

**RULES
OF
COMPTROLLER OF THE TREASURY**

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

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1715-01-.01 DEFINITIONS.

- (1) As used in these regulations:
- (a) "Board" means the Utility Management Review Board.
 - (b) "Chair" means the Comptroller's designee.
 - (c) "Comptroller" means the Comptroller of the Treasury, or designee.
 - (d) "Counsel" means an attorney from the Comptroller's Office.
 - (e) "Staff" means any person or persons under the control and direction of the Comptroller.

Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. **Administrative History:** Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-07 moved to 1715-01 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007. Repeal and new rule filed June 29, 2010; effective September 27, 2010. Repeal and new rule filed May 20, 2016; effective August 18, 2016.

1715-01-.02 POWERS, DUTIES, AND AUTHORITY.

- (1) Terms; expenses
- (a) Board members shall be appointed to four-year terms.
 - (b) If a successor is not appointed before the end of a Board member's four-year term, the Board member shall continue to serve until a successor is appointed or until the Board member is reappointed.
 - (c) Appointments to succeed a Board member who is unable to serve a full-term shall be for the remainder of that term.
 - (d) Board members shall serve without compensation, but shall be eligible for reimbursement for travel expenses in accordance with the provisions of the comprehensive travel regulations as promulgated by the Department of Finance and Administration and approved by the Attorney General and Reporter.
- (2) Meetings
- (a) The Board shall exercise its powers only at public meetings.

(Rule 1715-01-.02, continued)

- (b) The Board shall hold at least two meetings each calendar year.
 - (c) The Board may hold special meetings.
 - (d) Special meetings shall be called by the Chair or by any two Board members.
 - (e) For any calendar year, the Board by resolution may set a regular meeting schedule.
- (3) Quorum
- (a) A majority of the Board constitutes a quorum.
 - (b) A majority of the Board members present and voting shall be required for formal action of the Board; for purposes of determining whether a Board member is voting, any member who has been determined by Counsel to have a conflict of interest or an appearance of impropriety must be excluded.
- (4) Conflicts of interest; appearances of impropriety
- (a) Board members shall file annual written disclosures of financial interests and other direct and indirect conflicts of interest with Staff to be maintained in accordance with applicable records retention policy and open to the public in accordance with Comptroller policy and state law.
 - (b) 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 as determined by Counsel.
 - (c) At each Board meeting, Counsel shall state the following on the record:
 - 1. 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.
 - 2. 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.
- (5) Records
- (a) Staff shall keep complete and accurate records of Board meetings.
 - (b) Board records will be located in the office of the Comptroller and will be open to the public in accordance with Comptroller policy and state law.
- (6) Guidelines
- (a) The Board may annually delegate certain duties to Staff related to researching, drafting, and updating Board guidelines and other educational materials.

(Rule 1715-01-.02, continued)

- (b) The Board may annually review, amend, and endorse by formal action the following:
1. A non-revenue water percentage and validity score that provide parameters for water loss referrals and any related Board guidelines or educational materials.
 2. A list of certain factors that are used by the Board when evaluating the reasonableness of rate structures and any related Board guidelines or educational materials.
 3. A list of model utility system policies and any related Board guidelines or educational materials.
 4. A priority list of commissioner training topics and any related Board guidelines or educational materials.

Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. **Administrative History:** Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-07 moved to 1715-01 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007. Repeal and new rule filed June 29, 2010; effective September 27, 2010. Repeal and new rule filed May 20, 2016; effective August 18, 2016.

1715-01-.03 REGULATORY PROCEDURES.

(1) Formal Review

- (a) When an entity is referred by operation of statute to the Board for any reason, including, but not limited to financial distress, Comptroller investigation, or excessive water loss, the entity will undergo a formal review by Staff and the Board.
- (b) In preparation for the Board's formal review, Staff may request and review documents of the entity and speak with officials and staff of the entity. Staff shall gather as much verifiable information as possible about the circumstances leading to the referral and summarize that information, as well as remedial steps taken by the entity for the Board; Staff must be able to provide backup documentation for all statements made in any case summary.
- (c) The Board shall review Staff's case summary at a public meeting, request any backup documentation, and decide what the entity must do to correct any issues if the Board decides satisfactory remedial actions have not been taken by the entity. Counsel shall document the Board's direction(s) in the form of a Board order, letter, or memorandum. The order or similar document shall require the entity to update the Board in writing by a date certain prior to formal release from Board oversight. The Board's direction(s) must be met before it releases the entity from Board oversight.
- (d) Upon satisfactory compliance with the direction(s) of the Board, the Board shall instruct Staff to close the review and inform the entity of its changed status.

