

**Department of State
Division of Publications**

312 Rosa L. Parks Ave., 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: 09-03-18
Rule ID(s): 7239
File Date: 9/5/18
Effective Date: 12/4/18

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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: | Tennessee Public Utility Commission |
| Division: | Legal Division |
| Contact Person: | Kelly Cashman-Grams |
| Address: | 502 Deaderick Street, 4 th Floor, Nashville, Tennessee |
| Zip: | 37243 |
| Phone: | (615) 770-6856 |
| Email: | kellygrams@tn.gov |

Revision Type (check all that apply):

- ☒ Amendment
☒ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------|---|
| 1220-04-13 | Wastewater Regulation |
| Rule Number | Rule Title |
| 1220-04-13-.02 | Definitions |
| 1220-04-13-.04 | Documents to be Filed with the Commission |
| 1220-04-13-.05 | Maps and Records |
| 1220-04-13-.06 | Adequacy of Facilities |
| 1220-04-13-.07 | Financial Security |
| 1220-04-13-.08 | Standard Forms for Filing Financial Security |
| 1220-04-13-.09 | Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims against Financial Security, Expired and Terminated CCNs |
| 1220-04-13-.10 | Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition or Abandonment |
| 1220-04-13-.11 | Receiverships or Other Transfers of Operation of Ownership |
| 1220-04-13-.14 | Denying or Discontinuing Service |
| 1220-04-13-.16 | Transactions with Affiliates |
| 1220-04-13-.17 | Minimum Requirements for New and Amendments to Certificate of Convenience and Necessity |

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to

http://sos-tn-gov-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Rule 1220-04-13-.02 Definitions is amended by deleting subparagraphs (1) and (5) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs shall read:

- (1) Commission – Tennessee Public Utility Commission or TPUC.
- (5) Public wastewater utility includes, but is not limited to, any person, partnership, corporation, company, association, receiver, or two or more persons having a joint or common interest, that owns, operates, and manages any public wastewater system for compensation within the state subject to the jurisdiction of the Commission.

Authority: T.C.A. § 65-2-102. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.04 Documents to be Filed with the Commission is amended by deleting it in its entirety and replacing and substituting the following language, so that as amended, the new rule shall read:

- (1) The public wastewater utility shall file with the Commission the following documents and information, and shall refile such documents to keep such information up-to-date.
 - (a) A copy of the public wastewater utility's tariff as specified in Rule 1220-04-01-.02 that includes the rates, rules, terms, and conditions and that describes the policies and practices in rendering service that conform to all applicable provisions shall be filed with the Commission. Such tariff may also include cost recovery associated with financial securities as described in these rules and recovery of the costs of bonding for operation of the utility imposed by local governments.
 - (b) Before initiation of service, the public wastewater utility shall file with the Commission the TDEC approval of the design and permit for the wastewater system and proof that the utility owns the land and/or has easements for the proposed wastewater system.
 - (c) Each public wastewater utility shall file a completed annual report with the Commission on or before April 1 of each year. The report shall be in the form specified by the Commission and in compliance with these rules and all other requirements established by the Commission. The annual report shall include a report on the construction status of each service territory covered by the utility's CCN. The report shall also include an affirmation and supporting documentation that the financial security required by Rules 1220-04-13.07 remains in effect.
 - (d) The name, title, address, telephone number, and email, of the person(s) who should be contacted in connection with:
 - 1. General management.
 - 2. Customer relations and consumer complaints.
 - 3. Engineering and operations.
 - 4. Emergencies during non-office hours.
 - 5. The certified operator for each wastewater system included in the CCN.
 - (e) Any correspondence related to a notice of violation or administrative action from a state or federal regulatory agency or the initiation of litigation. Such correspondence shall be filed within seven (7) days of the utility's notice or receipt.
 - (f) Any correspondence to and from TDEC related to the wastewater utility's State Operating Permit. Such correspondence shall be filed within seven (7) days of the utility's notice or receipt.
 - (g) The wastewater utility shall notify the Commission within thirty (30) days when an entity with which it has a contractual relationship in the development, construction or operation of a wastewater system upon which its CCN is based, in whole or in part, files for bankruptcy.

protection or otherwise becomes unable or unwilling to carry out its contractual obligations with respect to the wastewater system.

1220-04-13-.05 Maps and Records is amended by adding a new paragraph (3), the new rule shall read:

- (1) Each public wastewater utility shall keep on file in its main office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.
- (2) Each public wastewater utility shall keep a record of all interruptions of service of its wastewater system, including a statement of time, duration, and cause of such interruptions.
- (3) Records of inspection conducted as part of operating and maintenance procedures shall be maintained by the public wastewater utility for a minimum of three (3) years.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.06 Adequacy of Facilities is amended by deleting in its entirety and replacing and substituting the following language, so that as amended the new rule shall read:

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal and local government agencies to ensure safe, adequate and reliable service and, as far as reasonably possible, continuity of service and uniformity in the quality of service so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to ensure safe, adequate and continuous service at all times by qualified staff, and shall make inspections on a regular basis and in accordance with the requirements stated in the TDEC-issued permit for the wastewater treatment facility.

Authority: T.C.A. §§ 65-2-102, 65-2-106, 65-4-104, 65-4-203, and 65-4-114, 65-4-115. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.07 Financial Security is amended by deleting in its entirety and replacing and substituting the following language, so that as amended the new rule shall read:

- (1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the Commission, an acceptable financial security. The public wastewater utility shall ensure that such financial security is maintained in continuous force in conformity with these rules.
- (2) Proof of financial security shall be furnished to the Commission as follows:
 - (a) A public wastewater utility submitting an initial application for a CCN shall present to the Commission, prior to approval of the application, proof of financial security in the amount of \$20,000. Prior to providing service the public utility shall file proof of financial security in the amount required by 1220-04-13-.07(2)(b) based on the annual revenue forecast in the CCN application submitted to the Commission.
 - (b) On or before July 1 of each year, any public wastewater utility holding a CCN and providing service shall file proof with the Commission of a security in the amount of fifty percent (50%) of annual wastewater revenues in the most recent annual or \$20,000, whichever is greater. The minimum financial security amount is \$20,000. The maximum required security is \$300,000. When calculating wastewater revenues, no monies received from customers for bonding under this rule or for meeting bonding requirements of a local government shall be included in the calculation of wastewater revenues.

