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File Date: \_\_\_\_\_

# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Tennessee Board of Utility Regulation
<b>Division:</b>	Comptroller of the Treasury
<b>Contact Person:</b>	J. Seth May
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Lela Shadrick
<b>Address:</b>	Cordell Hull Building 425 Rep. John Lewis Way North, Nashville, TN 37243
<b>Phone:</b>	615-401-7927-
<b>Email:</b>	Lela.Shadrick@cot.tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Volunteer Conference Center, 2 <sup>nd</sup> Floor		
Address 2:	Cordell Hull Building, 425 Rep. John Lewis Way North		
City:	Nashville		
Zip:	37243		
Hearing Date:	October 10, 2024		
Hearing Time:	10:00am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1715	Tennessee Board of Utility Regulation
Rule Number	Rule Title
1715-01	Definitions
1715-02	General Authority
1715-03	Customer Complaints and Informal Hearings

<b>Rule Number</b>	<b>Rule Title</b>
1715-04	Contested Cases
1715-05	Public Comment at Meetings
1715-06	Utility Revitalization Fund

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

All existing rules are deleted and replaced by the following:

#### 1715-01 Definitions

##### 1715-01-.01 Definitions

As used in these rules, the following terms and acronyms have the following meanings:

- (1) “Administrative review” is the review of a utility system at the direction of the Board, as described in 1715-02(9).
- (2) “Adverse action” is an action taken by a utility system’s governing board in response to a grievance presented to the utility system’s governing board which does not fully grant the relief requested by the aggrieved party. Adverse action also includes the refusal to hear or consider a grievance, and the failure to acknowledge or respond to a grievance.
- (3) “Ailing utility system”, “ailing system”, or “ailing utility” is a utility system that is:
  - (a) Financially distressed, as described in § 7-82-703(b);
  - (b) Financially unable to expand the amount or type of service as set forth and described in its founding documents or petition for creation as described under § 7-82-201, § 68-221-604, § 68-221-1304, or any other public or private act; or
  - (c) Displays a pattern of severe managerial incompetence such that the utility system cannot provide the public it serves with safe, consistent access to its services.
- (4) “Board” is the Tennessee Board of Utility Regulation (“TBOUR”) created in the office of the Comptroller by T.C.A. §§ 7-82-701-708, or its successor entity.
- (5) “Board chair” is the Comptroller or the Board member designated by the Comptroller to serve as the Board chair, pursuant to T.C.A. § 7-82-701(c)(1)(A). Board chair may refer to the Board vice-chair if the Board chair is unavailable, pursuant to 1715-02(4).
- (6) “Board counsel” is any attorney within the Comptroller’s office that is directed to provide legal advice, prepare documents, or act as counsel to the Board in any other capacity.
- (7) “Board staff” or “staff” is the Comptroller’s designated manager for the Board, counsel to the Board, and any other employee of the Comptroller assigned as staff to the Board.
- (8) “Board vice-chair” is the Commissioner of Environment and Conservation, or the Board member designated by the Commissioner of Environment and Conservation to serve as the Board vice-chair, pursuant to T.C.A. § 7-82-701(c)(1)(B).
- (9) “Complaint” or “customer complaint” is a grievance against a utility system submitted to the Comptroller or Board staff by a customer or potential customer of a utility system, requesting that the Board review the grievance under T.C.A. § 7-82-702(b).
- (10) “Complainant” is the customer or group of customers which submit a complaint.
- (11) “Completed complaint” is a complaint deemed complete by Board staff, as described in 1715-03(3)(c).
- (12) “Completed grant request” is a grant request that is deemed complete by Board staff, as described in 1715-06(2)(b).
- (13) “Comptroller” is the Tennessee Comptroller of the Treasury or the staff of the Tennessee Comptroller of the Treasury.