(2) Board Investigation

- (a) In certain circumstances, including, but not limited to, when an entity has been referred by operation of statute to the Board for two or more years

(Rule 1715-01-.03, continued)

consecutively, the Board may request Staff to perform an investigation of an entity's financial, technical, and managerial capacity.

- (b) Staff may request and review documents, speak with officials and staff of the entity, and attend entity meetings.
 - (c) At the conclusion of the investigation, Staff shall summarize its findings and recommendations in a draft report to the Board.
 - (d) The Board shall review and amend as necessary the draft report at a public meeting and decide what the entity must do to remedy any issues. The Board shall then direct Counsel to enter it into an order. The order shall require the entity to update the Board in writing by a date certain as a condition for formal release from Board oversight and the investigation.
 - (e) At the appropriate time, the Board shall direct Staff to close the investigation formally and inform the entity of its changed status.
- (3) Informal Hearing
- (a) Counsel shall review every customer request for an informal hearing in order to assess whether the matter falls within the legal jurisdiction of the Board.
 - (b) Upon confirmation of jurisdiction, Counsel shall prepare the matter for informal hearing by requesting evidence from both parties, including, but not limited to, minutes, transcripts, policies, rules, cost of service, and other related documentation.
 - (c) Both parties shall have an opportunity to be heard at the informal hearing.
 - (d) After reviewing the evidence, the Board shall direct Counsel to enter an order memorializing the Board's reasoning and conclusion(s).
- (4) Contested Case
- (a) In the event of customers petitioning the Board to initiate a contested case hearing, Staff shall verify the signatures on the petition and prepare a Staff recommendation to the Board.
 - (b) At a public meeting, the Board shall review the Staff recommendation and, if appropriate, the Board shall take formal action to initiate a contested case hearing. The Board shall direct Staff and Counsel accordingly to ensure that the case is handled in an efficient manner.
 - (c) All contested cases before the Board shall be conducted pursuant to the Rules of Procedure for Contested Cases as compiled at Chapter 1360-04-01.
- (5) Litigation
- (a) Within the parameters of state law, as confirmed by Counsel, the Board may initiate legal proceedings against noncompliant entities.
 - (b) The Board shall exhaust all statutorily authorized administrative procedures before initiating any formal legal proceedings.

(Rule 1715-01-.03, continued)

- (c) In all matters involving formal litigation, the Board shall engage the Attorney General and Reporter.

Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. **Administrative History:** Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-07 moved to 1715-01 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007. Repeal and new rule filed June 29, 2010; effective September 27, 2010. Repeal and new rule filed May 20, 2016; effective August 18, 2016. Repeal and new rule filed May 20, 2016; effective August 18, 2016.

1715-01-.04 REPEALED.

Authority: T.C.A. §§ 4-5-202, and 7-82-701 through 7-82-709. **Administrative History:** Original rule filed June 13, 1989; effective July 28, 1989. Amendment filed August 2, 1994; effective December 29, 1994. Chapter 1200-22-07 moved to 1715-01 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007. Repeal and new rule filed June 29, 2010; effective September 27, 2010. Repeal and new rule filed May 20, 2016; effective August 18, 2016.

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Authority: T.C.A. §§ 4-5-202 and 7-82-701 through 7-82-709. **Administrative History:** Original rule filed June 13, 1989; effective July 28, 1989. Chapter 1200-22-07 moved to 1715-01 by the Secretary of State under the authority of Public Chapter 86 of Acts of 2007. Repeal and new rule filed June 29, 2010; effective September 27, 2010. Repeal and new rule filed May 20, 2016; effective August 18, 2016.