- (c) Initial compliance revenue is defined as the amount of revenue upon which a public wastewater utility submits proof of financial security for the first time after the effective date of this rule. Notwithstanding 2(b), a public wastewater utility is not required to submit a new financial security until the initial compliance revenue increases by 10% as reported on its annual report. Once the public wastewater utility submits a new financial security, the revenues upon which the financial security is based shall become the new initial compliance revenue. The public wastewater utility must provide proof that its financial security is still in effect by July 1 or each year.
- (3) Financial security shall be provided in one of the following manners:
- (a) A bond issued by any surety company that has been authorized to issue such security by the Tennessee Department of Commerce and Insurance; or
 - (b) An irrevocable letter of credit issued by a financial institution that is a designated state depository under Tenn. Code. Ann. §9-4-107.
- (4) The public wastewater utility shall ensure that the Commission is notified within thirty (30) days prior to any termination action concerning an irrevocable letter of credit that will not be renewed or the expiration date for a bond of non-perpetual duration that is not to be renewed.
- (5) The recurring cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that adjusts a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Commission for a public wastewater utility on a case-by-case basis.
- (a) For the initial security, each public wastewater utility shall submit for the Commission's consideration a proposed tariff specifying the amount of the security, the amount of the monthly rate adjustment to be billed to its customers for recovery of the cost of such security and the percentage rate increase this represents, based on currently approved rates. The tariff filing documentation shall contain at a minimum a calculation of the rate adjustment based on the annual cost of the security and the number of existing or projected customers at the time of the tariff filing. The resulting cost per customer (total security cost divided by the number of customers) shall be recovered from customers on a monthly basis (total cost per customer divided by 12).
 - 1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Commission within thirty (30) days of the effective date of the financial security.
 - 2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Commission with the CCN application.
 - (b) Thereafter, on or before July 1 of each year, each public wastewater utility shall file with the Commission the following information to update its financial security and true up the recovery of its security costs:
 - 1. Proof of financial security compliant with this rule.
 - 2. A proposed revised tariff to become effective August 1, specifying the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents.
 - 3. Documentation supporting the calculation of the updated monthly rate adjustment. The documentation shall include but not be limited to:
 - (i) the annual cost of the new security;
 - (ii) the current number of customers;

- (iii) the total actual security costs paid in the previous reporting period or part thereof in the public wastewater utility's first year of operations or the first year this rule is in effect; and
- (iv) the security cost recovered from customers in the previous reporting period or part thereof.

4. A true-up calculation of the new monthly rate adjustment, calculated as follows:

$$RA = \frac{(CP - CR + SC)}{C} \times 12$$

Where:

- RA = New monthly rate adjustment to be effective August 1.
- CP = Total security costs actually paid in the prior reporting period or part thereof netted against any credits or refunds received by the public wastewater utility from the holder of the financial security.
- CR = Total security costs actually recovered from customers in the prior reporting period.
- SC = Annual security costs associated with the new security filed on July 1.
- C = Number of customers at July 1.

- (6) Upon the filing of an initial CCN application, a determination shall be made regarding the establishment of a reserve/escrow account. The Commission may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established. The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Commission on a case-by-case basis.
- (7) Reserve/escrow accounts established by a public wastewater utility shall be limited to paying for or reimbursing the utility for extraordinary expenses of the utility or for necessary capital projects, unless otherwise permitted by the Commission. Extraordinary expenses are those resulting from events which are infrequent and unusual in nature, and unrelated to the utilities' routine service or business activities. The utility must first receive authorization from the Commission via approved petition or, in emergency situations, authorization in writing from the Chairman of the Commission upon written request by a representative of the utility to use such funds. The Commission may require public wastewater utility employees having signature authority over such account to obtain a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.
- (8) The TPUC may waive or modify requirements of this rule for good cause shown, including but not limited to affordability of rates, minimization of rate shock or other operating characteristics of the utility.

Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.08 Standard Forms for Filing Financial Security is amended by deleting in its entirety and replacing and substituting the following language, so that as amended the paragraph shall read:

- (1) Corporate surety bonds or letters of credit filed to comply with TPUC Rule 1220-04-13-.07 shall include the following terms:

- (a) The name and identification number assigned to the utility by TPUC;

- (b) The name and contact information for the providers of the corporate surety bond or letter of credit;
 - (c) A statement identifying the TPUC as the beneficiary;
 - (d) A statement of the amount of the surety bond or letter of credit;
 - (e) A statement indicating that the financial security is required by Tenn. Code. Ann. §65-4-201 and TPUC Rule 1220-04-13.07;
 - (f) A statement indicating that after action under TPUC 1220-04-13.09 the Commission may assess a sum sufficient of this bond, up to its maximum sum;
 - (g) A statement that the provider of the corporate surety bond or letter of credit will promptly pay the Tennessee Public Utility Commission via wire transfer upon notice that the TPUC has taken action pursuant to TPUC Rule 1220-04-13.09; and
 - (h) A statement that the provider of the corporate surety bond or letter of credit shall provide the TPUC at least a ninety (90) day notice in the event of a non-renewal or termination of the corporate surety bond or letter of credit.
- (2) The Commission may require additional terms in a letter of credit to ensure access to funds in the event of action per TPUC Rule 1220-04-13.09.
 - (3) Providers of the corporate surety bond or letter of credit shall be authorized to do business in the state of Tennessee.

