

Department of State
Division of Publications
 312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
 Nashville, TN 37243
 Phone: 615-741-2650
 Fax: 615-741-5133
 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-29-10
 Rule ID(s): 4784
 File Date: 06/29/2010
 Effective Date: 09/21/2010

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. Section 4-5-205

Agency/Board/Commission: Utility Management Review Board
Division:
Contact Person: Robert T. Lee
Address: Suite 1400 James K. Polk Bldg., 505 Deaderick Street, Nashville, TN
Zip: 37243
Phone: 615-401-7779
Email: robert.t.lee@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1715-01	Utility Management Review Board
Rule Number	Rule Title
1715-01-.01	Purpose, Scope and Applicability
1715-01-.02	Definitions
1715-01-.03	Utility Management Review Board: Composition, Conflict of Interest
1715-01-.04	Powers, Duties and Authority
1715-01-.05	Procedures for Addressing Financially Distressed Utility Districts, Consolidation, Complaints and Water Loss
1715-01-.06	Appeals

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

1715.01 Utility Management Review Board is amended by deleting the Chapter in its entirety and substituting the following language so that as amended the Chapter shall read:

Chapter 1715-01
Utility Management Review Board

Table of Contents

1715-01-.01	Purpose, Scope and Applicability
1715-01-.02	Definitions
1715-01-.03	Utility Management Review Board: Composition, Conflict of Interest
1715-01-.04	Powers, Duties and Authority
1715-01-.05	Procedures for Addressing Financially Distressed Utility Districts, Consolidation, Complaints, Water Loss
1715-01-.06	Appeals

1715-01-.01 Purpose, Scope, and Applicability

The purpose of the Utility Management Review Board (established in T.C. A., Title 7, Chapter 82) is to advise utility district boards of commissioners in the area of utility management. This Board, provided for within the Comptroller of the Treasury, determines and ensures the financial integrity of certain facilities by effecting adequate user rates or system efficiencies, including negotiated consolidations of certain facilities. In carrying out the provisions of this part, the Board shall be deemed to be acting for the public welfare and in furtherance of the legislature's intent that utility districts be operated as self-sufficient enterprises.

Authority: T.C.A. §§4-5-202 and 7-82-701 through 7-82-709. Administrative History:

1715-01-.02 Definitions

(1) As used in these regulations:

- (a) "Act" means the Utility Districts Law of 1937, as amended.
- (b) "Board" means the Utility Management Review Board.
- (c) "Comptroller" means the Comptroller of the Treasury, or his designee.
- (d) "Staff" means any person or persons under the control and direction of the Comptroller.
- (e) "Financially distressed utility district" means a utility district that is identified by the Comptroller of the Treasury pursuant to T.C.A. §7-82-401.
- (f) "Utility District" has the meaning set forth in T.C.A. § 7-82-701(a).

Authority: T.C.A. §§4-5-202 and 7-82-701 through 7-82-709. Administrative History:

1715-01-.03 Utility Management Review Board: Composition, Conflict of Interest

(1) Term of Appointments and Vacancies

- (a) Board members shall serve for a four (4) year term, expiring on October 31st except as designated herein, but continuing to serve until a successor has been appointed or until the Board member has been reappointed.
 - (b) Appointments to succeed a Board member who is unable to serve a full term shall be for the remainder of that term. Appointments to the Board for the remainder of unexpired terms and subsequent appointments shall be representative as stipulated in T.C.A. §7-82-701(b).
 - (c) Board members may be reappointed, but they do not automatically succeed themselves.
- (2) Quorum, Conflict of Interest, Expenses
- (a) Five (5) Board members shall constitute a quorum and a majority of those present and voting shall be required for a determination by the Board.
 - (b) No Board member may participate in making a decision in any case involving a utility district in which the Board member has a financial interest, a conflict of interest as proscribed by State law or a contract of employment.
 - (c) Members of the Board shall be entitled to actual and necessary expenses incurred while engaged in the performance of official duties as authorized by the Board; however, all expenses and reimbursement shall be in accordance with the provisions of the Comprehensive Travel Regulations promulgated by the Commissioner of Finance and Administration and approved by the Attorney General and Reporter.
- (3) Records and Reports
- (a) The Board or its duly appointed staff shall keep complete and accurate records of proceedings.
 - (b) Records will be located in the office of the Comptroller and open to public inspection as required by law and in accordance with Comptroller policy, including fees and charges. The Board, in consultation with the Comptroller, shall designate staff as the official contact for public records requests.
 - (c) The Comptroller shall assist the Board and be responsible for minutes and other duties as required.
 - (d) The Board or its designee shall report annually to the Governor and the General Assembly on the activities of the preceding year. This report will be filed with the Comptroller's office no later than January 31st of each year.

Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. Administrative History:

1715-01-.04 Powers, Duties and Authority

- (1) Generally Accepted Accounting Principles and the interpretations of the Comptroller shall be used by the Board.
- (2) Conference Meeting: One or more members may participate in a meeting of the Board, or a Committee of the Board, in lieu of physical presence utilizing technology by means of which all persons participating in the meeting can hear each other (participation in this manner shall constitute presence in person at such meeting). A physical meeting location where the public can access the meeting shall be designated if the technology utilized does not readily permit public

access. Pursuant to T.C.A. § 8-44-108 if a quorum is not able to be present physically at the location of a meeting, then the meeting may occur only if the Board or the Committee makes a determination that a necessity exists. "Necessity" means (1) that the matters to be considered at that meeting require timely action, (2) that physical presence by a quorum of the members is not practical within the period of time requiring action, and (3) that participation by a quorum of the members by use of technology is necessary. Such determination, and a recitation of the facts and circumstances on which it was based, shall be included in the minutes of the meeting. If a physical quorum is not present at the location of a meeting, then the Secretary shall file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of the Tennessee Secretary of State no later than two (2) working days after the meeting.

