

Governance Committee Minutes

Date: Thursday, September 5, 2024

Time: 2pm

Members: Jessica Epley, Melanie Lewis, Alba Vogland, Jaimie Lemke, Lee Tumminello, Kevin Hennessy, Nathan Taylor, Robbie West, KC Chumachenko, and Matt Barrett

Non-Voting Members: Josh Thomas, Kitty O'Keefe, Megan Moore, Justin Roberts and Micah Brown

Guests: Dennis Hughes and Kristin McNamera

1. Announcements and Introductions

- a. Announcements and Guest sign-in
- b. Motion to approve minutes from OAR and Policy & Procedures on March 13, 2024, by Jaimie and seconded by Lee. Kitty to post on OUNC website.
- c. Comments from the Chair: Jessica thanked members and guests for joining and provided an overview of today's agenda.

2. Old Business

- a. Mandatory damage reporting
 - i. Jessica shared in May of 2023 a Concept Submission form was submitted and she provided an overview. Two questions that she asked members to keep in mind during this discussion: # 1. Cost? # 2. Modification of our contract with OCC – is this in our contract now?
 - ii. Jessica asked Josh to share his presentation for Mandatory Damage Reporting (See attachment)
 - o CGA helped staff meet via zoom with WA, NM, TN, NC, and SC.
 - o Getting more complete and accurate damage reporting helps identify the root causes of damage and informs strategies to help reduce those risks in the future.
 - o Reliance on 811 centers, connected to tickets or creation of damage report if no notification was made.
 - o DIRT is not intended to be used for enforcement purposes.
 - o Excavators encouraged to report damages, tell their side of the story.
 - o Recommended tracking emergency tickets and how they tie to damage.
 - o Can we combine and consolidate so reporting is a one stop shop that populates DIRT as well?
 - o What does mandatory reporting mean? What will it look like?
 - o Recommend continuing to discuss options and shop the proposal around to stakeholders, adjusting for concerns and suggestions as needed.
 - o Consider potentially big expectations to our users – especially small companies.
 - iii. Jessica asked to show the Proposed Language from the Concept Submission Form:

If the excavator causes or observes damage to underground facilities, the excavator must notify the operator of the underground facilities **and notify the Oregon Utility Notification Center** immediately. If the damage causes an emergency or if the damage from excavation activity is to a pipeline and causes release of any natural gas, other gas or hazardous liquid from the pipeline, the excavator must promptly report the released to appropriate emergency response authorities by calling the 911 emergency telephone number and must take reasonable steps to ensure the public safety. The excavator must not bury damaged underground facilities without the consent of the operator of the damaged underground facilities.

Committee Actions: Jessica asked members to provide their perspectives:

- o Melanie: she's looked at other states and their damage tickets. Options – create a damage ticket but added cost falls to us and the operator.
- o Micah: what are they going to say to the call center? That there is a damage and who they think made the damage.
- o Jaimie: would not want to create an additional process. Not complete info for the gas company. Consider not having to contact the Call Center.
- o Matt: he wants to be contacted personally and not an emergency ticket
- o Robbie: agrees with Matt and Jaimie. Put more on owner itself
- o Nathan: now we would have three phone number to call.
- o Andy: his company ends up calling emergency tickets to get a response.

- Dennis: he would support getting notified quickly. He commented, without enforcement, why would they make that extra call?
- Kevin: plan language standard that more people can achieve. What are we trying to accomplish with this? Consider using 'then' instead of 'and.'
- Alba: she agrees with Kevin to change the 'and' to 'then.'
- Lee: consider reworking the proposed language.
- Megan: 'then' or 'next' to avoid confusion as an operator.
- KC: nothing to add.
- Kevin: suggested a Ticket Header with no added cost to OUNC.
 - Motion by Matt Barrett to not accept or recommend this language to the board. Seconded by Lee Tumminello. Motion passed.

Next Action: Jessica reminded members this issue is not closed, just keeping the process moving forward. She would like more discussion with One Call Concepts.

b. Enhanced positive response

- i. Josh reminded members we have a version of positive response in place. Tool within the ticket that operators and locators can find the status and can save a lot of hassle for excavators.
- ii. We don't have 'two way,' but is our industry's next evolution. The excavator could comment on the ticket as well.
- iii. Josh shared the states currently using mandatory positive response.
- iv. Josh would recommend a year of outreach like we did with ITICnxt roll out and training for increasing voluntary adoption.
- v. Josh suggested sending a warning letter. But how do you enforce after that?

