



JASON E. MUMPOWER
Comptroller

MINUTES
of the
TENNESSEE BOARD OF UTILITY REGULATION MEETING
October 26, 2023
10:00 am

Greeting:

Chairman Moody detected a quorum and called to order the first meeting of the Tennessee Board of Utility Regulation (“TBOUR”) in the Volunteer Conference Center on the 2nd Floor of the Cordell Hull Building in Nashville, TN at 10:00 a.m. (CDT).

Board Members Present and Constituting A Quorum:

Greg Moody, Chairman
Tom Moss, Vice-Chairman
Edwin Carter
Eugene Hampton
David Purkey
Steve Stone
Bruce Giles
Nick Newman
Michael Adams
Anthony Pelham
Candace Vannasdale

Staff Present:

Ross Colona, Comptroller’s Office
Meghan Huffstutter, Comptroller’s Office
Nate Fontenot, Comptroller’s Office
Ben Johnson, Comptroller’s Office

Counsel Present:

Seth May, Comptroller’s Office

Others present and Addressing the Board

Eddie Nueman, Mayor, Town of Mason
Lureatha Harris, Town Recorder, Town of Mason
Aletha Harris, Alderman, Town of Mason
Virginia Rivers, Alderman, Town of Mason
Celia Chastain, Alderman, Town of Mason
Joyce Carpenter, Mooresburg Utility District
Carrie Riner, Alderman, Lynnville
Eddie O’Neill, Jackson Energy Authority
Jim Wade, Madison Suburban Utility District
Rob Wheeler, Legal Counsel, Madison Suburban Utility District
Mary Mason, Town of Mason
Rep. Debra Moody, State Representative, Tipton County
Carolyn, Alderman, Town of Mason
Christy Tolley, City Recorder, Lynnville
Robert E White, Mayor, Lynnville
Alton Hethcoat, Engineer, Lynnville
Evan Roma, Alliance Water
Don Scholes, TAUD
Cassie Wheeler, MTAS
Darren Cardwell, General Manager, Hallsdale Powell

Conflict of Interest Statement:

Counsel Seth May read the following statement: “The Board was created to act for the public welfare and in furtherance of the legislature’s intent that utility systems be operated as self-sufficient enterprises. Board members are not authorized to participate in the discussion of or to vote on matters involving entities in which the Board member has a financial interest, with which the Board member has a conflict of interest, with which the Board member has a contract of employment, or if there is any appearance of impropriety.”

No Board members recused themselves at this time.

Adopt and Review Minutes

Previous UMRB, WWFB and TBOUR minutes were adopted and reviewed.
Mr. Adams made a motion to accept the minutes. Mr. Stone seconded the motion which passed unanimously.

Public Comment

No one was in attendance for public comment.

Rules

Mr. May continued, briefly covered the current drafted rules and explained the process for the creation of the rules.

Mr. Pelham then moved to accept the rules. Mr. Newman seconded the motion which passed unanimously.

Update Cycle

Mr. Colona described the current standing of the utilities and explained the staff recommendations.

1. Board staff will review their audited financial statement for compliance until Board staff believes the entity is postured to be released from Board oversight. The entity will continue to follow board directives to ensure compliance with relevant state statutes.

Mr. Giles then moved to accept staff recommendations. Mr. Moss seconded the motion which passed unanimously.

Release Cases

Mr. Colona described the current status of the utilities and explained the staff recommendations.

1. The Entity is officially released from Board oversight
2. Staff and Counsel shall close the case

Mr. Adams moved to accept staff recommendations. Ms. Vannasdale seconded the motion which passed unanimously

Update Cycle

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1. Board staff will review their audited financial statement for compliance until Board staff believes the entity is postured to be released from Board oversight. The entity will continue to follow board directives to ensure compliance with relevant state statutes.

Mr. Pelham moved to accept staff recommendations. Mr. Adams seconded the motion which passed unanimously.