Authority: T.C.A. §§ 65-2-102, 65-2-106, and 65-4-104, 65-4-114, 65-4-203. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.09 Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims against Financial Security, Expired and Terminated CCNs is amended by deleting in its entirety and replacing and substituting the following so that as amended the new rule shall read:

- (1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, inability or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Commission has authority to take appropriate based on good cause that that may include suspension or revocation of all or a portion a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.
- (2) Good cause includes, but is not limited to, the following:
 - (a) A finding by the Commission of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code Annotated dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Commission relating to the same; or
 - (b) A finding by the Commission of:
 - 1. Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, gross mismanagement on the part of the public wastewater utility, or conviction of the utility or a principal of the utility of a crime related to management or operation of the utility or any crime that may interfere with the effective management or operation of the utility;
 - 2. Actual, threatened or impending insolvency of the public wastewater utility;
 - 3. Actual or threatened abandonment of the public wastewater utility by its owners or operators;

4. Persistent, serious, or substantial violations of statutes or regulations governing the public wastewater utility;
 5. Failure or inability on the part of the public wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance; or
 6. Failure to provide service to any customer reasonably entitled thereto.
- (3) In addition to the above, the Commission may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security:
- (a) Whether, to the extent practicable, service to customers will remain uninterrupted;
 - (b) Whether methods are available to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or whether there are no practicable methods to mitigate the financial consequences to customers;
 - (c) Whether the utility had opportunity to correct the conditions that are alleged to constitute the grounds for action; and
 - (d) Such other factors as the Commission deems relevant to the determination.
- (4) Proceedings before the Commission for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security shall be conducted in accordance with the contested case provisions of the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101, *et seq.*, which includes notice and an opportunity to be heard, which may, but is not required to include a proceeding commenced under Tenn. Code Ann. § 65-2-106. Notice of opportunity to be heard may be excused when the circumstances or the conduct of a public wastewater utility poses an imminent threat to the health, safety, or welfare of the public. In such exigent circumstances, the Commission may order the summary suspension of the utility's CCN and follow the procedures as set forth in Tenn. Code Ann. § 4-5-320.
- (5) In the event the Commission revokes or suspends all or a portion of a public wastewater utility's CCN, orders the forfeiture of wastewater utility funds, and/or makes a claim against the public wastewater utility's financial security, the Commission may order all necessary actions to ensure continuous utility service and operation of the wastewater plant consistent with statutory requirements and TPUC rules and orders. The Commission may take, but is not limited to, the following actions:
- (a) Order the divestiture of public wastewater utility assets.
 - (b) Ordering the hiring of a replacement operator.
 - (c) Ordering specific repairs or upgrades to wastewater plant to comply with applicable regulations.
 - (d) Petitioning a court of competent jurisdiction for the appointment of a receiver.
 - (c) Other actions necessary to provide for continuous public wastewater utility operations. An order under paragraph (5) may provide cost recovery mechanisms for costs associated with improvements to the wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:
 - (a) A mechanism for expediting any adjustments to the rates of the public wastewater utility.
 - (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.
 - (c) Incentives to facilitate acquisition or long-term operation of the public wastewater utility.

- (d) A wastewater CCN holder shall file a written notice of completion that the wastewater system is fully constructed, operational, and providing service not less than three (3) years from the date of the written order granting a CCN. If the written notice of completion is not filed within three (3) years, the CCN shall automatically expire and be terminated without the institution of proceedings under Rule 1220-04-13.09(4).
- (a) Not less than thirty (30) days before the expiration of the three (3) year period, a CCN holder may file a written request for an extension of time, not to exceed one year from the original deadline, to file the required notice of completion of the wastewater system. The filing of an extension request does not entitle the CCN holder to a contested case proceeding or constitute grounds for a proceeding under 1220-04-13.09(4); however, the commission may initiate such a proceeding upon such request or its own motion. Subject to the conditions herein, an extension request shall not be the basis for a proceeding under Rule 1220-04-13.09(4).
- (b) A request for an extension of time under this section shall include the following:
 - (1). Documentation of all phases of the project that have been constructed or completed;
 - (2). Documentation reflecting the timeline for completion of any unconstructed or incomplete portions of the system;
 - (3). Documentation that the property developer, at the time the CCN was awarded, intends to proceed with the project; and
 - (4). Such other documentation as the Commission may request.
- (c) In the event that a CCN expires, then the holder shall file a new application pursuant to Rule 1220-04-13.17 to obtain authority to serve the service area previously covered by the expired or terminated CCN.
- (e) Upon a complaint or the TPUC's own motion wherein it is alleged that a wastewater system has not been completed or is not operational and providing service to the designated service area after three (3) years from the date of the CCN Order, as noted in (7) above, there shall be a rebuttal presumption that the CCN granted to public wastewater utility is no longer valid or in effect.

Authority: T.C.A. §§ 4-5-320, 65-2-102, 65-2-106, 65-4-104, and 65-4-201. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.10 Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition or Abandonment is amended by deleting in its entirety and replacing and substituting the following language, so that as amended, the new rule shall read:

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Commission pursuant to Tenn. Code Ann. § 65-4-109.
- (2) Any person owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer or merge with another public wastewater utility, or intends to terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Commission to obtain Commission approval of the transaction and a proposed written notice to the customers.
- (3) Any petition filed with the Commission under this part shall include a description of the proposed transaction and the following:
 - (a) The names, addresses, and telephone numbers of the public wastewater utility and other parties to the transaction;
 - (b) The identity and contact information of the person(s) to contact regarding the petition;

- (c) The proposed effective date of the transaction;
- (d) A list of outstanding citations issued by TDEC and a discussion concerning how the acquiring party will correct any outstanding citations or violations;
- (e) A statement detailing the effect of the transaction upon customers; and
- (f) A copy of the customer notification letter, to be approved by the Commission, which will be mailed by the current provider of wastewater services to its customers no fewer than thirty (30) days prior to the customer transfer. Once approved by the Commission, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, any portion of this Rule 1220-04-13-.10(3)(f) may be waived or notice may be given using alternate means.

Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-112, and 65-4-113. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.11 Receiverships or Other Transfers of Operation or Ownership is deleted in its entirety.

Rule 1220-04-13-.14 Denying or Discontinuing Service is amended by deleting in its entirety and replacing and substituting the following language, so that as amended the new rule shall read:

- (1) No public wastewater utility shall discontinue service to any customer, without first providing adequate notice to the customer, provided, however, where an emergency exists fraudulent use is detected, or a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider.
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing to a "Subscription Service Contract" that would for the reasons listed in this part allow either:
 - (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the Commission, and this rule; or
 - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service is discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the Commission prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.
- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:
 - (a) Non-payment for service by a previous occupant of the premises to be served.
 - (b) Failure to pay for merchandise or special services purchased from the public wastewater utility.
 - (c) Failure to pay the bill of another customer as guarantor thereof.
 - (d) Failure to pay for a different type or class of public wastewater utility service.
- (4) The public wastewater utility's tariff on file with the Commission shall define all terms and conditions that relate to denying or discontinuing wastewater service.
- (5) When a prospective customer is refused service, or an existing customer has service disconnected under the specific provisions included in the public wastewater utility's tariff approved by the Commission, the public wastewater utility shall notify the customer or prospective customer promptly of the reason for refusal. The notification shall include an explanation of the Commission's dispute resolution process found in Rule 1220-01-03. A copy of such notification or other documentation shall

be sent within five (5) business days to the local county health department and the Commission. If service is disconnected using a water shut-off valve, the utility is not required to notify the county health department.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

Rule 1220-04-13-.16 Transaction with Affiliates is created. The new rule shall read:

- (1) This rule shall apply to all affiliate transactions between a public wastewater utility and any affiliate thereof. The primary purpose of this rule is to protect the ratepayers of a public wastewater utility from unauthorized or unwarranted cross-subsidies.
- (2) For purposes of this rule, the following definitions shall apply:
 - (a) Affiliate – any person who, directly or indirectly, is in control of, is controlled by, or is under common control with a public wastewater utility.
 - (b) Affiliate Transaction – any sale, lease trade, purchase, or transfer of goods, or services between a public wastewater utility and any affiliate thereof. The term also means any sale, lease, trade, purchase, or transfer of assets, goods, or services between the accounts for the regulated and nonregulated activities of a single public wastewater utility.
 - (c) Asset – any tangible or intangible property, or other right, entitlement, item, or thing of value that is recorded or should be recorded in the public wastewater utility's Balance Sheet Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).
 - (d) Control – the ownership of twenty percent (20%) or more of the shares of stock entitled to vote for the election of directors in the case of a corporation, or twenty percent (20%) or more of the equity interests in the case of any other type of entity, or status as a director or officer of a corporation or limited liability company, or status as a partner of a partnership, or status as an owner of a sole proprietorship, or any other arrangement whereby a person has the power to choose, direct, or manage the board of directors or equivalent governing body, officers, managers, employees, proxies, or agents of another person.
 - (e) Cross-subsidy – the unauthorized over-allocation of cost to a public wastewater utility resulting in an under-allocation of cost to an affiliate.
 - (f) Direct cost – with regard to a particular good or service, the cost solely attributable, on a cost-causative basis, to the production or provision of such individual good or service, where the attribution does not require the use of allocations to separate the common costs incurred in the production or provision of other goods or services.
 - (g) Fair market Value – the sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entry in an open market.
 - (h) Fully Allocated Cost – with regard to a particular good or service, the sum of the direct cost and indirect cost of such individual good or service.
 - (i) Good – any tangible or intangible property, item, or other thing of value that is recorded or should be recorded in the public wastewater utility's Income Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).
 - (j) Indirect Cost – with regard to a particular good or service, the cost, other than direct cost, properly attributable to the production or provision of such individual good or service; including the allocation of all common and overhead costs.
 - (k) Market Rate – the lowest price that is available for comparable goods or services from nonaffiliated entities in an open market.
 - (l) Net Book Value – the original cost of an asset less accumulated depreciation.

- (m) Person – a corporation, limited liability company, partnership, sole proprietor, enterprise, association, trust, cooperative, concern, individual, or any other entity.
 - (n) Service – any labor-related activity including but not confined to, auditing, accounting, consulting, engineering, managing, operating, financing, and legal, that is recorded or should be recorded in the public wastewater utility's Balance Sheet and Income Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).
- (3) A public wastewater utility shall record all affiliate transactions in its accounts as prescribed by the Uniform System of Accounts required under Rule 1220-04-01-.11(1)(h).
 - (4) When a public wastewater utility is a party to an affiliate transaction, as defined in this rule, the following methods must be used to record the transaction in the public wastewater utility's accounts:
 - (a) When an affiliated sells, leases, trades, or transfers an asset to a public wastewater utility, such transactions shall be recorded in the public wastewater utility's accounts at the lower of the affiliate's net book value or the fair market value of the asset.
 - (b) When a public wastewater utility sells, leases, trades, or transfers an asset to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Commission. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the higher of the public wastewater utility's net book value or the fair market value of the asset.
 - (c) When an affiliate sells, leases, trades, or transfers goods or services to a public wastewater utility, such transaction shall be recorded in the public wastewater utility's accounts at the affiliate's fully allocated cost or the market rate, whichever is lower.
 - (d) When a public wastewater utility sells, leases, trades, or transfers goods or services to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Commission. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the public wastewater utility's fully allocated cost or the market rate, whichever is higher.
 - (5) A public wastewater utility shall record the following minimum information regarding each affiliate transaction:
 - (a) The name of the affiliate involved in the transaction.
 - (b) A description of the transaction, including:
 - 1. The date of execution;
 - 2. The business purpose underlying the transaction;
 - 3. The starting date and termination date if the transaction is to be performed over a period of time; and
 - 4. Identification of the assets), good(s), or service(s) related to the transaction.
 - (c) If the transaction involves an asset, the net book value and the fair market value of the asset. Fair market value may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.
 - (d) If the transaction involves a good or service, the fully allocated cost incurred to produce or provision the good or service and the market rate of the good or service. The market rate may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.
 - (6) A public wastewater utility shall preserve and maintain all records and information related to affiliate transactions required under subsection (4) of this rule for a minimum period of three (3) years as specified in Rule 1220-04-13.03.