- (14) "Contested case" is any case commenced pursuant to the UAPA and the uniform rules for contested cases.
- (15) "Formal review" is the review of a utility system that is referred to the Board by operation of law, as described in 1715-02(8).
- (16) "Good cause" is, in reference to an omission or an untimely action, a reason based on circumstances outside the party's control and despite the party's reasonable efforts.
- (17) "Grant" is the schedule or series of payments from the URF authorized by the Board.
- (18) "Grant payment" is a payment made from the URF pursuant to an approved grant request.
- (19) "Grant request" is the request for payments from the URF submitted by a utility system.
- (20) "Informal hearing" is the hearing of a customer complaint that is not subject to the contested case requirements of the UAPA or the uniform rules for contested cases.
- (21) "Merger" is the merger or consolidation of two or more utility systems by operation of law or by action of the Board. A merger may be voluntary or ordered by the Board. The acquisition of the utility infrastructure of a city, county, or other local government by a utility system can be considered a merger for purposes of Chapter 1715 of the Tennessee Comprehensive Rules and Regulations.
- (22) "Order" is the decision of the Board in any given matter, as evidenced by the Board's vote on a motion and any amendments adopted. An Order is effective as of the date it is entered unless it states otherwise. An Order is effective and binding regardless of whether it is reduced to writing.
- (23) "Policy" has the same meaning as assigned in the UAPA.
- (24) "Professional" or "qualified professional" is, in the context of a feasibility or rate study, an individual or entity qualified to conduct a feasibility or rate study and approved by Board staff.
- (25) "Severe managerial incompetence" includes, but is not limited to:
- (a) Frequent interruptions in service to multiple customers, lasting multiple days;
  - (b) Frequent infrastructure failures that result in interruptions in service, or cause the quality of service to fall below safe levels; or,
  - (c) Failure to:
    1. Respond to reports of damage to, or failure of, infrastructure within a reasonable timeframe;
    2. Improve or attempt to improve infrastructure, including necessary maintenance, upgrades, or construction of redundant infrastructure where necessary; or
    3. Correct a deficiency in oversight, operational management, or finance management, which leads to repeated harm to the utility system, a violation of state or federal law, or fraud, waste, or abuse of the utility system's resources.
- (26) "Special meeting" or "special-called meeting" has the same meaning that it does in T.C.A. § 8-44-101-112.
- (27) "UAPA" is the Uniform Administrative Procedures Act, codified at T.C.A. §§ 4-5-301 et seq.
- (28) "Uniform rules for contested cases" are the Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies as set out in Tenn. Comp. R. & Regs. chapter 1360-04-01.
- (29) "Utility Revitalization Fund" or "URF" is the fund created by T.C.A. §§ 7-82-708(a)(1).
- (30) "Utility system" or "utility" is:
- (a) The water, wastewater, or natural gas systems of a county, metropolitan government, or incorporated town or city;
  - (b) A treatment authority created pursuant to:

1. The Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 6;
  2. The Regional Water and Wastewater Treatment Authority Act, compiled in title 68, chapter 221, part 13; or
  3. Another public or private act of the general assembly that operates a water, wastewater, or natural gas facility;
- (c) The water, wastewater, and natural gas systems of an energy or utility authority created pursuant to the Municipal Energy Authority Act, compiled in title 7, chapter 36, or a private act of the general assembly; and
- (d) Any utility district created under this chapter, or any other public or private act of the general assembly.
- (31) "Valid factual dispute" is a dispute which, if resolved in favor of the complainant, would justify the Board ordering remedial action. A purely speculative or hypothetical grievance or injury does not constitute a valid factual dispute.

Authority: T.C.A. §§ 4-5-201 et seq., and 7-82-702.

#### 1715-02 General Authority

- 1715-02-.01 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 Tennessee Attorney General and Reporter.
- 1715-02-.02 Meetings
- (1) The Board shall exercise its powers only at public meetings.
  - (2) The Board shall hold at least two regular meetings each calendar year.
  - (3) The Board may hold special meetings.
  - (4) Special meetings shall be called by the Chair or by any two Board members.
  - (5) For any calendar year, the Board may set a regular meeting schedule by resolution.
  - (6) The Board may conduct meetings electronically, in whole or in part, as allowed by Tennessee law. Tennessee law shall dictate the extent to which Board members may participate electronically, and whether a Board member participating electronically is considered present for purposes of quorum and whether the Board member may vote.
- 1715-02-.03 A majority of the Board constitutes a quorum. A majority of the Board members present and voting shall be required for formal action of the Board.
- 1715-02-.04 If the Board chair is incapacitated or unavailable, the Board vice-chair may serve as Board chair at meetings, sign subpoenas, orders, or other documents in place of the Board chair, or exercise any other authority ordinarily delegated to the Board chair. The Board chair may only be found to be incapacitated or unavailable by a Board vote at a meeting; or, outside of a Board meeting, by:
- (1) Agreement of Board staff and the Board Vice-chair; or,
  - (2) The Board chair's written notification of unavailability.
- 1715-02-.05 Conflicts of interest; appearances of impropriety
- (1) Board members shall file annual written disclosures of financial interests and other direct and indirect conflicts of interest with Staff.
  - (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. Board members must notify Board staff and/or the Board chair if they have a conflict of interest.
  - (3) At each Board meeting, Board staff shall state the following on the record:  
  
