

**RULES
OF
THE UNDERGROUND UTILITY DAMAGE ENFORCEMENT BOARD**

**CHAPTER 1230-01-02
RULES AND REGULATIONS OF PRACTICE AND PROCEDURE**

TABLE OF CONTENTS

1230-01-02-.01	Complaint of Alleged Violations of the Act	1230-01-02-.06	Representation by Counsel
1230-01-02-.02	Investigations	1230-01-02-.07	Proceedings Before a Hearing Officer
1230-01-02-.03	Executive Committee Proceedings	1230-01-02-.08	Notice of Hearing
1230-01-02-.04	Authorized Actions by Investigative Staff	1230-01-02-.09	Ex Parte Communications
1230-01-02-.05	Guidelines for Application of Penalties	1230-01-02-.10	Conflicts of Interest

1230-01-02-.01 COMPLAINT OF ALLEGED VIOLATIONS OF THE ACT.

- (1) Any person may report an alleged violation of the Act by completing and submitting an electronic complaint, which can be found on the Commission's website.
- (2) Alleged violations must be reported to the Executive Committee within ninety (90) days of the person or entity becoming aware of the circumstances constituting the alleged violation.
- (3) Reports of alleged violations should include as much relevant information concerning the circumstances as possible, including, but not limited to, damage and/or incident reports, photographs, statements and other informational documents.

Authority: T.C.A. §§ 65-31-114(f)(1), 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.02 INVESTIGATIONS.

- (1) Upon receipt of a complaint alleging violation of the Act, Investigative Staff shall send notice of the complaint to the alleged violator requesting a written response within thirty (30) days. Written responses to complaints may be provided to Investigative Staff by U.S. Mail or other commercial shipping/delivery service, facsimile, or electronic mail ("email").
- (2) Investigative Staff shall conduct an investigation to gather and examine all relevant facts with regard to the reported alleged violation. The investigation may include, but is not limited to, records verification, teleconferences, photo documentation, informal meetings and other appropriate investigative methods.
- (3) Upon completion of the investigation, Investigative Staff shall provide its findings and recommendations to the Executive Committee or issue a notice of violation or citation as permitted by T.C.A. §§ 65-31-112, 65-31-116(b) and these rules.
- (4) Where a complaint was not timely submitted, or as otherwise authorized by the Executive Committee, Investigative Staff may administratively close the investigation without presentation to the Executive Committee for determination of whether a violation occurred.
- (5) Investigative Staff shall notify the Complainant of administrative closure, dismissal, or issuance of a citation in matters filed by the Complainant.
- (6) Investigative Staff shall notify the Respondent of administrative closure or dismissal of matters filed against such Respondent or shall send to the Respondent a citation in matters where the Respondent is found to have violated the Act.

(Rule 1230-01-02-.02, continued)

Authority: T.C.A. §§ 65-31-114(f)(1), 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.03 EXECUTIVE COMMITTEE PROCEEDINGS.

- (1) The Executive Committee shall meet periodically to review complaints of alleged violations of the Act and the Investigative Staff's findings and recommendations relative to such complaints.
- (2) At any time prior to the consideration of a complaint by the Executive Committee, the person or entity that submitted the complaint may notify Investigative Staff of withdrawal of the complaint. Upon withdrawal of the complaint, Investigative Staff shall administratively close the matter.

Authority: T.C.A. §§ 65-31-114(f)(1), 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.04 AUTHORIZED ACTIONS BY INVESTIGATIVE STAFF.

- (1) If, during the course of an investigation, Investigative Staff identifies a person, in addition to, or in the alternative to the Respondent of a filed Complaint who may be responsible for the violation alleged in the Complaint. In such instance, Investigative Staff shall issue a Notice of Alleged Violation ("NAV") to such person.
- (2) The Investigative Staff may issue a citation, as directed by the Executive Committee.
- (3) In matters where the root cause alleged is failure to give notice to the one-call service prior to excavation as required by T.C.A. § 65-31-106, the Executive Committee may authorize the Investigative Staff to issue a citation to the Respondent if the investigation finds uncontroverted evidence of such root cause, and further finds that the violation would be a first violation for the Respondent. In the alternative, Investigative Staff may present such matters to the Executive Committee for collective consideration. The Executive Committee may remove any individual matter presented for collective consideration to be considered on an individual basis.

Authority: T.C.A. §§ 65-31-112, 65-31-114(f)(1), 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.05 GUIDELINES FOR APPLICATION OF PENALTIES.

- (1) The Executive Committee shall determine and assess penalties consistent with the provisions of T.C.A. § 65-31-112. When considering and determining the penalty for a violation, the Executive Committee may consider the nature, circumstances and gravity of the violation, the degree of the respondent's culpability, the respondent's history of prior violations, and such other factors as may be appropriate.
- (2) When considering the history of prior violations, the Executive Committee shall consider only the number of violations occurring in the eighteen (18) months immediately preceding the date of the alleged violation when considering the respondent's history of violations, provided, however, that the Executive Committee may consider a violation occurring more than eighteen (18) months immediately preceding the date of the alleged violation if the citation for such violation has not been satisfied.

