



JASON E. MUMPOWER
Comptroller

MINUTES
of the
UTILITY MANAGEMENT REVIEW BOARD MEETING
April 28, 2022
10:00 am

Greeting:

Chairman Knotts detected a quorum and called to order the meeting of the Utility Management Review Board (“UMRB”) in the Volunteer Conference Center on the 3rd Floor of the Cordell Hull Building in Nashville, TN at 10:00 a.m. (CDT).

Board Members Present and Constituting A Quorum:

Betsy Knotts, Chair
Tom Moss, Vice-Chair
Phillip Combs
Bruce Giles
Dan Coley
Anthony Pellham
Steve Stone

Board Members Absent:

Rebecca Hunter
Kevin Botts

Staff Present:

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

Counsel Present:

Seth May, Comptroller’s Office

Others Present & Addressing the Board

Mike Dunavant, Chief Investigative Counsel, Investigations, Comptroller’s Office
Phil Job, Deputy Chief Investigator, Investigations, Comptroller’s Office
Joseph Ensminger, Senior Investigator, Investigations, Comptroller’s Office
Alan Dover, Senior Counsel, Investigations Comptroller’s Office
Don Scholes, General Counsel, TAUD
Chris Leuber, Executive Director, American Water Works Association, Water Loss Committee

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.”

Chairman Knotts asked if anyone needed to recuse themselves. Mr. Giles asked about the South Fork due to his involvement in the TUA Board that was formed by him. Counsel said that there was no impropriety in that. Mr. Coley recused himself from Malley Valley UD and Milcrofton UD.

Approval of Minutes:

Chairman Knotts presented the approval of the October 28, 2021 minutes. Mr. Giles moved to approve the minutes as written. Mr. Coley seconded the motion.

Comptroller Investigations:

South Fork Utility District:

Mr. Colona gave a background on the South Fork UD situation. He introduced the Department of Investigations from the Comptroller’s office who were present to answer questions from the report. Mr. Colona alerted the board that the packet had been updated. Prior to this week the intention was to achieve a merger with South Fork UD and Bristol-Bluff City UD. South Fork currently purchases all their water from Bristol-Bluff City. The merger is in the best interest of the customers. On Tuesday, April 26, 2022, South Fork UD called a meeting to address two topics. The intent to merge and to address hiring a new manager. Mr. Colona drove from Nashville to Bristol. No commissioners attended the meeting which resulted in no quorum. The meeting turned into a public forum for the approximately 30 customers that were in attendance. The customers related concerns and complaints regarding the ordeal. Due to the input from the customers and the commissioners declining to take action, Mr. Colona’s recommendation has changed. The current attorney was told on Wednesday, April 27, 2022, that he was no longer representing the district. Board staff is unaware when this was decided since the meeting did not take place. Board staff is still gathering information regarding this.

Board staff recommendations:

1. Board staff shall initiate contested case proceedings, on behalf of the Board, against South Fork and any other necessary parties, to address the question of whether to remove South Fork’s Commissioners from their positions pursuant to Tenn. Code Ann. § 7-82-307(b)(2). This hearing should be scheduled as soon as is reasonably possible, and by a special called meeting if necessary.
2. The District may elect to voluntarily merge with another entity.
3. If the District does not elect to voluntarily merge with another entity, the District *shall* contract with TAUD or another qualified expert to perform a feasibility study that includes:
 - a. A rate study to show future rate increases necessary to perform current operations;

- b. The feasibility of a merger between the South Fork and Bristol-Bluff City Utility District including the projected rates for the districts' current customers and the costs of any new or upgraded infrastructure to support the merger;
 - c. The feasibility of a merger between South Fork and Blountville Utility District including projected rates for the districts' current customers and the costs of any new or upgraded infrastructure to support the merger; and,
 - d. The feasibility of a merger between the utility systems of South Fork and the City of Bristol including projected rates for the districts' current customers and the costs of any new or upgraded infrastructure to support the merger.
4. South Fork shall send Board staff a copy of the contract required by paragraph 3 above by June 17, 2022.
 5. South Fork shall send Board staff a copy of the completed feasibility study by December 16, 2022.
 6. South Fork shall complete and return the financial distress questionnaire to Board staff within 90 days of receiving the questionnaire.
 7. Board staff are given the authority to grant one extension of up to six months of the foregoing deadlines upon a showing of good cause by South Fork.