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. 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.

- 1715-02-.06      **Records**
- (1) Staff shall keep complete and accurate records of Board meetings.
  - (2) 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.
- 1715-02-.07      **Guidelines**
- (1) The Board may delegate certain duties to Staff related to researching, drafting, and updating Board policies, guidelines, manuals, and other educational materials. Board manuals and guidelines shall be reviewed by Board counsel and approved by the Board.
  - (2) **Policies and Procedures**
    - (a) Board staff may adopt new policies or forms for the administration of the Board's authority after such policies and procedures have been reviewed for legal sufficiency by Board counsel. New policies and procedures are effective when adopted by Board staff and will remain in effect until the Board's first regular meeting after their adoption.
    - (b) New policies or forms must be brought to the Board at the Board's next regular meeting after adoption by Board staff. The Board may adopt, reject, modify, or delay implementation of any new policy or procedure. Board counsel will advise the Board as to whether the policy or procedure should be written into rule.
- 1715-02-.08      **Formal Review**
- (1) When a utility system is referred to the Board by operation of statute, the utility system will undergo a formal review by the Board and Board staff. A utility system may be placed under formal review for the following reasons:
    - (a) The utility system's financially distressed status;
    - (b) Excessive water loss by the utility system;
    - (c) Approval of a utility system's ethics policy;
    - (d) Approval of the incorporation of a new utility district under T.C.A. § 7-82-702(a)(7) system;
    - (e) Approval of the purchase, development, acquisition, or construction of a new water or wastewater system by a city or county under T.C.A. § 68-221-1017;
    - (f) A utility system's failure to file an annual report;
    - (g) The failure of a utility system's governing body to meet training or continuing education requirements;
    - (h) The failure of a utility system to implement or update a cyber-security plan; and,
    - (i) Any other reason a utility system is referred to the Board for review, or must submit any documentation to the Board for review.
  - (2) In preparation for the Board's formal review, Staff may request any records from the utility system and speak with its officials and employees. Staff shall gather sufficient information about the circumstances leading to the referral and shall summarize that information and any remedial steps taken by the utility system for the Board.
  - (3) The utility's staff and governing body must promptly provide requested records and cooperate with Staff's review. The Board may adopt negative conclusions as to what missing records may show if the utility's staff or governing body repeatedly refuses to provide records or cooperate with Board staff.
  - (4) At a public meeting, the Board shall review staff's case summary and any recommendations, may request additional documentation for a full consideration of the issues before it, and may determine any other remedial actions the utility system must take to correct any remaining issues. Staff shall document the Board's directive(s) in the form of an order, letter, or memorandum, depending on the nature of the directive(s). The Board's directive(s) must be met before the Board releases the utility system from Board oversight and jurisdiction.
  - (5) Upon satisfactory compliance with the directive(s) of the Board, the Board shall instruct Staff to close the review and inform the utility system that it has been released from the Board's jurisdiction.
- 1715-02-.09      **Administrative Review**
- (1) The Board may request Staff to perform an administrative review of a utility system's financial, technical, and managerial capacity.

- (2) The utility's staff and governing body must promptly provide requested records and cooperate with Staff's review. The Board may adopt negative conclusions as to what missing records may show if the utility's staff or governing body repeatedly refuses to provide records or cooperate with Board staff.
- (3) At the conclusion of the investigation, Staff shall report its findings and recommendations to the Board.
- (4) At a public meeting, the Board shall review or hear the Staff report and recommendations based upon the Staff's administrative review. The Board may order the utility system to take any necessary and appropriate actions to remedy any issues, require staff to investigate further and gather more information, or take any other necessary and appropriate action.
- (5) Upon satisfactory compliance with the directive(s) of the Board, the Board shall instruct Staff to close the administrative review and inform the utility system that it has been released from the Board's jurisdiction.