- (3) The Board shall receive and consider from any source suggestions for amendments to T.C.A., Title 7, Chapter 82. These suggestions are to be submitted in writing. Within one hundred-twenty (120) days from the time request is received, the Board shall:
 - (a) Consider the merits of the suggestions; and
 - (b) Recommend amendments to the Comptroller; or
 - (c) Report to the suggesting party, in writing, the reasons for not recommending such proposed amendments.

Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. Administrative History:

1715-01-.05 Procedures for Addressing Financially Distressed Utility Districts, Consolidation, Complaints, Water Loss

- (1) Financially Distressed Utility Districts
 - (a) Within sixty (60) days from the receipt of the Comptroller's referral pursuant to the Act, the Board shall schedule a hearing to determine whether the utility district described in the report is likely to continue in a financially distressed position. This initial hearing shall not be a contested case within the meaning of T.C.A. §§ 4-5-101 et seq., but rather one that is legislative in nature.
 - (b) Upon a determination by the Board that the utility district is likely to remain in a financially distressed position, the Board may order the management of the utility district to adopt and maintain user rate structures necessary to:
 - 1. Fund current operation, maintenance, principal, and interest obligations within 12 months, unless otherwise specified by the Board;
 - 2. Resolve any default on indebtedness within 12 months, unless otherwise specified by the Board;
 - 3. Fund depreciation in 1-3 years, unless otherwise specified by the Board; and/or
 - 4. Liquidate in an orderly fashion any deficit total net assets within 5-10 years unless otherwise specified by the Board.
 - (c) In the determination of an equitable user rate, the review by the Board may include, but not be limited to, the following factors:
 - 1. The date and amount of the last rate increase;

2. Average user rates for commercial and residential users;
3. Average median household income;
4. Typical cost of similar treatment process;
5. User Charge System;
6. Ratio of minimum bills to total bills;
7. Number of users and user density per mile of utility line; and
8. Ratio of water processed to water billed.

(d) Any such order shall become final and not subject to review unless the parties named therein request by written petition a hearing before the Board, no later than thirty (30) days after the date such order is served. Any hearing or rehearing shall be brought pursuant to the Uniform Administrative Procedures Act, compiled in T.C.A., Title 4, Chapter 5, Part 3. Such hearing may be conducted by the Board at a regular or special meeting by any member or panel of members as designated by the Board to act on its behalf or the Board may designate an administrative judge who shall have the power and authority to conduct hearings in the name of the Board to issue initial orders pursuant to the Uniform Administrative Procedures Act, compiled in T.C.A., Title 4, Chapter 5.

(2) Consolidation

- (a) Prior to the consolidation of any utility district pursuant to the Act, the Board shall hold a public hearing for all interested parties to such consolidation at a place convenient to such parties at least sixty (60) days prior to the effective date of such consolidation. Notice of such public hearing shall be published in a newspaper of general circulation in the affected area not later than ten (10) days prior to the hearing.
- (b) If the parties to consolidation fail to reach an agreement within two hundred and seventy (270) days from the commencement of negotiations, or proceedings are otherwise terminated, the Board will take action to affect the legislative intent of financially self-sufficient utility districts.

(3) Rate Review Petitions and Complaints

(a) Processing of Rate Review Petitions and Complaints with the Board.

1. Rate Review petitions and complaints will be filed in writing with the staff.
2. Staff will contact the utility district with letters (with delivery confirmation) to the utility board of commissioners and manager (if appropriate) with a copy of the rate review petition or the complaint and a request for response to the complaint or the rate review petition including but not limited to copies of appropriate bylaw provision and minutes of the board of commissioners' actions.
3. Staff will report to the Board with the complaint or the rate review petition and utility's response to the complaint or the rate review petition, as set forth below.
4. If either party fails to comply with a request from the Board or staff during the investigation stage within forty-five (45) days of receipt by certified mail of such request, the Board may, on its own motion, either dismiss the complaint or petition or hold the offending party in default.

5. An "open hearing" under this rule shall not be a "contested case" under Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 et seq. The hearing shall be in the format of a legislative hearing. The complainant and the utility district will be given the opportunity to appear before the Board and offer testimony, witnesses, exhibits and affidavits. The Board shall have the opportunity to question the persons appearing before it who are offering testimony; however, the parties shall not be entitled to cross examine witnesses. The Board chairman shall preside over the hearing. The staff, including counsel to the Board, shall assist and advise the Board. Board counsel may, at the Board's request, ask questions of the witnesses.
6. The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.

(b) Rate Review Petitions

1. The Board shall review the rates of a utility district pursuant to T.C.A. §7-82-102 if the Board receives a petition signed by at least ten percent (10%) of the users within the authorized area of the utility district.
2. The Board will verify the validity of the petitioners by the records on file in the said utility district within sixty (60) days of receipt of the petition.
3. Upon validation of the petitioners, the Board will review the rates addressed in the petition. The Board staff will check for conformance with established regulations and policies within the district.
4. After the completion of the investigation, the Board staff shall hold a public hearing concerning the petition and its investigation. This public hearing shall be held, after notice, in the county in which the utility district maintains its principal office.
5. Upon conclusion of the public hearing and investigation, the Board staff will make public its findings within thirty (30) days of the public hearing.
6. The Board will review the rate petition and staff findings. The Board's review may consist of a review of the minutes, transcripts and other evidence of the utility board's actions and additional affidavit evidence submitted by the parties. If it deems appropriate, the Board may hold an open hearing as provided in 1715-01-.05(3)(a). Upon review of all the information, the Board may make a final decision at the next regular Board meeting following the conclusion of the hearing but at a time not to exceed ninety (90) days.
7. The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.