- (7) In the Annual Report required to be filed with the Commission pursuant to Rule 1220-04-13.04(1)(c), the public wastewater utility shall state for the reporting period whether or not it was a party to any affiliate transactions, as defined in this rule. If the public wastewater utility engaged in such affiliate transactions during the reporting period, it shall in its Annual Report:
- (a) Identify each affiliate by name and business address:
 - (b) Describe the affiliate relationship between each affiliate and the public wastewater utility; and
 - (c) For each affiliate, report the total dollar amount of affiliate transactions recorded in the public wastewater utility's accounts as follows:
 - 1. The total dollar amount of assets, goods, and services sold, leased, traded, or transferred to each affiliate by the public wastewater utility during the reporting period; and
 - 2. The total dollar amount of assets, goods, and services sold, leased, traded, or transferred to the public wastewater utility by each affiliate during the reporting period.
- (8) A public wastewater utility and each affiliate thereof shall provide the Commission, its staff, and its agents with full access to all relevant books and records of such entities in connection with the Commission's regulatory responsibilities to examine any costs sought to be recovered by the public wastewater utility in rate proceedings or to determine a public wastewater utility's compliance with this rule.
- (9) For good cause the Commission may waive any of the requirements or provisions of this rule on the written application of any interested party or on its own motion. The Commission shall, after hearing, state the basis of any such waiver and may impose conditions or limitations on any such waiver consistent with the purpose of this rule.

Authority: T.C.A. §§ 65-2-102 and 65-4-104.

Rule 1220-04-13-.17 Minimum Requirements for New and Amendments to Certificate of Convenience and Necessity is created. The new rule shall read:

- (1) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") in accordance with Tenn. Code Ann. § 65-4-201, *et seq.*, shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann § 65-4-201, and these rules.
- (2) Applications for a new or expanded CCN shall include the following information:
 - (a) General information about the applicant and the proposed system:
 - 1. The legal corporate name, physical address and mailing address of the applicant.
 - 2. An organizational chart showing each officer and any other key personnel by name and title.
 - 3. A list of owners, members and officers of the wastewater utility. Provide the address, telephone number, and percentage ownership of each individual. If different, list the names of owners, members and officers located in Tennessee.
 - 4. If the applicant has affiliated companies, provide a corporate organization chart showing all affiliate relationships. Describe in detail any transactions, direct or indirect, that occur or are expected to occur between affiliated entities.
 - 5. A copy of the applicant's articles of incorporation, partnership agreement, and/or by-laws.

6. A copy of the applicant's license to engage in business within the State of Tennessee registered with the Secretary of State, inclusive of any assumed names of the company.
 7. A complete description of the geographic territory to be served by the applicant, including the name and location of development (subdivision) and the number of acres. Include the name of the subdivision or development and the name of the wastewater system as stated in the TDEC permit. In addition, provide a legible map of the area with the proposed service territory clearly and accurately plotted. The map should include:
 - (i) The location of the wastewater system, i.e., treatment plant, pre-application treatment facilities, collection infrastructure, building(s) for equipment, drip fields, disposal fields and/or wetland cells. Include the physical address of the wastewater system and the associated latitude and longitude coordinates.
 - (ii) The names of surrounding streets and roads.
 - (iii) A map to show access roads and names of access roads (if available) and other utilities necessary to provide wastewater service.
 - (iv) All residences and habitable structures served by the wastewater system.
 - (v) Any portion of the areas that will not be served when the wastewater system becomes operational. If the wastewater system will be operational in phases, show the phases on the map.
 8. A description of the type of proposed wastewater system to be constructed including the design capacity and the maximum potential number of customers the public wastewater utility will service in the proposed service area. Indicate the technology used for the wastewater system (e.g., membrane, sand filter, wetland cell and/or lagoon). The type of system and design capacity should match the type and design capacity of the associated TDEC permit and permit application.
 9. The estimated dates for the commencement and completion of the construction of the system and the estimated date the wastewater system will be placed into service. If the wastewater system will be constructed or placed into service in phases, provide the anticipated dates for each phase.
 10. If portions of the wastewater system will be built in phases, state how many phases and the number of houses or units to be connected in each phase.
 11. Identify the builder or developer that has requested the utility to provide wastewater service. Include name of company, name of primary contact, title, mailing address, email address, and phone number.
 12. Respond completely to all information requests by Commission staff.
- (b) Evidence that the requisite property rights and public need exists for wastewater services in the proposed service area:
1. A letter(s) from local government(s) and public wastewater utilities in or near the proposed service area stating that they do not provide wastewater service to the proposed service area and that they are unable or unwilling to provide wastewater service to the proposed service area within the ensuing twelve (12) months.
 2. As applicable, a copy of any application for a franchise and the franchise agreement issued by a city or county.

3. All contracts or agreements between the builder(s) of the treatment and/or collection system, the utility, and the property and/or subdivision developer that show entitlement or ownership to the land, system specifications, costs for the wastewater system, timeline for the system to be built, and rights to the system once it is completed. Documents presented by the applicant should be signed by all parties and bear marks or stamps, such as those provided by notaries or public officials, as necessary.

