

Notice of Rulemaking Hearing
Utility Management Review Board

There will be a public rulemaking hearing before the Comptroller of the Treasury, acting on behalf of the Utility Management Review Board, to consider the adoption and promulgation of rules pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann., Section 4-5-201 et seq. and Section 7-82-701 et seq.. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann., Section 4-5-204, and will take place in Room 16 of the Legislative Plaza, 6th Avenue, between Charlotte Avenue and Union Street, Nashville, Tennessee at 9:00 a.m. CST on the 5th day of December, 2007.

Any individual with disabilities who wishes to participate in these proceedings should contact the Board staff to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact should be made no less than ten (10) days prior to the scheduled meeting date, to allow time for the Board to determine how it may reasonably provide such aid or service. Initial contact may be made with the Board's ADA Coordinator, Elaine Driver, at Ste. 1400, 505 Deaderick Street, Nashville, TN 37243-0261, and telephone number 615-401-7738

Substance of Proposed Rules

Rules 1715-01-.01 through .06 of Rule Chapter 1715-01 Utility Management Review Board are amended by deleting them in their entirety and substituting the following so that, as amended, they shall read as follows:

Chapter 1715-01
Utility Management Review Board

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1715-01-.01 Introduction

(1) Purpose, Scope, and Applicability

The purpose of the creation of the Utility Management Review Board (amending Tennessee Code Annotated Title 7, Chapter 82) is advising utility district boards of commissioners in the area of utility management. This Board, provided for within the Comptroller of the Treasury by Public Chapter No. 86 of Public Acts, 2007, 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.

(2) Use of Number and Gender

As used in these Rules:

1. Words in the masculine gender also include the feminine and neuter genders; and
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

(3) Rule Structure

These Rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item

I. subitem

A. section

(A) subsection

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708, Executive Order Number 21 (dated June 28, 1988), and Public Chapter No. 86 approved May 3, 2007.

1715-01-.02 Definitions

(1) As used in these regulations:

“Act” means the Utility Districts Law of 1937, as amended.

“Board” means the Utility Management Review Board.

“Comptroller” means the Comptroller of the Treasury, or his designee.

“Staff” means any person or persons under the control and direction of the Comptroller.

“Financially distressed utility district” means a utility district that is identified by the Comptroller of the Treasury pursuant to Tenn. Code Ann. §7-82-401.

“Utility District” means any municipality created pursuant to Tenn. Code Ann., Title 7, Chapter 82.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708, Executive Order Number 21 (dated June 28, 1988), and Public Chapter No. 86 approved May 3, 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. The Comptroller of the Treasury, or the Comptroller's designee;
2. The Commissioner of the Department of Environment and Conservation, or the Commissioner's designee;
3. Four (4) members appointed by the Governor shall be experienced utility district managers;
4. Three (3) members appointed by the Governor shall be experienced utility district commissioners; and
5. The Board shall elect a chairman from among its members every two (2) years and other officers as 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. Board members shall serve for a four (4) year term, expiring on October 19th except as designated herein, but continuing to serve until a successor has been appointed or until the Board member has been reappointed.
3. Appointments to succeed a Board member who is unable to serve a full term shall be for the remainder of that term.
4. 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 Tenn. Code Ann. §7-82-701(b).
6. The Term of the Board shall be staggered in accordance with the Act.

(c) Quorum, Conflict of Interest, Expenses.

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 Commissioner of Finance and Administration and approved by the Attorney General and Reporter.

(d) 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 and open to public inspection.
3. The Comptroller 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 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, Executive Order Number 21 (dated June 28, 1988) and Public Chapter No. 86 approved May 3, 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 Tenn. Code Ann., 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) For those utility districts in Tenn. Code Ann. §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.
- (6) The Board shall receive and consider from any source suggestions for amendments to Tenn. Code Ann., 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 Commissioner; or
 - (c) report 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 Tenn. Code Ann., Title 7, Chapter 82.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708 and Public Chapter No. 86 approved May 3, 2007.

1715-01-.05 Procedures for Addressing Financially Distressed Utility Districts, Consolidation, Complaints, and 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 is considered a financially distressed utility district pursuant to Tenn. Code Ann. § 7-82-401.
 - (b) Within sixty (60) days from the receipt of the Comptroller's 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 Tenn. Code Ann. §§ 4-5-101 et seq., but rather one that is legislative in nature.
 - (c) 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 Tenn. Code Ann., 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 any deficit total net assets within 5-10 years unless otherwise specified by the Board.
- (d) In the determination of an equitable user rate, the review by the Board may include but not be limited to the following factors:
1. when was and how much was 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.
- (e) 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 Tenn. Code Ann., 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 Tenn. Code Ann., 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.
 - (c) Prior to the consolidation of any utility district pursuant to 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.
 - (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 these Rules; 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 Rule 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 (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 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 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, Tenn. Code Ann. §§ 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 chairperson 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 Tenn. Code Ann. §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 staffs 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 Tenn. Code Ann. § 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 Tenn. Code Ann. §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 Office of the Comptroller of the Treasury 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 30 days of its decision.

Authority: T.C.A. Section 7-82-702(16), Public Acts of 2007, Chapter 243.

Authority: T.C.A. §§4-5-202, 7-82-701 through 7-82-708, Public Chapter No. 86 approved May 3, 2007 and Public Chapter No. 243 of the Public 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 30 days after such order or ruling is served pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann., 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, 7-82-701 through 7-82-708 and Public Chapter No. 86 approved May 3, 2007. Administrative History: The "DRAFT" rules may be accessed for review using <http://comptroller.state.tn.us/>.

Draft copies are also available for review at the Comptroller's Office (see address below).

Tennessee Comptroller of the Treasury
Division of Local Finance
17th Floor, James K. Polk Building
505 Deaderick Street
Nashville, TN 37243
615-401-7864

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to the address above; Attention: Ms. Joyce Welborn. However, such written comments must be received by the Division by 4:30 PM CST, January 4, 2008 in order to assure consideration. For further information, contact Ms. Joyce Welborn at the above address or telephone number.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of September, 2007. (FS 09-47-09 DBID 737)