(c) Customer Complaints

1. Within thirty (30) days of a decision of a board of commissioners a customer or any member of the public may request a review of that decision by the Board by submitting a written request to the Board.
2. The Board's review of complaints will be limited to whether the utility district had rules and regulations as required by T.C.A. § 7-82-402(b) and whether the utility district considered and resolved the complaint in accordance with the rules and regulations of the utility district. For purposes of this subsection (c) "complaints"

shall include complaints concerning the availability of service(s), the quality of service(s), the adjustment of bills, and all complaints of any nature concerning the services provided and the charge(s) for the service(s), except for rate review petitions under subsection (b). All complaints relating to water quality shall be referred to the Division of Water Supply by Board staff.

3. Upon conclusion of the investigation, the Board will review the complaint and staff findings. The Board's review of the minutes, transcripts and other evidence of the utility board's actions and additional affidavit evidence submitted by the parties. If it deems appropriate, the Board may hold an open hearing as provided in 1715-01-.05(3)(a).
4. Upon conclusion of the hearing and review process, the Board may issue a final order at the next regular meeting, but at a time not to exceed ninety (90) days. Any judicial review of any decision of the Board will be by common law certiorari within the county of the utility district's principal office.
5. The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.

(4) Water Loss

- (a) The Board will review the written report required in T.C.A. § 7-82-401(i) no less than annually to determine the acceptable unaccounted for water loss percentage for utility districts. Any amount greater than the acceptable unaccounted for water loss percentage established by the Board shall be considered excessive.
- (b) Once the percentage is determined, the Board shall notify the Division of Municipal Audit within the Comptroller's office in an appropriate manner of its determination of acceptable unaccounted for water loss percentage. The Division of Municipal Audit will make referrals to the Board based on that percentage.
- (c) The acceptable unaccounted for water loss percentage shall be posted on the website of the Board within thirty (30) days of its decision.

Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. Administrative History:

1715-01-.06 Appeals

- (1) Any order or ruling of the Board shall become final unless the parties named therein request by written petition a hearing before the Board, no later than thirty (30) days after such order or ruling is served pursuant to the Uniform Administrative Procedures Act, T.C.A., Title 4, Chapter 5, Part 3.
- (2) Any appeal hearing may be conducted by the Board at a regular or special meeting by any members, or administrative judge as designated by the Board to act on the Board's behalf.

Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. Administrative History:

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
David W. Norton, Chairman	x				
Ann Butterworth	x				
S. Donnie Leggett	x				
Rosemary Wade Owens				x	
Tom Moss				x	
Troy Roach	x				
John Hagewood	x				
Donald Stafford				x	
Loyal Featherstone				x	

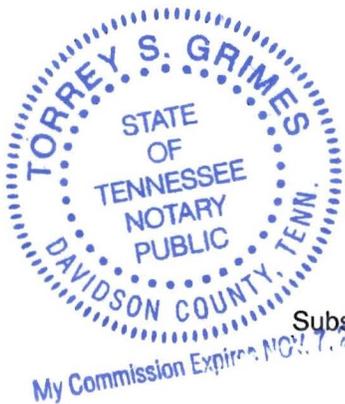
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Utility Management Review Board on June 25, 2010, and is in compliance with the provisions of T.C.A. §4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: September 28, 2007

Notice published in the Tennessee Administrative Register on: October 15, 2007

Rulemaking Hearing(s) Conducted on: (add more dates). December 5, 2007



Date: June 25, 2010

Signature: Joyce Welborn

Name of Officer: JOYCE WELBORN

Title of Officer: Board Coordinator

Subscribed and sworn to before me on: 6/25/2010

Notary Public Signature: Joyce Welborn

My commission expires on: 11/7/2012

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, T. C. A., Title 4, Chapter 5.

RECOGN

Robert E. Cooper, Jr.
Attorney General and Reporter

6-29-10

Date

Department of State Use Only

Filed with the Department of State on:

6/29/10

Effective on:

9/27/10

Tre Hargett

Tre Hargett
Secretary of State

RECEIVED
2010 JUN 29 PM 12:34
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T. C A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

See attached

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

NO IMPACT

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. §4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Utility Management Review Board was transferred to the Comptroller of the Treasury from the Department of Environment and Conservation on May 3, 2007. When Public Chapter 243, Acts of 2007 passed requiring the Board to promulgate rules regarding water loss for utility districts, the rules were transferred and revised to include water loss information.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Rules for the Board were promulgated in 1989 within the Department of Environment and Conservation as required in T.C.A. 7-82-702 (1), currently in process of a revision to comply with T.C.A. 7-82-702 (16) within the Comptroller of the Treasury ("COT"). The rules are currently being revised to reflect statutory changes since that date, including the transfer to the COT and Public Chapter 243 of 2007.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

All utility districts defined as "agencies, authorities or instrumentalities of government created by public or private act having the authority to administer a water or wastewater facility, other than those agencies, authorities or instrumentalities of government electing pursuant to T.C.A. 68-221-1006(a) or 68-221-1206(a) to come under the jurisdiction of the water and wastewater financing board" are affected by these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The amount of increase or decrease in local government expenditures cannot be estimated. By decreasing a high water loss in a system, expenditures should decrease. However, expenditures may be required in order to reduce the high loss. Reducing the water loss will result in having additional revenue available to cover the extra expenditures.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Robert T. Lee, General Counsel, Comptroller of the Treasury/ Joyce Welborn, Board Coordinator, Office of State and Local Finance, Comptroller of the Treasury