Authority: T.C.A. §§ 65-31-112, 65-31-114(f)(1), and 65-31-115(a)(1). **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.06 REPRESENTATION BY COUNSEL.

- (1) Any party to a contested case may be advised and represented, at the party's own expense, by a licensed attorney or attorneys.
- (2) Any party to a contested case may represent himself or herself, provided, however, that in the case of a corporation, limited liability company, or other entity recognized by law, the party may give testimony as an authorized representative of the entity, but shall have an attorney to provide legal representation for the filing of pleadings, examination and cross-examination of witnesses, and other actions that require a licensed attorney, as required by the statutes, rules, regulations and orders concerning the practice of law within the state.
- (3) Any out-of-state counsel shall comply with T.C.A. § 23-3-103(a) and Tenn. S. Ct. R. 19. The affidavit referred to in the Supreme Court Rule shall be filed with the Chair of the Board.

Authority: T.C.A. §§ 23-3-103(a), 65-31-112, 65-31-115(a)(1), and 65-31-116; and Tenn. S. Ct. R. 19.
Administrative History: New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.07 PROCEEDINGS BEFORE A HEARING OFFICER.

- (1) In any contested case brought under the Act and these rules, the Hearing Officer or Executive Committee may, on his or her own motion or on motion of any party, enter an order, pursuant to T.C.A. § 4-5-306, directing counsel for the parties and any unrepresented parties to appear for a conference or conferences prior to the hearing on the merits to consider:
 - (a) The simplification of issues for the hearing on the merits;
 - (b) The necessity or desirability of any amendments to filings;
 - (c) The possibility of obtaining stipulations, admissions of fact, and admissions of documents which may avoid unnecessary duplication of proof;
 - (d) The disposition of any pending motions;
 - (e) The steps which may be taken to expedite the disposition of the case or to facilitate settlement of the case, or any part of the case; and,
 - (f) Such other matters as may facilitate the just, efficient and economical disposition of the case including alternative resolution.
- (2) At least one of the counsel or other representative for each party participating in the pre-hearing conference shall have authority to enter stipulations, make admissions, or enter agreements with respect to any matters which the parties may reasonably anticipate may be considered.
- (3) The Hearing Officer shall enter an order which states the actions taken and all decisions made at the pre-hearing conference, and such order shall control the subsequent course of the case, unless modified by subsequent order.
- (4) In the discretion of the Hearing Officer, all or part of the pre-hearing conference may be conducted by electronic means, provided that each participant in the conference shall have an opportunity to hear and to participate in the proceeding while it is taking place.
- (5) In the absence of a pre-hearing conference, the Hearing Officer may issue a pre-hearing order based upon the filings to regulate the conduct of the proceedings.

(Rule 1230-01-02-.07, continued)

Authority: T.C.A. §§ 4-5-306, 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.08 NOTICE OF HEARING.

- (1) Except as may be otherwise provided by statute or by these rules, the Executive Committee and Hearing Officer shall give all parties reasonable notice of any hearing on the merits.
- (2) Except as may be otherwise provided by statute, by these rules, or by agreement of the parties, reasonable notice shall be given for any pre-hearing conference that may be held.

Authority: T.C.A. §§ 4-5-307, 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.09 EX PARTE COMMUNICATIONS.

- (1) Unless otherwise authorized by statute, rule, regulation or order of the Board or Executive Committee, all members of the Executive Committee and any Hearing Officer assigned to adjudicate any matters concerning complaints submitted to the Executive Committee may not communicate, directly or indirectly, regarding any issue in the proceeding, while such proceeding is pending, with any person, including, but not limited to:
 - (a) A party;
 - (b) A party's employee, attorney, or representative;
 - (c) A person known to act on behalf of a party;
 - (d) A person who has direct interest in the outcome of the proceeding;
 - (e) A person representing a third party advocating a certain outcome of the proceeding; or,
 - (f) A member of the Board who is not a member of the Executive Committee;without notice and opportunity for all parties to the proceeding to participate in the communication.
- (2) Notwithstanding subsection (1) above, only to the extent not otherwise inconsistent with this rule, any person may make educational or informational communications that are not intended to persuade or advocate a position on an issue in a particular proceeding while the proceeding is pending, provided, however, that the Executive Committee members and Hearing Officer do not receive ex parte communications of a type that such person would be prohibited from receiving and do not furnish, augment, diminish, or modify the evidence in the record.
- (3) A member of the Executive Committee or a Hearing Officer assigned to adjudicate any matters concerning complaints submitted to the Executive Committee, who receives an ex parte communication in violation of this rule shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom such person received an ex parte communication. Any party desiring to rebut the ex parte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within ten (10) days after notice of the communication.

Authority: T.C.A. §§ 4-5-304, 65-31-114(f)(1), 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.

1230-01-02-.10 CONFLICTS OF INTEREST.

The Board shall create a policy governing conflicts of interests that identifies procedures for identifying and disclosing conflicts of interest and establishes guidelines for participation in Board discussion and voting where conflicts of interest are identified and disclosed.

Authority: T.C.A. §§ 4-5-303, 65-31-115, and 65-31-116. **Administrative History:** New rules filed June 8, 2021; effective September 6, 2021.