1715-02-10 Litigation

- (1) Within the parameters of state law, the Board may initiate legal proceedings in chancery, circuit, or other courts of law against noncompliant entities.
- (2) The Board shall exhaust all statutorily authorized administrative procedures before initiating any formal legal proceedings.
- (3) In all matters involving formal litigation other than in front of the Board or an administrative hearing officer or administrative law judge, the Board shall engage the Tennessee Attorney General and Reporter.

1715-02-11 Orders

- (1) The Board shall produce a written order memorializing any directive entered by the Board which obligates a party other than Board staff to take an action. The written order may be produced by a Board member or Board staff and shall be reviewed and signed by the Board chair.
- (2) The written order shall be posted to the Board's website and sent to any parties named in or obligated by the order. Orders will remain available via the Board's website until such time as the order may be destroyed pursuant to the relevant records disposition authorization.
- (3) Board staff will resolve ambiguity in an order in favor of effectuating the Board's intent.

Authority: T.C.A. §§ 4-5-201 et seq., and 7-82-702.

1715-03 Customer Complaints and Informal Hearings

1715-03-01 The Board may review customer complaints and conduct informal hearings of the following:

- (1) The justness and reasonableness of a utility system's rates, fees, or charges;
- (2) The justness and reasonableness of a utility system's requirement that a customer or developer build infrastructure or fixtures to be dedicated to the utility system;
- (3) The failure of a utility system to adopt and enforce policies or rules necessary for the efficient and financially responsible operation of the utility system, including policies regarding ethics or financial controls, or for water loss, water leak adjustment, purchasing, or other industry standard policies;
- (4) The inadequacy of a utility system's policies regarding ethics or financial controls, or for water loss, water leak adjustment, purchasing, or other industry standard policies; and
- (5) The failure of a utility system to offer or extend utility service to a customer:
  - (a) Located within the utility system's covered area;
  - (b) Located within an area in which the utility system offers similar services;
  - (c) Located within an area in which the utility has the infrastructure to offer similar services; or,
  - (d) Pursuant to a request made in accordance with T.C.A. § 7-82-112.
- (6) For any complaint submitted pursuant to subsection (e), the utility system has the affirmative burden to show that:
  - (a) It does not have the capacity to serve the customer;
  - (b) Service to the customer is not economically feasible; or
  - (c) Service is not in the best interests of the utility and its existing customers.
- (7) Any other subject or grievance allowed by law.