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Joyce Welborn

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Joyce Welborn, Office of State and Local Finance, Office of the Comptroller of the Treasury, Suite 1600 James K. Polk Bldg., 505 Deaderick Street, Nashville, TN 37243 Telephone – (615) 401-7864

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

SUMMARY OF COMMENTS RECEIVED
AT THE DECEMBER 5, 2007 PUBLIC HEARING
ON RULES OF THE
THE UTILITY MANAGEMENT REVIEW BOARD (UMRB)
AND
THE WATER AND WASTEWATER FINANCING BOARD (WWFB)

The following is a summary of comments received at the public hearing held December 5, 2007 at 9:00 a.m. (and concluded at 9:30 a.m.) in Room 16, Legislative Plaza, Nashville, Tennessee on proposed rules of the UMRB and of the WWFB.

Ms. Joyce Welborn, Board Coordinator, briefly described the purpose for the public hearing and referred to Public Chapters 86 and 243, Acts of 2007 sponsored by Representative Charles Curtiss, District 43. She said the proposed rules have been filed with the Secretary of State's Office and also posted on the boards' websites.

Representative Curtiss said that there are some water systems that are billing for 50% or less of the water they produce, which in his opinion is unacceptable. He sponsored the legislation (PC243) giving the UMRB and WWFB authority to establish water loss rules because he felt those boards had the expertise and experience to address the problems faced by water systems in Tennessee. Although the legislation could have contained specific water loss criteria, enacting amendments to the legislation in the future that might be needed could be difficult. He felt that if the criteria is developed by the boards, it would be more flexible and thereby better able to address the problems faced by water systems throughout Tennessee.

Representative Curtiss said that while there are certain reasons when water loss is acceptable, it should be accounted for. He said that his legislation was drafted prior to the drought during the summer of 2007, but being able to account for water loss could certainly be of benefit if future drought conditions occur. Representative Curtiss closed his remarks by stating that each water system in this state is a monopoly and has a captive customer base. Consequently, there may be no incentive for some districts to actively seek solutions to a water loss problem. If this was a free market system—with competition among water systems—any system having significant water losses would not continue to operate very long.

Mr. Bill Young, Assistant Manager of Harriman Utility Board, stated that he supported the legislation, the growth of the Harriman system places new burdens on their water management process, and adequately monitoring and accounting for water loss must be part of this process.

Ms. Welborn then summarized the Division of Municipal Audit's requirements for utility districts and municipalities. For audit reports ending June 30, 2007, the system is required to include in the supplemental information a statement of gallons of water produced versus gallons sold. This will be unaudited information. For reports of years beginning after July 1, 2007, Municipal Audit has developed a proposed calculation but this may not necessarily be final—each utility district and municipal water system will be examined on a case by case basis if necessary.

Mr. Grey Scott, Gibson County Municipal Water District, asked if there was any legislation existing or proposed that would address use of water by fire departments, highway maintenance crews, and others who expect water for free. Ms. Welborn said she knew of no such legislation, but it could be proposed in the next session if considered necessary. Mr. David Bowling, Division of Local Finance, asked if there was any statutory authority that allowed providing water for free. Ms. Welborn said she knew of none. Mr. Bill Case, Division of Municipal Audit, stated that the statutes require water systems to levy sufficient rates to meet operating expenses and debt service. Mr. Don Scholes, attorney for the Tennessee Association of Utility Districts, stated that many bond covenants have similar language regarding rates.

Mr. Bill Young inquired about when the rules might go into effect. Ms. Welborn stated that the UMRB will not adopt the rules until after the annual report required on February 1 from Municipal Audit is received. Ms. Welborn advised that the WWFB has no such restriction regarding when it can adopt the rules.

Mr. Donnie Leggett, Fayette-Hardeman Utility District, asked by what authority the boards have to enforce the rules. Ms. Welborn said it would ultimately be through Chancery Court, which is the same authority the boards have now for financially distressed systems.

Ms. Welborn stated that if anyone would like to make written comments concerning the proposed rules, those comments must be received by her within 10 business days following the public hearing [*None were received.*].

To the Government Operations Committees:

The Utility Management Review Board adopted Chapter 1715-01 which amended the existing rule to accomplish the following:

- Reflect the expanded authority (PC483, Acts 1997)
- Reflect responsibility regarding water loss (PC243, Acts 2007)
- Reflect the reassignment to the Office of the Comptroller of the Treasury (PC86, Acts 2007)
- Delete pure restatement of statutory provisions
- Update accounting and auditing terms and references

**RULES
OF
THE TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF COMMUNITY ASSISTANCE**

**CHAPTER 1715-01
UTILITY MANAGEMENT REVIEW BOARD**

TABLE OF CONTENTS

1715-01-01	Introduction Purpose, Scope and Applicability	1715-01-04	Powers, Duties and Authority
1715-01-02	Definitions	1715-01-05	Procedures for Addressing Financially Distressed Utility Districts, Consolidation, and Complaints
1715-01-03	Utility Management Review Board: Composition, Conflict of Interest	Water Loss 1715-01-06	Appeals

1715-01-01 INTRODUCTION PURPOSE, SCOPE AND APPLICABILITY.