(c) Evidence that the applicant possesses sufficient managerial ability:

1. Biographies of officers and/or key wastewater utility staff that demonstrate managerial ability. Include a list of certifications or professional licenses held by officers or wastewater utility staff with documentation.
2. Identify all states where the applicant is certified as a wastewater provider and/or the status of certification in states where an application is pending.
3. Copies of all contracts related to any pending merger or acquisition of the applicant, corporate parent or affiliate.
4. Proof that the party contracted to install the proposed system has a valid and current contractor's license by the applicable licensing board of the State of Tennessee.

(d) Evidence that the applicant possesses sufficient technical ability:

1. A copy of the application for the State Operating Permit ("SOP") filed with TDEC. Include the letter from TDEC indicating the receipt of a complete application. Include any engineering and/or design reports submitted to TDEC, such as the Design Development Report and the Detailed Soils Investigation Report. If an operating permit has been issued, provide a copy of the permit. The utility shall file a copy of the TDEC permit in the docket file prior to providing service.
2. A copy of the State Operator Certificate for the wastewater system operator of record. If the operator is a contract employee of the utility, provide a copy of the employment contract.
3. The name, address, and telephone number of the technical contact person responsible for and knowledgeable about the applicant's proposed operations in Tennessee.
4. A list of any complaint(s), notices of violation or administrative action filed with or issued by a regulatory agency. Identify the nature of the complaint notices of violation or administrative action, which agency is involved, and how the issue was or is being resolved.
5. A certification from a design engineer that the wastewater system was constructed in accordance with the TDEC-approved construction plans and specifications. The certification shall be filed in the docket file prior to providing service.

(e) Evidence that the applicant possesses sufficient financial capability:

1. Financial statements for the applicant covering the most recent year ended. Include a balance sheet, income statement, and statement of cash flows.
2. Pro forma income statements for the wastewater utility for the first three (3) years of operations or for an expanded amended CCN, the first three years after the latest year-end financials. In the calculations of utility revenues show the number of consumers and the rates used in the calculations. Show operation and maintenance expenses by account number and provide the basis and/or assumptions used to arrive at these amounts.

3. A chart of accounts for the wastewater utility, following the NARUC Uniform System of Accounts (USA) for wastewater utilities.
 4. A list of all plant-in-service account numbers with account names and estimated account balances as of the state of operations.
 5. The depreciation rates the applicant intends to use for each plant account that will be on the wastewater utility's books. Include the estimated useful life of each account. If no depreciation study has been performed, explain the basis for these rates.
 6. The total estimated detailed cost of construction of the wastewater system to be constructed for the proposed service area. If the wastewater system will be constructed in phases, provide detailed construction cost estimates for each phase. Indicate whether the developer or the applicant will pay for the construction of the system.
 7. Indicate the identity of the owner(s) of the wastewater system once construction is complete. If a party other than the utility pays the cost of construction and transfers ownership of the wastewater system to the applicant, provide a detailed breakdown of the estimated amount of contributed capital that will be recorded on the applicant's financial books.
 8. A tariff showing products, services, terms, conditions and proposed rates to be charged for wastewater service. A tariff should include all pass-through fees, including but not limited to, customer deposits, disconnect or reconnect fees, late fees, tap fees, escrow fees, bond fees, franchise fees and taxes.
 9. Provide estimates of costs and customers added by month for the first five (5) years based upon the construction build-out schedule for developers in the service area of the proposed wastewater system. For each year, by month, provided an estimated number of customers by customer class anticipated to be served by the wastewater system. Include the utility's basis and assumptions used for this projection. Provide this information in a spreadsheet in Microsoft Excel format with all assumptions clearly documented.
 10. Documentation describing bonding requirements imposed by municipal governments for the proposed wastewater system.
 11. Demonstrate that the applicant has acquired a performance bond from the developer or builder of the wastewater system made payable to the Utility to ensure construction of the wastewater system. The performance bond should be for an amount equal to or greater than the cost of the system as provided in contracts between builder, developer and/or utility.
 12. List all funding sources available to the applicant for the wastewater system proposed by the applicant.
 13. Provide information demonstrating compliance with the financial security requirement of Rule 1220-04-13.07.
- (f) Sworn pre-filed written testimony by the applicant's owner, member, officer or other principal having knowledge of the applicant's operations and the proposed wastewater system. The testimony should, at a minimum, include the following information:
1. Evidence that a public need exists for wastewater services in the proposed service area.
 2. A description of the wastewater system and the services to be provided.
 3. A statement that the applicant is aware of and will abide by all applicable Tennessee statutes and TPUC Rules.

4. A discussion and demonstration of technical, managerial, and financial capability of the applicant to provide the proposed wastewater service.
5. A statement that the applicant is aware of the requirement of Rule 1220-04-13.09(7) concerning the completion of the construction of the wastewater system within three years of TPUC's written approval of the CCN.
6. A signed affidavit stating that all information submitted concerning the wastewater CCN application is true and correct to the best of the witness' knowledge and belief.

Authority: T.C.A §§ 65-2-102, 65-4-104, 65-4-201, 65-4-204

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

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|----------------------------------|-----|----|---------|--------|-------------------------|
| Chairman David F. Jones | x | | | | |
| Vice-Chairman Robin Morrison | x | | | | |
| Commissioner Herbert H. Hilliard | x | | | | |
| Commissioner Kenneth C. Hill | x | | | | |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Public Utility Commission on April 10, 2017, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 9/23/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 11/21/2016

