distribution	Dave Celona (Chairman)	2021
Speaker of the House	Electric Cooperatives	Jason Woods	2021
Speaker of the House	Locators	Joe Costell	2023
House Minority Leader	Commercial Excavator	William Hocevar	2023
Governor	Electric Utility	David Losinski	2022
Governor	Telephone	Joshua Motzer	2022
Governor	Municipal Corporations	Michael R. Perry	2021
Governor	ODOT	Wendi Snyder	2023
Governor	General Public	Jim Jewell	2023
Governor	Hazardous Liquid Pipeline	Jennifer Reams (Secretary)	2021
Governor	Designers/Developers/Surveyors	Edward Miller	2022

³ Pursuant to ORC 3781.34(D), the terms of the members initially appointed shall be staggered at two, three, and four years and determined by lot, except that the stakeholder group of the commercial excavator industry shall have only one member with an initial two-year term. The term of the office of each member subsequently appointed shall be four years. At the July 28, 2016 meeting, the committee members staggered initial terms were determined.

Underground Facilities Protection Administrative Fund – Registration

To cover the costs associated with operation and of enforcement by the UTC, ORC 4913.03 requires each utility, excavator, developer, and designer who participates in the one-call notification system (Ohio 811) to register with the PUCO and pay a safety registration fee of up to \$50 annually. The intention was that the parties that benefit from enforcement should share in the cost and that the PUCO would only collect what it needed to fund enforcement.

The PUCO partnered with the Ohio Utilities Protection Service (Ohio811) in 2016 to identify utilities, excavators, developers, and designers that were affected by the statute and develop a list of companies that would be required to pay the registration fee. The registration fee collected in 2016 was \$25. In 2016, a total of 17,753 individuals and companies registered with the PUCO, and \$444,976 was collected for the underground facilities protection administrative fund.

Since the initial registration in 2016, no further registration has been issued. A registration was planned for 2020 but was not issued due in part to lower activity and expenses that year. The PUCO has not yet determined if an additional registration will be required in 2021. If issued, the registration fee is anticipated to be \$25.

Underground Facilities Protection Fund – Fines

Fines totaling \$4,500 were assessed by the UTC in 2020. A total of \$4,250 in fines were collected in 2020, \$3,250 from fines assessed in 2020 and \$1,000 from fines assessed in the previous year. \$1,250 of fines assessed in 2020 remain outstanding.

Funds from collected fines were deposited in the underground facilities protection fund to be used for the grant program as required by ORC 4913.31. These funds may be used for:

1. Public awareness programs established by a protection service;
2. Training and education programs for excavators, operators, designers, persons who locate underground facilities, or other persons; and/or
3. Programs providing incentives for excavators, operators, persons who locate underground utility facilities, or other persons to reduce the number and severity of compliance failures.

Investigations

Submitting a complaint is voluntary and must be submitted by an “aggrieved person,” which means the person submitting the complaint (complainant) has to be a person with duties and obligations under Ohio damage prevention law and be directly involved with or impacted by the alleged violation. ORC 4913.01(A). PUCO staff received a total of 36 complaint submissions in 2020, down from 71 in 2019.

Upon receipt of a complaint, PUCO staff promptly begins an investigation. The first step in the investigation process is determining whether the submission is a valid complaint. In 2020, the UTC was not able to move forward with an investigation on five complaints. Those invalid complaints were comprised of submissions that were either by made by persons who did not meet the definition of an aggrieved person (2) or were submitted more than 90 days past the date of discovery (3).

Complaint investigations largely consist of collecting statements, documents, photographs, videos, and other evidence from the complainant and the alleged violator (respondent). Once all the evidence has been collected from both parties, PUCO staff then compiles it into a case file, known as a report of inquiry.

Reports of Inquiry

In 2020, the UTC received 31 reports of inquiry from the PUCO for consideration. The UTC is tasked with reviewing each report to determine if the respondent violated state law based upon the information in the record. The UTC members are given the opportunity to review the information in the report of inquiry prior to the meeting and request further information from the complainant, the respondent, PUCO staff , or any other source that may be helpful in making the right decision.

UTC Decisions

The UTC holds public meetings, under direction of the chairperson and with assistance from the PUCO. During the meetings, the UTC deliberates the facts of the complaint and holds a vote to determine if a violation occurred.

If a majority cannot be reached or the majority agrees that no violation occurred, then no enforcement action is taken.

If a majority agrees that one or more violations occurred, then the UTC chooses an appropriate fine and/or penalty based upon several factors, including the severity of the violation and the respondent’s violation history.

The UTC has the authority to issue a fine or some other non-monetary penalty. Penalties can consist of a warning letter, a training requirement, a requirement for a process improvement plan, or other required actions that the UTC deems appropriate. Fines can be issued for up to \$2,500 for a first offense and up to \$5,000 for subsequent offenses. The PUCO will then enforce the penalty or fine on behalf of the UTC. Parties may appeal the decision to the PUCO.

Of the 31 cases reviewed in 2020, the UTC found that the respondent violated the damage prevention law in 26 cases and that no violation occurred in five cases.

Table 2. 2020 UTC Decisions

<u>Action</u>	<u>Cases</u>
Violation	26
No Enforcement Action	5
Withdrawn	0
Total	31

Of the 26 cases in which a violation occurred, penalties were issued in all instances, and a fine was assessed in four of the cases. Penalties consisted of a requirement for the respondent to submit a written process improvement plan (PIP) detailing the breakdowns in its process that led to the violation and a plan to correct these breakdowns and improve performance, a requirement for the respondent to attend prescribed excavation damage prevention training, or both. In addition, one fine was assessed by the UTC for failure of a respondent to comply with a penalty issued the previous year.

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