Annual Information Report Compliance Referrals

Mr. Colona described the current standing of the utilities and explained staff recommendations.

1. By December 31, 2023, the entity shall file its Annual Information Report.
2. Should the Entity fail to comply with any directive in this order, Board staff and Counsel may issue subpoenas for the Entity's governing body and Manager to appear in-person before the Board during its next meeting following non-compliance of this order.
3. Should the Entity submit an Annual Information Report and there is no other reason the Entity's case should remain open, Board staff may close the Entity's case and release any outstanding subpoenas.

Mr. Giles moved to accept staff recommendations. Mr. Hampton seconded the motion which passed unanimously.

Subpoenas

Lynnville

Mr. Colona explained the main issues with the Town are due to prior management and staffing. The governing body was subpoenaed to the meeting for not meeting previous Board ordered requirements. Ms. Tolley and Mr. Hethcoat addressed the Board and explained the progress made by the Town as of current. Ms. Tolley noted that four subpoenaed aldermen did not attend. Mr. Pelham asked was the primary explanation was that the order was not followed. Ms. Tolley explained that they had been on the bad list for a while, they thought TAUD was handling. Mr. Purkey noted that subpoenas are not just issued to be issued and that they are serious. He also stated that there seems to be an inability by the Town to organize and start to work on the problems.

Mr. Pelham asked if the time was adequate for the Board directives. Mr. Colona said they were adequate. Mr. Pelham said a subpoena cannot be ignored. Mr. Moss noted he did not like setting a precedent of ignoring subpoenas. Mr. May explained the potential of ignoring subpoenas. Mr. Adams inquired of Ms. Huffstutter if any board members had reached out and communicated. She stated that they had not. Mr. May noted one alderman reached out to him and he had offered

for him to attend online. However, the alderman did not attend online.

Mr. Scholes addressed the board on behalf of TAUD and stated that they were 80-90% complete with the rate study. But that there would not be a feasibility study.

Mr. Hethcoat said his firm is handling that. Mr. Pelham requested hearing from the Mayor. Mr. Colona noted that we were getting away from staff recommendations and the enforcement of subpoenas.

Mr. Pelham made a motion to enforce subpoenas with appropriate authority and accept staff recommendations. Mr. Hampton seconded the motion which passed unanimously.

1. The Board should amend its prior order to extend the deadline for the Entity to provide proof of engagement for the rate and feasibility study from September 29, 2023 to December 31, 2023. All remaining deadlines will be extended approximately 30 days or as deemed appropriate by Board staff.

Mr. Adams asked counsel what the repercussions were for referring subpoenas to the next level of authority. Mr. May said there were a variety of things but ultimately that was up to the judge. Mr. Giles said we are setting a precedent for this board. Mr. Pelham did not wish to change his order.

Board Manager Cases

Madison Suburban Utility District (MSUD)

This was a complaint case. Mr. Colona allowed the complainant to discuss for five minutes.

Mr. John Cooper with Greystar Real Estate Partners addressed the board. He stated they are not challenging the authority of the district but challenging the denial of the variance. He gave the background and scope of the project and explained that the invoice changed from a tap fee of \$40,000 to a new price of approximately \$260,000 more. The new invoice had a note that said system development fee. There was no public notice of the fee and no agenda online. There was no way to know that this new fee was to be considered. The tap fee for the invoice did not increase, what was increased was a completely new fee. Mr. Cooper stated they are not challenging the fee just the application and that MSUD should honor prior approval and structure. They would like the TBOUR to overturn the denial of the variance request.

Mr. Evans addressed the Board on behalf of MSUD along with Mr. Rob Wheeler who serves as legal counsel with MSUD. Mr. Pelham asked if Greystar had any other projects with MSUD. Mr. Evans stated they do. He noted that the invoicing process takes time. They chose this fee and assigned it per unit.