The purpose of ~~the creation~~ of the Utility Management Review Board (~~amending Tennessee Code Annotated established in T.C. A., Title 7, Chapter 82~~) is to ~~advise~~ utility district boards of commissioners in the area of utility management. This Board, provided for within the ~~Comptroller of the Treasury Department of Environment and Conservation by Executive Order~~, determines and ensures the financial integrity of certain facilities by effecting adequate user rates or system efficiencies, including negotiated consolidations of certain facilities. In carrying out the provisions of this part. the Board shall be deemed to be acting for the public welfare and in furtherance of the legislature’s intent that utility districts be operated as self-sufficient enterprises.

Authority: T.C.A. §4-5-202, 7-82-701 through 7-82-708~~709~~, ~~and Executive Order Number 21 (dated June 28, 1988)~~. *Administrative History:* Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-7 moved to 1715-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1715-01-02 DEFINITIONS.

- (1) As used in these regulations:
 - (a) “Act” means the Utility Districts Law of 1937, as amended.
 - (b) “Board” means the Utility Management Review Board.
 - (c) “~~Commissioner~~Comptroller” means the ~~Comptroller of the Treasury~~Comptroller of the Department of Environment and Conservation, or its successor in interest, or his designee.
 - (d) “Staff” means any person or persons under the control and direction of the ~~Comptroller~~Comptroller.
 - (e) “Financially distressed utility district” means a utility district that is identified by the Comptroller of the Treasury pursuant to T.C.A. §7-82-401as:
 - 1. ~~defaulting on any outstanding indebtedness; or~~
 - 2. ~~operating with a net loss for three (3) consecutive years; or~~
 - 3. ~~having a retained earnings deficit.~~

(Rule 1715-01-.02, continued)

- (f) ~~“Utility District” has the meaning set forth in T.C.A. § 7-82-701(a). means any municipality created pursuant to Tennessee Code Annotated, Title 7, Chapter 82.~~

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708, 709 and Executive Order Number 21 (dated June 28, 1988). *Administrative History:* Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-7 moved to 1715-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1715-01-.03 UTILITY MANAGEMENT REVIEW BOARD: COMPOSITION, CONFLICT OF INTEREST.

(1) ~~Composition.~~

- (a) ~~The Utility Management Review Board shall be composed of the following nine (9) members:~~

- ~~1. Four (4) members appointed by the Governor shall be experienced utility district managers; and~~
- ~~2. Three (3) members appointed by the Governor shall be experienced utility commissioners.~~
- ~~3. The Commissioner of the Department of Environment and Conservation, or his designee; and~~
- ~~4. The Comptroller of the Treasury, or his designee.~~
- ~~5. The Board shall elect a chairman from among its members every two (2) years and other officers it may deem necessary.~~

(b) Term of Appointments and Vacancies.

- ~~1. The Governor shall consult with the Tennessee Association of Utility Districts as to qualified individuals to be appointed to the Board.~~
- 2.(a) Board members shall serve for a four (4) year term, expiring on October 19th 31st except as designated herein, but continuing to serve until a successor has been appointed; or until the Board member has been reappointed.
- 3(b) Appointments to succeed a Board member who is unable to serve a full term shall be for the remainder of that term. Appointments to the Board for the remainder of unexpired terms and subsequent appointments shall be representative as stipulated in T.C.A. §7-82-701(b).
- 4.(c) Board members may be reappointed, but they do not automatically succeed themselves.
- ~~5. Appointments to the Board for the remainder of unexpired terms and subsequent appointments shall be representative as stipulated in T.C.A. §7-82-701(b)~~
- ~~6. The Term of the Board shall be staggered in accordance with the Act.~~

- (2e) Quorum, Conflict of Interest, Expenses.

(Rule 1715-01-.03, continued)

- ~~1.~~ Five (5) Board members shall constitute a quorum and a majority of those present and voting shall be required for a determination by the Board.
- ~~2.~~ No Board member may participate in making a decision in any case involving a utility district in which the Board member has a financial interest, a conflict of interest as proscribed by State law or a contract of employment.
- ~~3.~~ Members of the Board shall be entitled to actual and necessary expenses incurred while engaged in the performance of official duties as authorized by the Board; however, all expenses and reimbursement shall be in accordance with the provisions of the Comprehensive Travel Regulations promulgated by the Department of Finance and Administration **and approved by the Attorney General and Reporter.**

(3d) Records and Reports.

1. The Board or its duly appointed staff shall keep complete and accurate records of proceedings.
2. Records will be located in the office of the ~~Comptroller-Commissioner~~ and open to public inspection **as required by law and in accordance with Comptroller policy, including fees and charges.** The Board, in consultation with the Comptroller, shall designate staff as the official contact for public records requests..
3. The ~~Comptroller-Commissioner~~ shall assist the Board and be responsible for minutes and other duties as required.
4. The Board or its designee shall report annually to the Governor and the General Assembly on the activities of the preceding year. This report will be filed with the ~~Comptroller's Commissioner's~~ office no later than January 31st of each year.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-~~708,709~~ and Executive Order Number 21 (dated June 28, 1988). *Administrative History:* Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-7 moved to 1715-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1715-01-.04 POWERS, DUTIES AND AUTHORITY.