- 1715-03-.02 Customer complaints and informal hearings are not contested cases and are not subject to the UAPA or the uniform rules for contested cases.
- 1715-03-.03 Referral by Board Staff
- (1) The Board may only review and conduct an informal hearing of a matter that is referred by the Comptroller or Board staff.
  - (2) Board staff will refer a completed complaint to the Board if:
    - (a) The Board has the statutory authority to hear the complaint, as determined by Board counsel;
    - (b) The complaint raises a valid factual dispute;
    - (c) Board staff received the completed complaint within 30 days of the adverse decision of the utility system's governing board; and,
    - (d) The complainant has utilized all other remedies offered by the utility system.
  - (3) A complaint is deemed completed when Board staff have received the following information:
    - (a) The complainant's name, and the name of the complainant's representative, if any.
    - (b) Either the complainant's or the complainant's representative's phone number, email address, and mailing address, or other alternative contact information;
    - (c) The utility system which is the subject of the complaint;
    - (d) Proof of the adverse action taken by the utility system's governing body or an explanation of why such proof is unavailable;
    - (e) The date of the adverse action taken by the utility system's governing body;
    - (f) A summary of the complaint. The summary must include sufficient information for Board staff to determine whether the complaint raises a valid factual dispute; and,
    - (g) Any other information Board staff needs to determine if the complaint should be referred to the Board. Board staff will promptly request any needed additional information.
  - (4) On receipt of a completed complaint, Board staff shall advise the complainant:
    - (a) That their complaint will be added to the agenda of the next meeting or the meeting following, as set out in (f); or,
    - (b) That their complaint will not be referred to the Board, along with a brief explanation why.
  - (5) Board staff may establish a standardized form or online portal to receive complaints. Until and unless a standard process is adopted, Board staff shall receive complaints by email, mail, or any other way in which staff may receive records or information. All complaints must be submitted in writing: no oral complaints will be accepted. If Board staff establishes a standardized form or online portal to receive complaints, staff shall present such to the Board at its next regular meeting for approval.
  - (6) If Board staff determine the complaint should be referred to the Board more than thirty days in advance of the Board's next regular meeting, the complaint will be added to that meeting's agenda. If the determination is made within 30 days of the date of the Board's next regular meeting, the complaint will be added to the agenda for the meeting following the next scheduled regular meeting.
  - (7) If Board staff refer a complaint to the Board, staff will promptly notify both the complainant and the utility system that is the subject of the complaint, as well as any other necessary parties.
  - (8) Review and informal hearing before the Board
    - (a) The Board will review all complaints referred by Board staff.
      1. By majority vote, the Board may decline to hear a complaint. The Board must state its reasons for so declining.
      2. The Board may choose to defer an informal hearing on the complaint to a later meeting. The Board must state its reason for delaying the information hearing, and direct Board staff as to any actions necessary to for it to hear the complaint at its next meeting.
    - (b) The Board chair will conduct the informal hearing. The Board chair will determine how many witnesses may testify, what testimony and written evidence may be presented, and the order of proceedings. The chair may exercise discretion, but will ensure that the complainant, the subject of the complaint, and any other necessary parties have an equal opportunity to present evidence and testimony before the Board.
    - (c) The Board may make a decision on a complaint based on the written record if no other testimony or evidence is presented at the time of the hearing, or if the Board finds the record is sufficient to render a decision.
    - (d) At the conclusion of the hearing the Board may:
      1. Order any remedial action allowed by law;
      2. Dismiss the complaint; or,

3. Reconvene the informal hearing at the next meeting with instructions as to what additional information or actions are necessary for the Board to reach a decision on the merits.
- (9) Board staff may close any incomplete complaint if information is requested from the complainant, and the complainant does not provide the requested information within 15 business days of the request for such information. The complainant may submit a new complaint of the same issue, subject to all requirements in law or rule.
- (10) Board staff is not required to respond to or process complaints which have previously been found to be outside the Board's jurisdiction unless new information is submitted.
- (11) If a complaint is not referred to the Board, the complainant may request to address the Board during the public comment period at its next regularly scheduled meeting and may submit a concise letter to the Board to be included in the information given to the Board prior to the meeting.

1715-03-.04 Nothing in this chapter limits the Board's statutory authority. These rules shall be interpreted broadly in favor of effectuating the Board's authority to hear and resolve customer complaints. This chapter applies only to direct customer complaints to Board staff pursuant to the Board's authority to conduct informal hearings on the subjects set forth in T.C.A. § 7-82-702(b). This chapter does not apply to a formal review or administrative review by the Board under 1715-02.

Authority: T.C.A. §§ 4-5-201 et seq., and 7-82-701 et seq.

#### 1715-04 Contested Cases

- 1715-04-.01 The Board may commence a contested case for the following reasons:
- (1) Removal of a utility district commissioner for:
    - (a) Failure to complete all continuing education or training requirements;
    - (b) Knowingly or willfully committing misconduct in office, neglecting to fulfill any duty imposed upon the member by law, or failing to fulfill the commissioner's fiduciary responsibility in the operation or oversight of the district; or,
    - (c) Upon the petition of at least twenty percent (20%) of the customers of a utility district;
  - (2) To change the manner of filling vacancies as per T.C.A. § 7-82-702;
  - (3) To conduct a rate review of a utility district's rates as per T.C.A. § 7-82-102;
  - (4) Instead of an informal hearing, if necessary in the interest of justice; and,
  - (5) Any other reason necessary to discharge its statutory duties.
- 1715-04-.02 All contested cases before the Board shall be conducted pursuant to the UAPA and the uniform rules for contested cases.
- 1715-04-.03 Customers petitioning the Board to initiate a contested case hearing under T.C.A. § 7-82-102 must submit the petition to Board staff in a form and in sufficient detail that Board staff can reasonably verify the validity of signatures.
- 1715-04-.04 The Board must authorize Board staff to commence a contested case.

