

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

In Re:)
)
RULEMAKING PROCEEDING TO)
PROMULGATE INITIAL RULES FOR) Docket No. U20-0001
THE UNDERGROUND UTILITY)
DAMAGE ENFORCEMENT BOARD)

COMMENTS OF TENNESSEE ASSOCIATION OF UTILITY DISTRICTS

Comes now the Tennessee Association of Utility Districts and files these written comments on the proposed rules of the Underground Utility Damage Enforcement Board in this rulemaking proceeding.

1. The Tennessee Association of Utility Districts (TAUD) is a trade association whose members are utility districts, utility authorities, municipal utility systems and county utility systems which provide water, sewer and natural gas utility services in Tennessee. Its members provide their services using underground utility lines and facilities and have an interest in the proposed rules of the Underground Utility Damage Enforcement Board (UUDEB or Board).

2. Rule 1230-01-01-.01 – Definitions. The proposed rules use the terms “operator” and “utility” which are not defined in the definition section of the rules, Rule 1230-01-01-.01. These terms need to be defined and should have the same definition as these terms are defined in T.C.A. § 65-31-102, either by including these same definitions in Rule 1230-01-01-.01 or incorporating the definition of these terms by reference to T.C.A. § 65-31-102.

3. Rule 1230-01-01-.01(j) – Definition of Private Service Line. TAUD has concerns about the definition of Private Service Line in proposed Rule 1230-01-01-.01(j). As

drafted, the definition of private service line is determined based upon the location of a utility line or facility being on “private property” rather than the actual ownership of the underground utility line. Private property is not defined in the proposed rules. Underground utility lines which are not owned by an operator may be located on public property as well as private property. TAUD believes defining a private service line based upon non-ownership of the line by an operator is a better way to define a private service line. Such a definition would make the obligations under proposed Rule 1230-01-03-.02(3) a little clearer. TAUD suggests the definition be changed to something along these lines:

“Private Service Line” means an underground utility line or facility which is not owned by an operator and is not used by an operator to provide its utility services.

4. Rule 1230-01-02-.05(2) – Guidelines for Application of Penalties. This rule limits the consideration of the history of prior violations to 18 months when the Executive Committee is assessing a penalty for violations of the Act. The enabling legislation does not address the factors the Executive Committee may consider in assessing civil penalties. TAUD questions why the Board would want to place such a limitation on the Executive Committee’s discretion when such discretion is not addressed in the Board’s enabling legislation.

5. Rule 1230-01-02-.09 – Ex Parte Communications. This proposed rule imposes a prohibition on ex parte communications to members of the Executive Committee when the Committee is considering whether a violation of the Act has occurred and the amount of any penalty which should be assessed. Much of the work of the Executive Committee does not involve contested cases as defined by the Uniform Administrative Procedures Act, T.C.A. § 4-5-102(3). Most of Executive Committee’s work is investigative in nature and should not be hampered by this proposed rule. A potential violator has no right a hearing before a civil penalty

is assessed and a citation is issued. The Board should not broaden by rule the application of the prohibitions against ex parte communications in the Uniform Administrative Procedures Act which is limited to contested cases. Therefore, TAUD requests that proposed Rule 1230-01-02-.09 not be adopted. The prohibition against ex parte communications in T.C.A. § 4-5-304 will apply to any contested cases before the Executive Committee, the Board or a Hearing Officer without this proposed rule being adopted.

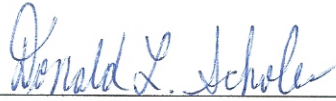
7. Rule 1230-01-03-.02(3) – Marking Standards. To make this proposed rule consistent with suggested definition of “Private Service Line” set forth earlier, TAUD suggests that that second sentence of this subsection (3) read something along these lines:

The marking of a Private Service Line is the responsibility of the person who owns the Private Service Line who shall bear any expense for marking the Private Service Line.

8. Rule 1230-01-03-.03(4) – Exercise of Reasonable Care in Excavation Practices. Similar to the language in proposed Rule 1230-01-02-.02(1), the adoption of the best practices of excavation in Common Ground Alliance, Best Practices: *The Definitive Guide for Underground Safety and Damage Prevention* in this proposed rule probably needs to add the language “as may be amended from time to time” so changes to these best practices are automatically incorporated into the rule without the rule being amended.

Thank you for the consideration of these comments by TAUD.

Respectfully submitted,



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