Mr. Giles asked DOI with the Comptroller's Office, if there is any measure of control this board had over what was going on, He commented that the word "questionable" was used multiple times throughout the report, and in his 9 years serving on the UMRB, this is the worst case of abuse he's seen, there was no oversight. He asked the DOI to speak to what they saw.

Mike Dunavant introduced himself to the Board as Chief Investigative Counsel to the DOI, as well as Phil Job, Joseph Ensminger, and Alan Dover. He deferred to Investigator Ensminger who stated that it's hard to say the oversight level, but the board was aware of a lot of the issues. Mr. Dunavant added that the report is divided into two main sections. The first is material findings, and the second is internal controls and compliance deficiencies. Those speak to board awareness. Mr. Giles stated that it all comes back to the board reviewing what is going on and that money was misappropriated and misused.

Mr. Moss said that the Johnson City field office with TDEC likes the idea of a merger. Mr. Combs asked if the firing of the attorney was a violation of sunshine law and questioned if there is any other instance that this may have taken place. Mr. Ensminger said he did not want to go outside the scope of the report. Mr. Dunavant said if there was a finding it would be in their report. Mr. Combs asked how many commissioners were participating in group health coverage. Mr. Scholes stated that he does not know. Mr. Colona stated that he knows they have health insurance expenses for the manger and employees, it is unknown in regard to the board and commissioners.

Mr. Pellham inquired if there are dual signatories on every check. Mr. Ensminger said there are on every check. Mr. Stone asked how many clients the UD services. Mr. Ensminger said approximately 3,400 water customers. Mr. Giles asked if the manager or his construction company is still providing service to the UD. Mr. Colona said he was unaware the last time they provided service to the district. Mr. Ensminger said that the in the scope of the investigation, once the manager was employed, they no longer did work with that particular company.

Chairman Knotts stated that the board has a duty to provide oversight and asked if this investigation warranted to bring members down and questioned and in turn ousted. Mr. Giles said he found it incredulous they allowed Mr. Colona to drive that distance and not attend the meeting, let alone attend the UMRB meeting here today. Mr. Colona asked if there were any employees or commissioners of South Fork UD that would like to speak up now was the time to do so, but there was no requirement. No one responded.

Mr. Moss made a motion to accept staff recommendations. Chairman Knotts confirmed that he meant all seven recommendations which included pursuing commissioners to have them removed. Chairman Knotts said it would initiate a contested case hearing as soon as possible. Mr. Giles asked if criminal charges were off the table against commissioners. Mr. Dunavant stated that the investigations report has been shared with the District Attorney General of Sullivan County.

Mr. Moss made a motion to accept all staff recommendations. Mr. Giles seconded the motion.

Mr. Colona said that dates needed to be established to schedule a contested case hearing, and Counsel Seth May could explain the process and dates to accomplish this, in anticipation of this vote. Mr. May said that there would be logistics that would require administrative procedures with the Secretary of State's Office, and an administrative law judge could sit for the hearing. He also mentioned that legally the first thing they do is vote, notice the hearing, and have a brief summary of the board's decision. There needs to be reasonable notice before the hearing; 30 days.

Chairman Knotts stated that the prehearing conference should be in May to get all the motions competed and have the actual hearing in June or July. The law judge will deal with legal, but ultimately UMRB makes the final decision. Mr. Dunavant asked that the court reporter make official record of proceedings.

The Board agreed on three potential dates: June 23 or June 30, 2022, or July 14, 2022 for the administrative law judge hearing.

Financial Distress:

Bristol-Bluff City Utility District

Mr. Colona noted that since the meeting with South Fork did not occur, staff recommendations have changed. Mr. Colona explained staff recommendations:

1. The Board orders that the District shall complete and return the financial distress questionnaire to Board staff within 90 days of receiving the questionnaire.

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

Iron City Utility District

Mr. Colona explained that prior to the board order the district was trying to accomplish a new board, and they had a failure to comply with the law for training. There is a letter included in the board packet explaining why. He invited anyone from Iron City to speak. Ms. Debra Chambers the office manager, said the commissioners know all about the water lines.

Chairman Knotts asked if any commissioners were on the phone and if it would be possible to hear from them. Commissioner Brewer stated that they did not get around to the training. Commissioner Atwell spoke and said she had cancer for two years followed by open heart surgery.

Mr. Pellham asked if for 238 customers was 5 board members normal. Mr. Colona said it was not and that it was atypical. Mr. Colona also stated that the board does not receive compensation or a stipend.