Mr. Purkey asked if the company was being punished for not meeting deadlines. Mr. Wheeler said

no he was not saying that. Mr. Purkey said but if they had paid it they wouldn't have gotten this fee due to deadlines. Mr. Wheeler said yes. Mr. Wade said the fee did not exist until July 1, 2023. Mr. Newman asked if there are other developers or contracts that are now also subject to this. Mr. Wade said that he went back and added a fee to all projects that had elapsed 30 days. Mr. Newman said they had a list of people who had projects approved. Mr. Wade said yes. Mr. Newman asked if they were alerted, and Mr. Wade said yes, they were emailed. Mr. Giles said they were given 3 days' notice. Mr. Wade then stated no they did not notify them prior. Mr. Giles asked if they felt that was fair and reasonable. Mr. Wade said we are not going to ask our other customers to bear this burden. Mr. Giles said he agreed but there was no notice given. Mr. Purkey asked if there was a discussion around grandfathering in rates. Mr. Wade said he didn't recall. Mr. Pelham asked about other fees and the standard practice.

The Board discussed with counsel, Mr. May, if there was a finding and next steps.

Mr. Colona said staff would draft a letter addressing the boards position on the matter. That it was unprofessional and not best practice since they did not give seqaute notices. And then also to bring this matter before the Board again in 2024 if they do not go along with the letter. This would apply to every contractor on the list not just Greystar.

Mr. Wade noted that 4 of the 18 contracts had paid the fee.

Staff will provide a recommendation and send a letter to MSUD. Board staff will also generate a report about what transpired, who the other developers are and how much is outstanding. Part of that will possibly have some sort of determination on the legal extent of the authority. And then this will potentially come before the board in 2024.

Mr. Pelham made a motion to accept the recommendation and added in the justification of the fee time frame. Mr. Moss seconded the motion which passed unanimously.

Plateau Utility District

Plateau Utility District is wanting to acquire Wartburg's utility system. They want approximately \$1.2 million from the Utility Revitalization Fund. Mr. Colona noted that was too high and we would recommend \$500,000. \$300,000 up front, with \$40,000 given out over the next 5 years to cover depreciation.

Mr. Mike Monroe addressed the board on behalf of Plateau Utility District and explained their needs and justification for the amount requested. He also stated that nothing would be obstructed if they got less.

Mr. Moss made a motion to accept the recommendation. Mr. Stone seconded the motion which passed unanimously.

Recess

The board went into a twelve-minute recess at 11:28 pm and resumed at 11:40 pm.

Mason

Mr. Colona presented the Town of Mason. He explained previous board orders and that they had done a lot to improve their situation. They contracted with Alliance Water Resources and Alliance has made many positive changes. They were subpoenaed to address the governing body. They did not get a water operator by the deadline required. Therefore, they should have immediately gotten a feasibility study contract in place. They failed to do so.

The Mayor and staff addressed the board. They explained they are working on it and making a lot of changes. After much discussion with the Mayor and the Board, there was confusion regarding the language of the original letter. The Town did not understand the difference between a rate study and feasibility and the language of the letter requiring them to do so.

Clarification was made by Mr. Giles that the Board is not forcing them to merge, just trying to determine the best option. This would simply be the study.

Mr. Giles made a motion that the Town had 45 days to enter into an agreement for a feasibility study. And that would be due to staff by April 1, 2024, staff would also have the ability to extend that timeline as needed by up to 90 days. Mr. Purkey seconded the motion which passed unanimously.

Hallsdale Powell

Mr. Colona presented the City of Hallsdale Powell. Board staff had concerns about affordability for customers in the district. We wanted to ensure the rate payer is protected and rates are fair. Unsure how to move forward. Leave it to the Board.

Mr. Hampton asked if they had a rate protest. Mr. Colona noted that they had and it was previously handled by the previous board. Mr. Giles stated it was based off debt and deemed okay.

Mr. Darren Cardwell addressed the board and shared the reason for rates.