Date: 7/6/18

Signature: Kelly Cashman Grams

Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel

Subscribed and sworn to before me on: 7/6/2018

Notary Public Signature: Rebecca R. Lutes

My commission expires on: 3/8/2022



Agency/Board/Commission: Tennessee Public Utility Commission


Rule Chapter Number(s): 1220-04-13

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

Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): 1220-04-13

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


Herbert H. Slatery III
Attorney General and Reporter
8/27/2018
Date

Department of State Use Only

Filed with the Department of State on: 9/5/18

Effective on: 12/4/18



Tre Hargett
Secretary of State

RECEIVED
2018 SEP -5 AM 8:45
SECRETARY OF STATE
PUBLICATIONS

Public Hearing Comments

The public hearing on this matter was held on November 21, 2016. Prior to the hearing, the Tennessee Public Utility Commission (Commission) issued a Notice requesting comments on the proposed rule, and received comments from four parties. Two of those parties participated in the rulemaking hearing and their remarks are summarized below. The substance of the comments received and the response of the Commission are as follows:

One commenter suggested that any restrictions on the market entry or operations of a utility should be imposed by incorporating a specific provision into the order granting the certificate of public convenience and necessity to such utility, instead of by promulgation of a general rule. The Commission asserts that this suggestion is not in the public interest when, as here, it is preferable to treat similar utilities uniformly.

One commenter suggested that utilities that request authority to provide service should provide a letter from the county planning commission that affirms that the establishment of a stand-alone wastewater treatment system in the proposed service area is consistent with county planning. The Commission does not find this approach in the public interest because the current requirement that a letter from the local government(s) stating that it does not currently provide service is determined to be sufficient.

One commenter suggested that a reserve fund should be used in lieu of the financial security. The Commission asserts that this is not in the public interest because the relevant statute requires a bond or other security.

One commenter suggested that the requirement that a utility company must secure approval from the Commission before it accesses ratepayer-funded escrow account funds may unreasonably delay wastewater facility maintenance and repairs. The Commission asserts that allowing utility companies to access ratepayer-funded escrow funds without prior approval of the Commission is not in the public interest.

One commenter suggested that basing the size of the statutorily required financial security on a percentage of revenue is undesirable. The Commission asserts that using a percentage of revenue to base the size of the required security is the method that has been in place since the initial wastewater rules were established. Further, the size of the bond as a percentage of revenue was reduced in the rule adopted by the Commission relative to the rule contained in the rulemaking notice and the existing rule.

A commenter suggested that the proposed rule requires the company to submit documents that are produced by other state agencies, like TDEC. The comment asks that the Commission reconsider the duplication of documents produced by other state agencies. The Commission does not find the suggestion to be in the public interest. The documents are needed to maintain a complete evidentiary record.

A commenter suggested that they would like the TPUC to require all people/customers within the territory of the wastewater utility to purchase service from the utility authorized to service that service area. The Commission responds that it does not have the authority to require all people to purchase utility service.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The proposed rule impacts 13 investor-owned wastewater utilities under the jurisdiction of the Commission. The rule will impact companies that choose to become certificated wastewater utilities. The Commission believes that all of wastewater utilities that will be potentially impacted by this rule are small businesses.

The proposed rule is not anticipated to significantly increase reporting, recordkeeping, or other administrative costs relative to existing rules. Rather, the rule streamlines the treatment of existing rules related to statutorily-mandated financial securities, financial security forms, and proceedings related to the modification of operating certificates.

The proposed rule does not overlap, duplicate, or conflict with other federal, state, and local governmental rules. Exemption of small businesses from the rule is not in the public interest because the financial security portion of the rule is required by statute.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed is not anticipated to have an impact on local government.

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 proposed rule is a comprehensive rewrite of a rule originally adopted over a decade ago. The proposed rule changes the existing wastewater rules in five major ways. First, the requirements concerning financial securities provided by wastewater utilities have been substantially changed. The change decreases the size of the security from 100% of annual revenues to 50% of annual revenues with a cap of \$300,000. Second, the process of revocation and modification of certificates of convenience and necessity (CCNs) issued by the TPUC have been modified to set initial time deadlines within which service must be established so as to prevent misuse/abuse of the CCN process to "lock up" particular areas to gain leverage over development for extended periods of time. Third, the proposed rule establishes guidelines for documentation and the accounting treatment of affiliate transactions. It is the experience of the TPUC that transactions with affiliates are common in the wastewater industry and that affiliate transactions must be accurately documented for the TPUC to set just and reasonable rates as required by statute. The proposed rule codifies a standard utility regulatory treatment of affiliate transactions. Fourth, the information requested by Staff in its review of requests for initial and amendments to CCNs are codified in the proposed rule. The information is normally requested in data requests to the company after the filing of an application for a CCN. The rule will help speed the issuance of operating certificates since the applicant will provide all necessary information at the time it files its application instead of waiting for the Commission to request information after its initial filing. Finally, the existing rule was revised to provide better organization and clarity.

- (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;

Tenn. Code Annotated § 65-4-201(e) reads "The authority shall establish by rule the amount of such bond or other security for various sizes and types of facilities."

- (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;

This rule impacts the investor-owned utility industry and their customers. Certain industry members have expressed support for elements of the rule. Some industry members have expressed opposition to portions of the rule.

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

N/A

- (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;

No expected changes to state or local government revenues.

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

Kelly Cashman-Grams, General Counsel; Jerry Kettles, Director, Director Economic Analysis; and David Foster, Director, Utilities Division.

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

Kelly Cashman-Grams, General Counsel; Jerry Kettles, Director, Director Economic Analysis; and David Foster, Director, Utilities Division.