Authority: T.C.A. §§ 4-5-201 et seq., 7-82-102, 7-82-307, 7-82-701 et seq.,

#### 1715-05 Public Comment at Meetings

- 1715-05-.01 The Board will include a period for public comment at all meetings where required by law.
- 1715-05-.02 Periods for public comment are subject to the following parameters:
- (1) Written notification to request to speak at a meeting must be sent to and received by Board staff at [utilities@cot.tn.gov](mailto:utilities@cot.tn.gov) at least two business days in advance of the meeting. The email should include the proposed speaker's name, the agenda item(s) upon which the speaker wishes to comment, and whether the speaker's comments will be in favor of or opposed to the agenda item(s). Speakers will be selected on a first-come first-served basis.
  - (2) The public comment period will be held at the beginning of the meeting once the meeting is called to order and a quorum has been established.

- (3) Speakers will be limited to three minutes per person per agenda item, with a maximum of two speakers in favor of and two speakers opposed to each agenda item.
- (4) Speakers must identify themselves at the beginning of their allotted time and stay on the topic of the agenda item(s) that they have indicated their desire to speak on when addressing the Board.
- (5) Speakers should conduct themselves in a respectful manner and will be asked to remove themselves if they engage in threatening or disruptive behavior.
- (6) The Board, in its discretion, may ask relevant questions of any speakers providing public comment. Such question period will not be included in the speaker's allotted time frame.
- (7) The Chair may extend the allotted time frame or the number of speakers for a particular agenda item if the Chair determines that the circumstances reasonably require it. If the Chair extends the allotted time frame or the number of speakers, the Chair shall ensure that an equal extension is granted to both those in favor of and opposed to any agenda item subject to an extension.

Authority: T.C.A. §§ 4-5-201 et seq., 7-82-702, 8-44-112

#### 1715-06 Utility Revitalization Fund

##### 1715-06-.01 General Provisions

- (1) The Board may approve a grant request made by one or more utility systems when:
  - (a) the utility systems have merged in accordance with TCA 7-82-704; or
  - (b) the utility systems are pursuing a voluntary merger, consolidation or acquisition.
- (2) When Payments May Be Made:
  - (a) Grant payments may be made to any entity involved in a merger, or to the merged entity.
  - (b) In the case of a merger ordered by the Board pursuant to T.C.A. § 7-82-704, payments may only be made after the merger is final.
  - (c) Payments may be made to any entity pursuing a voluntary merger, consolidation or acquisition when the parties are legally obligated to merge or have merged.
  - (d) Grant payments are subject to the claw back provision in 1715-06(3)(d) and (e).
- (3) Grant payments may be approved to accomplish a Board-ordered merger under TCA 7-82-704, or a voluntary merger and offset, in whole or in part, the following costs and obligations:
  - (a) Amounts to offset increased administrative costs relating to the merger, to the extent those costs cannot reasonably be recovered from customer revenues or other assets of the utility system;
  - (b) Amounts that may be necessary to cure a default on indebtedness of the utility system to the extent the defaults can, in the opinion of the Board, reasonably be cured;
  - (c) Amounts that may be necessary to renovate and repair the facilities of the utility system to the level necessary to enable the merged utility to provide continued service to the public being served by an ailing utility system;
  - (d) Amounts necessary to standardize equipment, infrastructure, or software between the merging utilities; and,
  - (e) Other payments that may be necessary in the opinion of the Board to accomplish the merger and mitigate the financial impact of the merger.
- (4) The Board will not favor any grand division, county, municipality, or service population over any other when determining whether a grant should be approved.
- (5) A grant will only be approved pursuant to a completed grant request for such payments, which request must be made in a manner approved by the Board and timely submitted to Board staff.
- (6) The Board has sole discretion to approve a grant.
- (7) The Board has sole discretion to determine the amount of a grant. The Board shall consider the following:
  - (a) Available funds in the URF;
  - (b) The findings of a study performed pursuant to § 7-82-704;
  - (c) Evidence provided by a qualified professional as part of a feasibility or rate study; or,
  - (d) Any other source or authority determined by the Board to be reliable.
- (8) A request for a grant may be approved prior to a merger of the utility systems but grant payments will only be made as described in the Order approving the grant.

