

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

For Department of State Use Only

Sequence Number: 02-02-16
 Rule ID(s): 6120
 File Date: 2/1/16
 Effective Date: 5/1/16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Comptroller of the Treasury
Division:	Utility Management Review Board
Contact Person:	Betsy Knotts
Address:	Suite 1700, James K. Polk Building, 505 Deaderick Street
Zip:	37243
Phone:	(615) 401-7954
Email:	Betsy.Knotts@cot.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	Definitions
1715-01-.02	Powers, Duties, and Authority
1715-01-.03	Regulatory Procedures

Chapter Number	Chapter Title
Rule Number	Rule Title

(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://share.tn.us/sos/rules/1360/1360.htm>)

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 2007. Amendment filed June 29, 2010; effective September 27, 2010. Repeal and new rule filed <DATE>; effective <DATE>.

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.
- (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.
- (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.

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 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

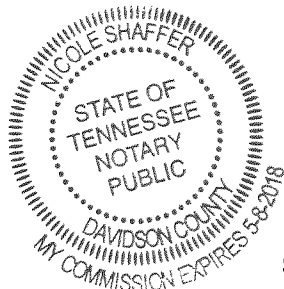
- (a) Within the parameters of state law, as confirmed by Counsel, the Board may initiate legal proceedings against noncompliant entities.
- (b) The Board shall exhaust all statutorily authorized administrative procedures before initiating any formal legal proceedings.
- (c) In all matters involving 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.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ann Butterworth	X				
Tom Moss	X				
Jim Hunter	X				
Kevin Botts	X				
Tim Pelham				X	
Bruce Giles	X				
Jason West	X				
Rebecca Hunter	X				
Pat Riley	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 12/03/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: 1/4/16

Signature: [Handwritten Signature]

Name of Officer: Ann V. Butterworth

Title of Officer: Chair of the Utility Management Review Board

Subscribed and sworn to before me on: 01/04/16

Notary Public Signature: [Handwritten Signature]

My commission expires on: 05/08/18

All proposed 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, Tennessee Code Annotated, Title 4, Chapter 5.

[Handwritten Signature]
Herbert H. Slattery III
Attorney General and Reporter

1/28/2016
Date

RECEIVED
 2016 FEB -1 11:16
 SECRETARY OF STATE
 PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 2/1/16

Effective on: 5/1/16

[Handwritten Signature]

Tre Hargett
Secretary of State
RDA 1693

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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)

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The estimated fiscal impact on state and local government revenues and expenditures is minimal; the rule is merely a simplified version of the UMRB’s prior rule.

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 rule provides basic procedural guidelines for the Utility Management Review Board's (UMRB) administrative processes. The rule changes previous UMRB regulations by removing all provisions that duplicated state law, streamlining the regulatory procedures section, and clarifying the provisions related to board member conflicts of interest.

- (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;

TCA Section 7-82-702(a)—The UMRB has the power and authority to promulgate rules and regulations for the conduct of its affairs, the training of utility district commissioners, and to define excessive water losses for utility districts.

- (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;

The UMRB, which is administratively attached to the Comptroller's Office, as well as Tennessee utility districts will be affected by this rule. The UMRB has formally endorsed the rule.

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

- (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 estimated fiscal impact on state and local government revenues and expenditures is minimal; the rule is merely a simplified version of the UMRB's prior rule.

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

Betsy Knotts, Assistant General Counsel, 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;

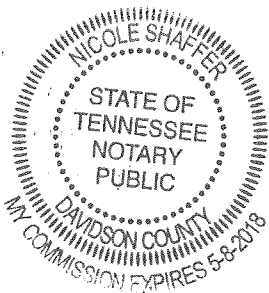
Betsy Knotts, Assistant General Counsel, Comptroller of the Treasury

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

Suite 1700, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243
(615) 401-7954; Betsy.Knotts@cot.tn.gov

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

--



Date: April 12, 2016

Signature: Ann V. Butterworth

Name of Officer: Ann V. Butterworth

Title of Officer: Chair of Utility Management Review Board

Subscribed and sworn to before me on: April 12, 2016

Notary Public Signature: Nicole Shaffer

My commission expires on: May 8, 2018

Department of State Use Only

Filed with the Department of State on: 4/14/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2016 APR 14 AM 8:50
SECRETARY OF STATE
PUBLICATIONS