- (1) ~~The Board shall meet to adopt, modify repeal and promulgate rules in accordance with the Uniform Administrative Procedures Act compiled in Tennessee Code Annotated, Title 4, Chapter 5, and alter due notice, to enforce rules and regulations which the Board deems necessary for proper administration of the Act.~~
- (2) ~~The Board shall conduct all meetings in accordance with the Public Meetings Act compiled in Tennessee Code Annotated, Title 8, Chapter 44.~~
- (3) ~~The Board or its designee may investigate the financial condition of utility districts under its jurisdiction.~~
- (4) Generally accepted accounting principles and the interpretations of the ~~Tennessee Comptroller of the Treasury~~ shall be used by the Board.
- (5)(2) **Conference Meeting:** One or more members may participate in a meeting of the Board, or a Committee of the Board, in lieu of physical presence utilizing technology by

(Rule 1715-01-.04, continued)

means of which all persons participating in the meeting can hear each other (participation in this manner shall constitute presence in person at such meeting). A physical meeting location where the public can access the meeting shall be designated if the technology utilized does not readily permit public access. Pursuant to T.C.A. § 8-44-108 if a quorum is not able to be present physically at the location of a meeting, then the meeting may occur only if the Board or the Committee makes a determination that a necessity exists. "Necessity" means (1) that the matters to be considered at that meeting require timely action, (2) that physical presence by a quorum of the members is not practical within the period of time requiring action, and (3) that participation by a quorum of the members by use of technology is necessary. Such determination, and a recitation of the facts and circumstances on which it was based, shall be included in the minutes of the meeting. If a physical quorum is not present at the location of a meeting, then the Secretary shall file such determination of necessity, including the recitation of the facts and circumstances on which it was based, with the office of the Tennessee Secretary of State no later than two (2) working days after the meeting.

~~For those utility districts in T.C.A. §7-82-703, the Board shall be authorized:~~

- ~~(a) to effect the adoption of user rates necessary for the self-sufficiency of certain utility districts;~~
- ~~(b) to negotiate the consolidation of certain utility districts;~~
- ~~(c) to subsidize from appropriations made to the Revitalization Fund, the repair or improvement of the financially distressed utility district as an incentive for consolidation in negotiating any consolidation under the part; and~~
- ~~(d) to exercise all powers granted to the Board by law.~~

(63) The Board shall receive and consider from any source suggestions for amendments to **Tennessee Code Annotated**, Title 7, Chapter 82. These suggestions are to be submitted in writing. Within one hundred-twenty (120) days from the time request is received, the Board shall:

- (a) ~~C~~onsider the merits of the suggestions and;
- (b) ~~R~~ecommend amendments to the ~~Commissioner~~; or
- (c) ~~R~~eport to the suggesting party, in writing, the reasons for not recommending such proposed amendments.

~~(7) This Board shall have authority over those utilities as prescribed in Title 7, Chapter 82, Tennessee Code Annotated, as amended.~~

Authority: T.C.A. §§4-5-202, and 7-82-701 through 7-82-708-709 *Administrative History:* Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-7 moved to 1715-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1715-01-.05 PROCEDURES FOR ADDRESSING FINANCIALLY DISTRESSED UTILITY DISTRICTS, CONSOLIDATION, ~~AND COMPLAINTS WATER LOSS~~

- (1) Financially Distressed Utility Districts.
 - (a) ~~Within sixty (60) days from the time an audit of a utility district is filed with the Comptroller of the Treasury, the Comptroller shall file with the Board the audit report of a utility district which has a retained earnings deficit or has an operating deficit for a period of three (3) consecutive years, or is in default on any of its debt instruments.~~

(Rule 1715-01-.05, continued)

(b) Within sixty (60) days from the receipt of the Comptroller's **referral pursuant to the Act-audit**, the Board shall schedule a hearing to determine whether the utility district described in the report is likely to continue in a financially distressed position. This initial hearing shall not be a contested case within the meaning of T.C.A. §§ 4-5-101 et seq., but rather one that is legislative in nature.

1. ~~Hearings shall be set according to the following criteria:~~

~~(i) — default on debt;~~

~~(ii) — operating with a net loss for three (3) consecutive years;~~

~~(iii) — having a retained earning deficit;~~

~~(iv) — severity of public health threat;~~

~~(v) — any other financial information the Board may deem pertinent.~~

~~2. — Notification to the responsible party for management of the financially distressed utility district shall be by certified mail.~~

(b) Upon a determination by the Board that the utility district is likely to remain in a financially distressed position, the Board may, ~~in addition to other powers granted to it under T.C.A. Title 7, Chapter 82,~~ order the management of the utility district to adopt and maintain user rate structures necessary to:

1. Fund current operation, maintenance, principal, and interest obligations within 12 months, unless otherwise specified by the Board;

2. Resolve any default on indebtedness within 12 months, unless otherwise specified by the Board;

3. Fund depreciation in 1-3 years, unless otherwise specified by the Board; and/or

4. Liquidate in an orderly fashion **deficit total net assets** ~~any retained earnings deficit~~ within 5-10 years unless otherwise specified by the Board.

(c) In the determination of an equitable user rate, the review by the Board may include, but not be limited to, the following factors:

1. **The date and amount of** ~~when was and how much was~~ last rate increase;

2. **Average** user rates for commercial and residential users;

3. **Average** median household income;

4. **T**ypical cost of similar treatment process;

5. User Charge System;

6. **R**atio of minimum bills to total bills;

7. **N**umber of users and user density per mile of utility line; and

8. **R**atio of water processed to water billed.