Mr. Pellham asked if all board members were currently in compliance. Mr. Colona confirmed they were all in compliance. Mr. Colona asked if the board would like to rescind the orders or oust the commissioners. Mr. Giles asked what the law allowed for. Counsel Seth May stated that the law states they can request an extension and they are not allowed reappointment but given the situations whatever the board would deem best.

Mr. Colona explained the staff recommendations.

1. The Board finds it appropriate under these narrow circumstances to rescind its previous order to initiate contested case proceedings against the commissioners. That order is hereby rescinded.

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

Roan Mountain Utility District

Mr. Colona explained the staff recommendations:

1. As such, the Board orders that the Entity shall send financial updates to Board staff by March 1st and September 1st of each year beginning September 1, 2022 until the Board releases the Entity from its oversight.

Mr. Combs moved to accept staff recommendations. Mr. Pellham seconded the motion which passed unanimously.

Release Cases

Mr. Colona said the following utility districts were to be released from board oversight:

Arthur-Shawnee Utility District
Bon de Croft Utility District

Copper Basin Utility District
Crockett Public Utility District
Fall River Road Utility District
Milcrofton Utility District
North Stewart Utility District
Northeast Henry Utility District
Northwest Henry Utility District
Reelfoot Utility District
Walden's Ridge Utility District

Mr. Giles motioned to accept the staff recommendations for the release cases. Mr. Moss seconded the motion which passed. Mr. Coley abstained from the vote due to the Conflict of Interest involving Milcrofton Utility District.

Board Investigation:

Tuckaleechee Utility District

Mr. Colona informed the board that they are under investigation due to the customers running out of water during a fire. The water pressure went to fighting the fire, so the homes did not have water pressure. There is an infrastructural need in the district and there needs to be a plan in place to remedy the problem.

Mr. Colona stated that South Blount Utility District is willing to help the district. The staff recommendation follows:

1. Board staff shall investigate the Entity to address the financial, technical, and managerial capacity of the Entity to comply with the requirements of any applicable federal and state laws or regulations.
2. Board staff shall, with the full authority of the Board, issue subpoenas for the Entity's manager, governing body, any other necessary staff, to appear in-person before the Board at its first meeting of 2022 if the Entity does not comply fully with the Board's investigation.
3. Board staff shall update the Board as to the status of this investigation at its next meeting on September 22, 2022.

Mr. Giles said for the past six months they have been trying to a third-party peer evaluation for them, and it is not compensated. Counsel Seth May said that would not be a conflict of interest.

Mr. Stone asked if the board oversees the district's ability to deliver water in the event of a fire, would that fall under the technical ability of the utility district. Mr. Moss commented that TDEC could charge for not maintaining a 20PSI. Mr. Moss also commented that there would be a sanitary survey in the next 4-6 weeks.

Mr. Pellham moved to accept staff recommendations. Chairman Knotts seconded the motion, which passed unanimously.

Annual Information Report:

Mr. Colona addressed the board regarding water loss, and the currently established parameters submitted in the audit reports from the AWWA workbook. He recommended to change water loss standards to be greater than 40% by volume. He also informed the board that entities are not equipped to fill out the report correctly, and legislation had been passed that it is no longer an audit report but rather an annual information report. Mr. Leauber addressed the board to discuss this, and supported Mr. Colona's explanation.

Chairman Knotts made a motion to accept the changes to the report. Mr. Moss seconded the motion which passed unanimously.

Updated Questionnaires:

Mr. Colona asked the board to approve the questionnaire as stated in the packet. And to grant the ability for board staff to make edits as needed and to provide the updates after the fact.

Mr. Giles made a motion to approve the questionnaire and to allow board staff to make edits. Mr. Pellham seconded the motion which passed unanimously.

Utility District Revitalization Fund Rules:

Mr. Colona explained that the legislature passed a law that would allow the UMRB to force mergers in financial distress situations as needed. There was also a \$2M non-recurring deposit into a revitalization fund specifically for instances that the board would order a merger and the district may need help offsetting the costs of the merger if needed. The fund will operate like a grant and therefore rules are necessary for the fund.

Chairman Knotts made a motion to accept the draft of the rules. Mr. Moss seconded the motion which passed unanimously.

Member COI Statements:

Mr. Colona reminded board members that their desk had Conflict of Interest forms on it that needed to be signed and left for board staff.

Board Discussion:

None

Adjournment:

Chairman Knotts adjourned the meeting at 11: 23 am. Mr. Moss seconded.