Mr. Adams stated he did not have a concern with the rate structure. He was slightly concerned about the volume of debt in the future but they may not have a choice. Mr. Purkey stated for the record that staff did not find fraud, waste or abuse. Mr. Colona and Mr. May stated there was no action to take based off no findings or financial distress. The Board does not have power to take action.

Staff recommendation would be to close the case and put into the update cycle. Mr. Pellham made a motion to accept staff recommendation. Mr. Newman seconded the motion which passed unanimously.

East Sevier County Utility District

Mr. Colona presented an update to the board that they recently engaged in TUA to be their manager. Staff recommended:

The Board should grant the request from the East Sevier County Utility District to allow for a

contract to be sent between the utility and the third party to complete the rate study and feasibility study to April 30, 2024. The rate study and feasibility study submission deadlines should also be extended to September 30, 2024.

Mr. Pellham made a motion to accept staff recommendation. Mr. Giles seconded the motion which passed unanimously.

Witt Utility District

Mr. Pelham requested an update on Witt UD. Mr. Colona noted we wanted to oust two board members. Both have resigned. We are not pursuing further action. No action was taken.

East Tennessee Cases

Bulls Gap

Mr. Johnson provided an update on the entity and requested:

1. By December 31, 2023 the Entity shall provide Board staff with the completed rate study and either proof of implementation of the resulting recommendations or a proposed plan of implementation.

Mr. Giles made a motion to accept staff recommendation. Mr. Stone seconded the motion which passed unanimously.

Clearfork Utility District

Mr. Johnson provided an update on the entity and requested:

1. The Entity shall complete all provisions of the December 8th 2022 UMRB order by January 31, 2024.
2. The Entity shall provide a completed feasibility study to board staff by March 31, 2024.
3. Should the Entity fail to comply with any directive in this order, Board staff and Counsel may issue subpoenas for the Entity's governing body and Manager to appear in-person before the Board during its next meeting following non-compliance of this order. Board staff may withdraw or release any subpoenas issued if the Entity has complied with this order and there is no other cause to maintain the subpoena

Ms. Vannasdale made a motion to accept staff recommendation. Mr. Pelham seconded the motion which passed unanimously.

Cold Springs Utility District

Mr. Johnson provided an update on the entity and requested:

1. By December 31, 2023, the Entity shall provide Board staff with proof of implementation of the recommendations of their most recent rate study, or a proposed plan of implementation.
2. By December 31, 2023 the Entity shall update Board staff regarding its attorney's opinion on whether it is in the Entity's best interest to pursue legal proceedings to settle the issue in regards to providing water at no cost to its water rights customers.
3. Board staff is given the authority to grant one extension of up to six months of the foregoing deadlines upon a showing of good cause by the Entity.

Mr. Adams made a motion to accept staff recommendation. Mr. Newman seconded the motion which passed unanimously.

Cumberland Utility District

Mr. Johnson provided an update on the entity and requested:

1. Board staff believe that the administrative review should remain open to evaluate the progress of the CUD under new management.

Mr. Giles made a motion to accept staff recommendation. Mr. Adams seconded the motion, which passed unanimously. Ms. Vannasdale abstained from voting.

Mooreburg

Ms. Joyce Carpenter addressed the board and asked for an extension of the rate study. Mr. Giles thanked her for her work and efforts. Mr. Johnson noted that Mooreburg is currently under investigation within DOI. The staff recommendation is the following.

1. By December 31, 2023 the Entity shall provide Board staff with the proof of implementation of the resulting recommendations or a proposed plan of implementation.

Mr. Giles made a motion to accept the staff recommendation with the addition of a 45 day extension. He then rescinded his motion and changed the date to April 1, 2023. Per the recommendation of Mr. Adams and Mr. Colona.

The staff recommendation is the following:

2. By April 1, 2024 the Entity shall provide Board staff with the proof of implementation of the resulting recommendations or a proposed plan of implementation.

Mr. Adams made a motion to accept staff recommendations with the changes mentioned. Mr. Newman seconded the motion and it passed unanimously.