(Rule 1715-01-.05, continued)

- (d) Any such order shall become final and not subject to review unless the parties named therein request by written petition a hearing before the Board, no later than thirty (30) days after the date such order is served. Any hearing or rehearing shall be brought pursuant to the Uniform Administrative Procedures Act, compiled in **T.C.A.**, Title 4, Chapter 5, Part 3. Such hearing may be conducted by the Board at a regular or special meeting by any member or panel of members as designated by the Board to act on its behalf or the Board may designate an administrative judge who shall have the power and authority to conduct hearings in the name of the Board to issue initial orders pursuant to the Uniform Administrative Procedures Act, compiled in **T.C.A.**, Title 4, Chapter 5.
 - (f) ~~In the event the board of commissioners of the financially distressed utility fails to adopt the prescribed rate structure pursuant to a final order of the Board, the Board shall petition the chancery court in a jurisdiction in which the utility district is operating to require the adoption of the rate structure prescribed by the Board or such other remedial actions, which, in the opinion of the court, may be required to cause the utility district to be operated in accordance with the provisions of state law.~~
- (2) Consolidation.
- (a) ~~As a means to restore financial stability to financially distressed utility districts and to insure continued operations for the benefit of the public being served by such a utility district, the Board may undertake to study the possible consolidation of a financially distressed utility district with another utility district or districts, municipal utility system or county utility system. In the event the Board determines that such a consolidation is in the best interest of the public being served by a utility district, and to the extent not otherwise prohibited by law, it may undertake negotiations with the affected parties, under the auspices of the chancery court as the case may be, to accomplish such consolidation on such terms as may be agreed by all of the parties thereto.~~
 - (b) ~~In order to mitigate any negative financial impact of such a consolidation on the utility district or districts, municipal utility system or county utility system agreeing to consolidate with a financially distressed utility district, the Board is hereby authorized to develop a plan of mitigation payments to such consolidated utility system. Such mitigation payments will be made from funds available in the Utility District Revitalization Fund and shall include but not be limited to: amounts to offset increased administrative costs relating to the consolidation, to the extent such costs cannot reasonably be recovered from customer revenues or other assets of the financially distressed utility district; amounts which may be necessary to cure a default on indebtedness of the financially distressed utility district to the extent such defaults can, in the opinion of the Board, reasonably be cured; amounts which may be necessary to renovate and repair the facilities of the financially distressed utility district to the level necessary to enable the consolidated utility system to provide continued service to the public being served by the financially distressed utility district; and, other such payments as may be necessary in the opinion of the Board to accomplish such a consolidation and mitigate the financial impact thereof;~~
 - (e) Prior to the consolidation of any utility district pursuant to ~~the Act~~ **this part**, the Board shall hold a public hearing for all interested parties to such consolidation at a place convenient to such parties at least sixty (60) days prior to the effective date of such consolidation. Notice of such public hearing shall be published in a newspaper of general circulation in the affected area not later than ten (10) days prior to the hearing.

(Rule 1715-01-.05, continued)

- (d) If the parties to consolidation fail to reach an agreement within two hundred and seventy (270) days from the commencement of negotiations, or proceedings are otherwise terminated, the Board will take action to effect the legislative intent of financially self-sufficient utility districts.
- ~~(e) The Board shall contract with a resulting consolidated utility system to provide for the repayment of any such mitigation payments over a period of time as may be agreed upon by the Board and the consolidated utility system. Such repayments may be made from surcharges levied upon the customers in the service area of the financially distressed utility district being consolidated; provided, however, such subcharges shall not result in user fees in the service area of the financially distressed utility district being in excess of the maximum level of user fees as may be determined by the Board to be reasonable for the service area. Upon a determination by the Board that repayment of the mitigation payments would be unduly burdensome and financially detrimental to the customers of such utility system, the Board may waive repayments required pursuant to this section; provided, however, any such waiver must be approved by the Commissioner of Finance and Administration.~~
- ~~(f) Any repayments which may be received by the Board pursuant to this section shall be deposited into and shall become part of the Utility District Revitalization Fund.~~
- (3) Rate Review Petitions and Complaints.
- (a) Processing of Rate Review Petitions and Complaints with the Board.
1. Rate Review petitions and complaints will be filed in writing with the staff.
 2. Staff will contact the utility district with letters (with delivery confirmation) ~~(return receipt requested)~~ to the utility board of commissioners and manager (if appropriate) with a copy of the rate review petition or the complaint and a request for response to the complaint or the rate review petition including but not limited to copies of appropriate bylaw provision and minutes of the board of commissioners' actions.
 3. Staff will report to the Board with the complaint or the rate review petition and utility's response to the complaint or the rate review petition, as set forth below.
 4. If either party fails to comply with a request from the Board or staff during the investigation stage within forty-five (45) days of receipt by certified mail of such request, the Board may, on its own motion, either dismiss the complaint or petition or hold the offending party in default.
 5. An "open hearing" under this rule shall not be a "contested case" under Tennessee Uniform Administrative Procedures Act, T.C.A. §4-5-301 et seq. The hearing shall be in the format of a legislative hearing. The complainant and the utility district will be given the opportunity to appear before the Board and offer testimony, witnesses, exhibits and affidavits. The Board shall have the opportunity to question the persons appearing before it who are offering testimony; however, the parties shall not be entitled to cross examine witnesses. The Board chair ~~person~~ shall preside over the hearing. The staff, including counsel to the Board, shall assist and advise the Board. Board counsel may, at the Board's request, ask questions of the witnesses.
 6. The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.

(Rule 1715-01-.05, continued)

(b) Rate Review Petitions.

1. The Board shall review the rates of a utility district pursuant to T.C.A. §7-82-102 if the Board receives a petition signed by at least ten percent (10%) of the users within the authorized area of the utility district.
2. The Board will verify the validity of the petitioners by the records on file in the said utility district within sixty (60) days of receipt of the petition.
3. Upon validation of the petitioners, the Board will review the rates addressed in the petition. The Board staff will check for conformance with established regulations and policies within the district.
4. After the completion of the investigation, the Board staff shall hold a public hearing concerning the petition and its investigation. This public hearing shall be held, after notice, in the county in which the utility district maintains its principal office.
5. Upon conclusion of the public hearing and investigation, the Board staff will make public its findings within thirty (30) days of the public hearing.
6. The Board will review the rate petition and staff's findings. The Board's review may consist of a review of the minutes, transcripts and other evidence of the utility board's actions and additional affidavit evidence submitted by the parties. If it deems appropriate, the Board may hold an open hearing as provided in ~~1715-01-.05(3)(a)~~~~1200-22-7-.05(3)(a)~~. Upon review of all the information, the Board may make a final decision at the next regular Board meeting following the conclusion of the hearing but at a time not to exceed ninety (90) days.
7. The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.