Committee Action: Jessica asked members how they would like to proceed:

- Matt: roll this out as a benefit and he shared his company is working with using positive response the last two months.
- Micah: address the voluntary positive response first.
- Melanie: OCC provides tools that any utility can use. With a year of training, consider a year or two. She'd like mandatory response.
- KC: ensure positive response is working at front end before we go enhanced positive response.
- Megan: agrees with what has been said.
- Justin: he'd like to see it enforced.
- Dennis: is there additional costs to get involved? No additional costs to participate. After Jessica provide additional info to him, he was in support of this.
- Nathan: he agrees with everyone.
- Alba: she commented the folks out with the county road department might be more difficult for using positive response. Personally, she'd like mandatory positive response.
- Lee: she signed up for positive response with her crew. She likes the outreach process.
- Kevin: can this be accomplished through operational side or rule? Operationally, would be a win for everyone here.

Next Action: Jessica would like her and Josh to review this and will get back to the group and discuss at the next scheduled meeting.

c. Rulemaking process

- i. Jessica asked Josh for a recap:
 - January 1, 2025, effective date
 - Final hearing on October 17, 2024, at the board meeting
 - November 13, 2024, is the Legislative notice deadline
 - Outreach and communication to stakeholders (staff will discuss what we want Creative Teams help with)

3. New Business

- a. **1.4.3. Governance Committee Statement of Purpose** To review and recommend revisions, as necessary, to the Oregon Administrative Rules (Chapter 952, Division 1), Oregon Revised Statutes (757.542-757.599), Oregon Utility Notification Center Policy and Procedures Manual and Oregon Utility Notification Center Bylaws. Recommends new policy proposals to Board for approval.
 - i. Jessica shared the consolidation as written above under 3.a. No real revision.
Committee Action: Motion by Alba to recommend revision to the Policy & Procedures manual as written. Seconded by Jaimie. Motion passed.
Next Action: Discussion on this at next board meeting.
- b. Legislative outlook
 - i. Updating the reference to our old standards manual. Tabled for now.
 - ii. Exemptions – may request via the Oregon Broadband Office. Jessica will have more to share at the next committee meeting.

4. For the Good of the Order

- i. Josh shared at the Budget, Audit and Tariff Committee meeting: Nate would like to see closer to \$300,000 in reserves.
- ii. Consider for this committee: 30 days notification center contract and 90 days for other contractual obligations.
- iii. This will be covered at the next Budget, Audit and Tariff Committee meeting on Sept. 25.

5. Next Meeting: Tuesday, October 1, at 11 a.m.

Meeting adjourned at 3:04 pm

Kitty submitted minutes on September 11, 2024

Mandatory Damage Reporting



- Getting more complete and accurate damage reporting helps identify the root causes of damage and informs strategies to help reduce those risks in the future.
- While Oregon has decent voluntary participation in DIRT, we know there are a lot of gaps in reporting. This adversely impacts our analysis, findings and conclusions due to incomplete data.
- We have a concept submission form to prompt consideration of a new damage ticket and reporting process.
- What does mandatory damage reporting mean? What will it look like?

Mandatory Damage Reporting



- Met with leaders from Common Ground Alliance South Carolina, North Carolina, Tennessee, Washington, and New Mexico. All recommended for this topic and positive response.
- All have some form of mandatory damage reporting.
- SC and NC require excavators to report damages; TN, WA and NM put the onus on the operator/their locators.
- SC, NC and NM require reporting directly to their 811 and it is then uploaded to DIRT; WA and TN have them report into DIRT.
- Reliance on 811 center, connected to tickets or creation of damage report.

Mandatory Damage Reporting



- DIRT is not intended to be used for enforcement purposes. They don't want to dissuade reporting if those submitting the damage are concerned about it being used against them.
- Excavators encouraged to report damages, tell their side of the story. Emphasis is on improvement, not incrimination.
- Recommended tracking emergency tickets and how they tie to damage.
- Even those with mandatory damage reporting are still missing data. They suggested to “start where you are.”

Mandatory Damage Reporting



- Back to the question: What does mandatory damage reporting mean? What will it look like?
- Decisions to be made. Who required? Where will it be reported to? How enforced?
- Can we implement without creating an undue burden of additional reporting? Can we combine and consolidate so reporting is a one stop shop that populates DIRT as well?
- Recommend continuing to discuss options and shop the proposal around to stakeholders, adjusting for concerns and suggestions as needed.

Enhanced Positive Response



- Positive response is an important tool that allows facility operators and locators to communicate the status of a locate request directly with the excavator.
- Enhanced positive response vs mandatory positive response
 - We currently have enhanced positive response capabilities (not two-way); hyperlinks in use by some users
 - Oregon has voluntary positive response. Scott shows 240 using ticket check and 1,177 are not.
- SC, NC, TN and NM have mandatory positive response, and WA is planning to move in that direction. TN participation is 90%+.