##### 1715-05-.02 Request for a Grant from the URF.

- (1) A grant request must be made in a manner approved by the Board. Board staff will make the process to request a grant available online.

- (2) Before the Board will consider a grant request, the grant request must be complete. A grant request is deemed complete when it includes the following:
  - (a) The names of all utility systems involved in the plan to merge. If only a portion of a utility system is involved in the plan to merge, a description of the area to be merged must be included. The grant request must designate an individual from the requesting utility that Board staff may work with regarding the grant application and grant payments, and provide contact information for the designated individual.
  - (b) A summary of the plan to merge and the need for a grant. This includes:
    1. A summary of what grant payments will be used for and why existing funds or customer revenue is insufficient to cover these expenses; and,
    2. A summary of the plan to merge, including which utility will survive the merger or what the name of the merged utility will be, an anticipated timeline for infrastructure changes or upgrades that are necessary.
  - (c) The most recent audit of all utilities involved in the merger, or written explanation why such audit cannot be provided; and,
  - (d) When the merger occurs pursuant to TCA 7-82-704, a feasibility study performed by a qualified professional examining the feasibility of a merger between any utilities involved in the merger. This feasibility study must examine the impact of the merger on the customers of all utilities involved, such that the Board can determine whether the merger is in the best interest of at least one utility and is not detrimental to other involved utilities.
- (3) The Board may deny a grant if any of the requirements are not met or are insufficient, in the Board's discretion.
- (4) A grant request may include any supplementary information the applying utility system wishes to include.
- (5) The Board or Board staff may request any additional information necessary to determine whether the utility qualifies for a grant, how or when payments should be made, and the amount of the grant.
- (6) Grant requests will only be approved upon showing that all eligibility requirements are met. This includes the requirements set forth above, in addition to statutory and other requirements. The applicant has the burden to establish eligibility for grant payments.
- (7) Grants are presumed to take the form of reimbursement for expenses incurred. Grant payments may take other forms upon Board approval.
- (8) Quarterly Reports
  - (a) Any utility that receives grant payments under this section must submit a quarterly report to the Board on a form approved by the Board.
  - (b) Reports must be submitted within 90 days from the date of the first disbursement of funds to a party to the merger, and every 90 days thereafter.
  - (c) Two quarterly reports must be submitted after the date of the last grant payment.

#### 1715-05-.03 Miscellaneous Provisions

- (1) A grant request may be submitted prior to the merger, and up to 180 days after the merger. A grant request is received when it is completed; that is, when Board staff receive the grant request in a manner approved by the Board including all required supplemental information set forth in 1715-06(2)(b).
- (2) The Board will review completed grant requests at the first meeting following Board staff's receipt of the request. At this meeting the Board will approve, deny, or modify the grant, or request further information prior to issuing a final order.
- (3) A grant or grant request may be amended as follows:
  - (a) A party to a merger may request an amendment to the grant or make an amendment to a grant request freely. The Board will review the amendment at its next regular meeting. Board staff may request additional information following receipt of an amendment, if necessary. No additional grant payments may be made until the amended grant or grant request is approved by the Board;
  - (b) The Board may amend a grant sua sponte or at the request of Board staff; or
  - (c) Any grant or grant request is subject to the availability of funds in the URF, and any pending grant payments may be reduced or terminated without notice if funds become unavailable.
- (4) If grant payments were made to a utility system and that utility system does not merge as described in its grant request, the utility system must repay the URF in full within 180 days of the date on which the plans to merge are discontinued or dissolved. If no such date can be

determined, the URF must be repaid in full within 180 days of the day Board staff learn that the merger will not proceed.

- (5) Any grant amount that is not used for approved purposes must be reimbursed to the URF within 180 days of the inappropriate use. If the date of the inappropriate use is not known, the amount must be reimbursed within 180 days of the date Board staff learn of the inappropriate payment.

Authority: T.C.A. §§ 4-5-202, 7-82-702, 7-82-704, 7-82-708.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: August 13, 2024

Signature: /s/ J. Seth May

Name of Officer: Jamin Seth May

Title of Officer: Counsel to the Tennessee Board of Utility Regulation

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Filed with the Department of State on: \_\_\_\_\_

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Tre Hargett  
Secretary of State