Oliver Springs

Mr. Johnson provided an update of the administrative review. The staff recommendation is:

1. By December 31, 2023 the Entity shall send Board staff proof that all members of the utility system's governing body have complied with the applicable training requirements.
2. This Order does not supersede or withdraw the requirements of any previous orders

Mr. Giles asked if they had entered into an agreement to merge. Mr. Johnson said it wasn't stated but due March 31. Mr. Giles requested to modify the staff recommendation for 45 days to enter in an agreement for a merger. Mr. Adams seconded the motion and it passed unanimously.

West Tennessee Cases

South Fulton

Mr. Fontenot provided an update of the entity and requested:

1. The Entity shall have the Tennessee Association of Utility Districts, or another qualified expert as approved by Board staff, perform a rate study that includes the following:
 - a. a review of the capitalization policy, including any recommended modifications;
 - b. a review of the debt management policy, including any recommended modifications;
 - c. the creation of a five-year capital asset budget, to be taken from the current capital asset list and to include future anticipated needs;
 - d. a review of relevant utility fees including but not limited to connection or tap fees, including any recommended modifications;
 - e. verification that all governing body members of the utility are in compliance with all relevant training requirements;
 - f. and a justification of the inside and outside the city limit rates, including any recommended modifications to the rate structure.
2. By December 31, 2023, the Entity shall send Board staff a copy of the contract between the Entity and the qualified expert who is to perform the tasks in paragraph 1
3. By June 30, 2024, the Entity shall provide Board staff with the completed rate study and either proof of implementation of the resulting recommendations or a proposed plan of implementation.
4. Board staff is given the authority to grant one extension of up to six months of the foregoing deadlines upon a showing of good cause by the Entity.

Mr. Pelham made a motion to accept staff recommendations. Mr. Newman seconded the motion and it passed unanimously.

Gibson

Mr. Fontenot provided an update of the entity and requested:

1. Beginning November 1, 2023, the Entity shall send Board staff monthly financial updates showing the Town's repayment of funds borrowed from the utility system's inter-fund balance. These updates should include bank statements, remaining balance, and the ordinance(s) approving the transfer of funds. The updates should be sent to the Board by the 1st of each month until the requirements of paragraph 2 are met. Board staff may request further documentation if needed.
2. Once the Entity shows that the full inter-fund balance has been repaid, Board staff may close the requirements listed in Paragraph 1 without further action by the Board.
3. If the Division of Local Government Audit is not able to confirm receipt of the fiscal years' 2021, 2022, and 2023 audits by December 31, 2023, the Entity shall provide Board staff an update regarding the delinquent audits by January 31, 2024.
4. Should the Entity fail to comply with any directive in this order, Board staff and Counsel may issue subpoenas for the Entity's governing body and Manager to appear in-person before the Board at its next meeting. Board staff may withdraw or release any subpoenas issued if the Entity has complied with this order and there is no other cause to maintain the subpoena

Mr. Hampton asked if the town has contracted with an auditor. Mr. Colona noted they had.

Mr. Giles made a motion to accept the staff recommendation. Mr. Hampton seconded the motion and it passed unanimously.

Hornsby

Mr. Fontenot provided an update of the entity and requested:

1. The Entity shall contract with a qualified expert to carry out a feasibility study for a merger with another utility system in the area by December 31, 2023.
2. The Entity shall provide a completed feasibility study to board staff by June 30, 2024

Mr. Newman made a motion to accept the staff recommendation. Mr. Purkey seconded the motion and the motion passed unanimously.

Future Meeting Dates

Mr. Colona stated that the TBOUR will plan to meet again on the following dates:

March 14, 2024

July 18, 2024

October 24, 2024

Board members had no conflicts with any dates.

Adjournment

Chairman Moody moved that the meeting be adjourned. Mr. Newman seconded and motion carried unanimously. Adjourned at 1:17pm.