

Use of Utility Revenues A State Regulator's Perspective

Presented by:

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Use of Utility Revenues
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To Set the Stage

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Municipal Electric Plant Law of 1935

- Codified in Title 7, Chapter 52 of the *Tennessee Code Annotated (TCA)*
- In general, authorizes a Tennessee municipality to operate an electric plant - *TCA 7-52-103*
 - Currently, there are sixty-one municipally operated electric systems in Tennessee along with twenty-three electric co-operatives

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- An electric utility's board of directors may authorize a round-up program whereby the customer rounds up their bill to the next dollar.
 - The electric utility's board of directors distributes the voluntary contributions for bona fide economic development or community assistance purposes pursuant to programs approved by the board

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- May use public rights-of-way with the consent of the municipality - *TCA 7-52-104*
- Has the power of eminent domain
 - In connection with the construction, operation and maintenance of an electric plant or
 - Improvements in the electric plant
 - *TCA 7-52-105*

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- The vast majority of electric systems in Tennessee are operated by a board of directors appointed by a municipal governing body – *TCA 7-52-107*
 - Generally either three or five members
 - If 60% of the electric utility's customers live outside of the county in which the municipality is located, two additional board members shall be appointed from such area served – *TCA 7-52-118*

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- A municipal governing body, by vote, may confer jurisdiction over a waterworks, sewerage works or gas system to the electric BOD – *TCA 7-52-111*
- The electric board members appoint a superintendent who is responsible for the day to day operation of the system – *TCA 7-52-114*

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Some of the municipalities that have elected to operate all of their utilities under one board are:

- Athens
- Cleveland
- Clinton
- Columbia

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- Erwin
- Etowah
- Harriman
- Humbolt
- Jellico
- Knoxville
- LaFollette
- Lawrenceburg
- Lenoir City
- Loudon
- Memphis
- Milan
- Morristown
- Newport
- Paris
- Somerville
- Sparta
- Sweetwater
- Trenton
- Tullahoma

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- An electric system shall charge the municipality for services received at rates applicable to other similar customers - *TCA 7-52-116*
- A municipal governing body may vote to sell the electric plant – *TCA 7-52-132*
 - Such action must be approved by a vote of a majority of the citizens voting

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- Any municipal electric system is authorized to contract with TVA for the purchase of power – *TCA 7-52-201*

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Municipal Electric System Tax Equivalent Law of 1987

In lieu of tax payments

- Defined – *TCA 7-52-303*
- Conditions and Limitations *TCA 7-52-304*
- Contracts for distribution of such –
TCA 7-52-306

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Telecommunications Services

- Authority to provide telephone, telegraph, and telecommunications services *TCA* 7-52-401
- Prohibition of subsidies *TCA* 7-52-402

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Cable Television, Internet and Related Services

- *TCA 7-52-601* authorizes an electric system to provide cable service, two-way video transmission, video programming, Internet services
- Public referendum shall be held regarding the providing of such service(s)

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- Separate division to provide services –
TCA 7-52-603
 - Any subsidization strictly prohibited
 - The electric system may lend funds to the cable operations provided that they charge the highest going interest rate earned by the electric system on their other invested funds
 - Must establish and charge rates to recover all costs of services

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- Required in lieu of tax payments

TCA 7-52-606

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Revenue Bonds

- All municipal electric systems issue revenue bonds under the provisions of *TCA* Title 9, Chapter 21, Part 3, *Revenue Bonds*

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- *TCA 9-21-308* requires systems to prescribe and collect reasonable rates so that the public works project shall be and always remain self-supporting
- The rates and fees shall be at least sufficient to produce revenue to:
 - Provide for all expenses of operations and maintenance

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- Payment of all bonds and notes and interest thereon
- Establishment of and funding of any reserves
- Payment of any in-lieu of ad valorem taxes
(assuming funds are available)

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If a municipality violates the provisions of this section, it must repay any funds illegally transferred. If the municipality does not have sufficient funds to repay any funds illegally transferred, the municipality is required to submit a plan covering a period not to exceed five (5) years in

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....which to repay the funds.

The plan shall be submitted to and approved by the director of local finance in the office of the comptroller of the treasury.

Upon discovery of such violation through an audit, any city official in violation of this section is subject to ouster.

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Bottom Line

Often time, especially in harsh economic times, Tennessee municipalities often look at their utilities which often have large net assets/cash balances as the goose with the golden egg

And they want it!

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- As a result, the in-lieu of tax payment will often be *whatever it takes* to balance the general fund budget without having a tax increase
- While staff often sees problems with municipally operated water/sewer and gas systems, I cannot recall a single problem in this area involving an electric system

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- I give TVA the credit in that they simply will not allow any excess in-lieu of tax payments to be made by a municipally operated electric utility
- They do pay their fair share of in-lieu of tax **but only their fair share**

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- Every municipal electric system in the State of Tennessee always pays the maximum in lieu of tax payment
- The same cannot be said for all municipally operated water-sewer and/or gas utilities

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Financial Report Reviews

- What we look for
- And if we find it, what we do

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To Summarize

- A municipally operated electric system must charge rates to be self supporting
- Such an electric system cannot subsidize any other activity operated by the power board

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- A municipality operated electric system may pay an in-lieu of tax but such payments cannot be excessive
- The municipality, of which the electric system is part of, must be charged the same rates for services as all other similar customers

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- Electric system revenues cannot be used to subsidize the operations of the municipal government
- If done so illegally and discovered, all excess funds must be repaid within five (5) years
- Responsible officials are subject to ouster

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Tennessee Cities currently having to reimburse their utilities for illegal transfers:

- Spring Hill - \$4,000,000
- Bolivar - \$1,000,000
- Portland - \$1,300,000

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Because of the professionalism with which Tennessee's municipal electric systems are operated, combined with the oversight provided by TVA, I am aware of only one system that is not financially sound, and for that all of you are to be congratulated!

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**KEEP UP THE GOOD
WORK**