(c) Customer Complaints.

1. Within thirty (30) days of a decision of a board of commissioners a customer or any member of the public may request a review of that decision by the Board by submitting a written request to the Board.
2. The Board's review of complaints will be limited to whether the utility district had rules and regulations as required by T.C.A. § 7-82-402(b) and whether the utility district considered and resolved the complaint in accordance with the rules and regulations of the utility district. For purposes of this subsection (c) "complaints" shall include complaints concerning the availability of service(s), the quality of service(s), the adjustment of bills, and all complaints of any nature concerning the services provided and the charge(s) for the service(s), except for rate review petitions under subsection (b). All complaints relating to water quality shall be referred to the Division of Water Supply by Board staff.
3. Upon conclusion of the investigation, the Board will review the complaint and staff findings. The Board's review of the minutes, transcripts and other evidence of the utility board's actions and additional affidavit evidence submitted by the parties. If it deems appropriate, the Board may hold an open hearing as provided in ~~1715-01-1200-22-7-.05(3)(a)~~.
4. Upon conclusion of the hearing and review process, the Board may issue a final order at the next regular meeting, but at a time not to exceed ninety (90) days.

(Rule 1715-01-.05, continued)

Any judicial review of any decision of the Board will be by common law certiorari within the county of the utility district's principal office.

5. The Board staff and counsel shall assist the Board and do not represent the interests of any petitioner or utility district.

(4) Water Loss

(a) The Board will review the written report required in T.C.A. § 7-82-401(i) no less than annually to determine the acceptable unaccounted for water loss percentage for utility districts. Any amount greater than the acceptable unaccounted for water loss percentage established by the Board shall be considered excessive.

(b) Once the percentage is determined, the Board shall notify the Division of Municipal Audit within the Comptroller's office in an appropriate manner of its determination of acceptable unaccounted for water loss percentage. The Division of Municipal Audit will make referrals to the Board based on that percentage.

(c) The acceptable unaccounted for water loss percentage shall be posted on the website of the Board within thirty (30) days of its decision.

Authority: T.C.A. §§4-5-202 and 7-82-701 through 7-82-~~708~~709. **Administrative History:** Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-7 moved to 1715-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1715-01-.06 APPEALS.

- (1) Any order or ruling of the Board shall become final unless the parties named therein request by written petition a hearing before the Board, no later than **thirty** (30) days after such order or ruling is served pursuant to the Uniform Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, Part 3.
- (2) Any appeal hearing may be conducted by the Board at a regular or special meeting by any members, or administrative judge as designated by the Board to act on the Board's behalf.

Authority: T.C.A. §§4-5-202 and 7-82-701 through 7-82-~~708~~709 **Administrative History:** Original rule filed June 13, 1989; effective July 28, 1989. Chapter 1200-22-7 moved to 1715-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

**RULES
OF
~~THE TENNESSEE DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF COMMUNITY ASSISTANCE~~**

**CHAPTER 1715-01
UTILITY MANAGEMENT REVIEW BOARD**

TABLE OF CONTENTS

1715-01-.01 Applicability	Introduction Purpose, Scope and	1715-01-.04	Powers, Duties and Authority
1715-01-.02	Definitions	1715-01-.05	Procedures for Addressing Financially Distressed Utility Districts, Consolidation, and Complaints
1715-01-.03	Utility Management Review Board: Composition, Conflict of Interest	Water Loss 1715-01-.06	Appeals

1715-01-.01 INTRODUCTION PURPOSE, SCOPE AND APPLICABILITY.

The purpose of ~~the creation~~ of the Utility Management Review Board (~~amending Tennessee Code Annotated established in T.C. A., Title 7, Chapter 82~~) is ~~to advise~~ utility district boards of commissioners in the area of utility management. This Board, provided for within the ~~Comptroller of the Treasury Department of Environment and Conservation by Executive Order~~, determines and ensures the financial integrity of certain facilities by effecting adequate user rates or system efficiencies, including negotiated consolidations of certain facilities. In carrying out the provisions of this part. the Board shall be deemed to be acting for the public welfare and in furtherance of the legislature’s intent that utility districts be operated as self-sufficient enterprises.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708~~709~~, ~~and Executive Order Number 21 (dated June 28, 1988)~~. *Administrative History:* Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-7 moved to 1715-1 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007.

1715-01-.02 DEFINITIONS.

- (1) As used in these regulations:
 - (a) “Act” means the Utility Districts Law of 1937, as amended.
 - (b) “Board” means the Utility Management Review Board.
 - (c) “~~Commissioner~~Comptroller” means the ~~Comptroller of the Treasury-Commissioner of the Department of Environment and Conservation, or its successor in interest~~, or his designee.
 - (d) “Staff” means any person or persons under the control and direction of the ~~Comptroller-Commissioner~~.
 - (e) “Financially distressed utility district” means a utility district that is identified by the Comptroller of the ~~Treasury pursuant to T.C.A. §7-82-401 as:~~
 - 1. ~~defaulting on any outstanding indebtedness; or~~
 - 2. ~~operating with a net loss for three (3) consecutive years; or~~
 - 3. ~~having a retained earnings deficit.~~