Enhanced Positive Response



- Positive response saves time and money for users, but also yields valuable information on late and missing locates. Creates a record for tracking on-time response and accountability.
- Outreach, training is beneficial. Some would use it willingly if they knew it existed and/or knew how to use it.
- Kentucky positive response allows to contact the excavator directly, which isn't as valuable outside of the system.
- NM uses warning notices and enforcement for late or missing locates. Fines and recovery of losses.

Enhanced Positive Response



- Recommend year of outreach, training to encourage voluntary usage with a deadline before it becomes mandatory. Similar to ITICnxt rollout.
- No new systems needed, exists currently.
- Primary question is what to do with holdouts who don't use positive response. What happens after warning notices?

Rulemaking



- 1.Reducing ticket length from 45 days to 30 days. [amends OAR 952-001-0010 (23)]
- 2.Adding hand digging, air cutting, vacuum excavation or hydro vacuum excavation to the definition of “non-invasive methods.” [amends OAR 952-001-0010]
3. Defining “large area” as a project exceeding seven hundred fifty linear feet. [amends OAR 952-001-0010 (10)]
- 4.Allowing for the use of electronic white lining. [amends OAR 952-001-0040]
- 5.Working within a facility enclosure exempted from notification requirement. [amends OAR 952-001-0050 (2)]
- 6.Clarifying design locate request process, delivery of drawings and maps owned by facility operators during planning. [amends OAR 952-001-0080]
- 7.Specifying recruitment partners for OUNC board. [adds OAR 952-001-0002]

Rulemaking



TIMELINES AND DEADLINES

ORS 183.335 Notice; content; public comment; temporary rule adoption, amendment or suspension; substantial compliance required.



Before a rule can become effective:



49-day notice to Legislators



28-day notice to those on agency's interested party mailing list



21-day notice to the public via the Bulletin prior to effective date



21-day deadline for interested parties to contest the rule



14-day published in Bulletin before hearing is held



Current Filing deadline last day of the month – 11:59 p.m. to make the Bulletin's publication at the start of the month

Rulemaking



- Planning for a January 1, 2025 effective date
- Final hearing at October 17 OUNC meeting, approval of some or all proposed changes
- Deadline for legislative notice is November 13 (49 days)
- Submitting the Notice of Proposed Rulemaking in October for extra time to ensure permanent rule language is ready by January 1, 2025.
- Outreach and communications to stakeholders leading up to October meeting and in advance of implementation; new Standards Manual.

Committee Purpose



1.4.3. Governance Committee Statement of Purpose:

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Legislative



There are three categories of priorities for the 2025 session and beyond:

1. **Housekeeping** - Eliminating outdated reference from statute enacted during our creation. Also reconsidering language that was written before Internet use was mainstream.
2. **Funding** - We are starting with a self-certification process to determine eligibility and may consider elimination of some or all of the special exemptions and subsidies in the future. There may be a need to more fully reevaluate our model in the future.
3. **Broadband** - We are primarily looking into administrative funding support and a special broadband ticket type to help prevent problems as projects and activity increases in our unserved and underserved communities.

Legislative



- Lobbyist support/budgetary, travel to Salem, Capitol Club registration.
- Annual report to all legislators and the Governor.
- Proclamation from the Governor for Safe Digging Month. Possible floor speeches, rotunda event and legislator office visits.
- Public display case in our State Capitol for Oregon 811. Under major construction for over a year, however, so this may have to wait another session.
- Mailer to newly elected Senators and Representatives after November General Election.

Referral – Reserve Policy



The Budget, Audit and Tariff Committee met on August 29 and voted to refer an item of business to the Governance committee relating to the appropriate level of reserves. In April 2023, the board approved the following:

3.2 Reserve Policy

It is the policy of the Oregon Utility Notification Center to keep a reserve in the budget equal to three months of essential operating costs.

Essential operating costs include continuation of service provided by a one call contractor, Oregon Utility Notification Center staff payroll, and other legal or contractually mandated responsibilities. Use of reserve funds requires approval by the Oregon Utility Notification Center board.

Referral – Reserve Policy



- When including the OCC contract, staff costs and other liabilities, the total reserves requirement is approximately \$600,000.
- Nate Rivera believes that the costs of the notification center contract should not be included in the calculation because we do not pay them directly. Bills are paid from the ticket revenue collected. He would like to see it set closer to \$300,000.
- The intent of the reserves is to weather a catastrophic, worst-case event. If we needed to switch providers in a pinch, we would need emergency funding to support the transition.
- Proposed solution: Consider 30 days funding for the Call Center contract and 90 days for staff and other contracts.