- (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

Kelly Cashman-Grams, General Counsel, 502 Deaderick Street, 4th Floor, Nashville, TN 37243, 615-770-6856 kelly.grams@tn.gov; Jerry Kettles, Director, Director Economic Analysis, 502 Deaderick Street, 4th Floor, Nashville, TN 37243, 615-770-6894, jerry.kettles@tn.gov; and David Foster, Director, Utilities Division, 502 Deaderick Street, 4th Floor, Nashville, TN 37243, 615-770-6884, david.foster@tn.gov

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

N/A

**RULES
OF
TENNESSEE REGULATORY AUTHORITY**

**CHAPTER 1220-4-13
WASTEWATER REGULATIONS**

TABLE OF CONTENTS

| | | | |
|---------------|---|----------------|---|
| 1220-4-13-.01 | Application and Purpose | 1220-4-13-.10 | Title of Physical Assets and Sale, Transfer, Merger, Termination, Acquisition, or Abandonment |
| 1220-4-13-.02 | Definitions | 1220-4-13-.11 | Receiverships or Other Transfers of Operation or Ownership |
| 1220-4-13-.03 | Retention of Records | 1220-4-13-.12 | Customer Relations |
| 1220-4-13-.04 | Documents to be Filed with the Authority | 1220-4-13-.13 | Customer Billing |
| 1220-4-13-.05 | Maps and Records | 1220-4-13-.14 | Denying or Discontinuing Service |
| 1220-4-13-.06 | Adequacy of Facilities | 1220-4-13-.15 | Reconnection |
| 1220-4-13-.07 | Financial Security | 1220-4-13-.16 | Transactions with Affiliates |
| 1220-4-13-.08 | Standard Forms for Filing Financial Security | 1220-04-13-.16 | Transactions with Affiliates |
| 1220-4-13-.09 | Procedure for Suspension or Revocation of CCN, Forfeiture of Wastewater Utility Funds, and Claims Against Financial Security Expired and Terminated CCNs | 1220-04-13-17 | Minimum Requirements for New and Amendments to Certificate of Convenience and Necessity |

1220-4-13-.01 APPLICATION AND PURPOSE.

- (1) These rules shall apply to public wastewater utilities as defined in these rules and in Tenn. Code Ann. §65-4-101.
- (2) The purpose of these rules is to define acceptable practices for the provision of wastewater service. The rules are intended to ensure continued adequate and reasonable service.

Authority: T.C.A. § 65-2-102. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-4-13-.02 DEFINITIONS.

- (1) ~~Authority—Tennessee Regulatory Authority.~~ Commission- Tennessee Public Utility Commission or TPUC
- (2) Certificate of Public Convenience and Necessity or CCN – certificate required for a public utility to establish, construct or operate utility service in a specified area, pursuant to Tenn. Code Ann. § 65-4-201 et seq.
- (3) Customer - any person, firm, corporation, association, or governmental unit that receives wastewater service from a public wastewater utility.
- (4) Local government – any political subdivision of the State of Tennessee, including, but not limited to a county or incorporated municipality.
- (5) ~~Public utility or public wastewater utility includes but is not limited to,~~ any person, partnership, corporation, company, association, receiver or two or more persons having a joint or common interest that owns, operates, and manages any public wastewater system for compensation within the state subject to the jurisdiction of the ~~Authority Commission.~~
- (6) TDEC – Tennessee Department of Environment and Conservation.
- (7) Wastewater system - any structure, land, equipment, or process for collecting, storing, treating, or disposing of wastewater, including but not limited to, tanks, pipes, pumps, and filters.
- (8) Reporting Period – the twelve (12) month period from May 1 through April 30, during which actual financial security costs are netted against financial security costs that have been recovered (collected) from the

(Rule 1220-4-13-.02, continued)

customers of the public wastewater utility by means of a rate adjustment established in a tariff that is filed with the Authority each July 1.

Authority: T.C.A. § 65-2-102. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.03 RETENTION OF RECORDS.

- (1) Unless otherwise specified by the Authority, all records required by these rules shall be preserved for a minimum period of three (3) years. All records shall be kept at the main office of the public wastewater utility in Tennessee and shall be made available to the Authority or its authorized representatives upon request.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.04 DOCUMENTS TO BE FILED WITH THE COMMISSION AUTHORITY.

- (1) The public wastewater utility shall file with the ~~Authority-Commission~~ the following documents and information, and shall refile such documents to keep such information ~~up-to-date up-to-date~~. ~~Rates, schedules, special contracts, other charges, and the utility's operating rules and regulations governing wastewater service shall not become effective until filed with and declared effective by the Authority.~~
 - (a) A copy of the public wastewater utility's tariff as specified in Rule 1220-4-1-.02 that includes the rates, rules, terms and conditions, and that describes the policies and practices in rendering service that conform to all applicable provisions ~~rules and regulations~~, shall be filed with the ~~Commission Authority~~. Such tariff may also include cost recovery associated with financial securities as described in these rules and recovery of the costs of bonding for operation of the utility imposed by local governments.
 - (b) ~~Before initiation of service, the public wastewater utility shall file with the Commission the TDEC approval of the design and permit for the wastewater system and proof that the utility owns the land and/or has easements for the proposed wastewater system. Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (CCN) authorizing such public utility to construct and/or operate a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that they are registered with the Secretary of State and possess sufficient managerial, financial, and technical abilities to provide the wastewater services for which they have applied. Each application shall justify existing public need and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.~~
 - (c) ~~Each public wastewater utility shall file a completed annual report with the Commission on or before April 1 of each year. The report shall be in the form specified by the Commission and in compliance with these rules and all other requirements established by the Commission. The annual report shall include a report on the construction status of each service territory covered by the utility's CCN. The report shall also include an affirmation and supporting documentation that the financial security required by Rules 1220-04-13.07 remains in effect. Before initiation of service, the public wastewater utility shall file with the Authority the TDEC approval of the design and permit for the wastewater system.~~
 - (d) ~~Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year. The report shall be in compliance with these rules and all other requirements established by the Authority. The name, title, address, telephone number, and email address of the person(s) who should be contacted in connection with:~~

(Rule 1220-4-13-.04continued)

1. General Management.
 2. Customer relations and consumer complaints.
 3. Engineering and operations.
 4. Emergencies during non-office hours.
 5. The certified operator for each wastewater system include in the CCN.
- (e) Any correspondence related to a notice of violation or administrative action from a state or federal regulatory agency or the initiation of litigation. Such correspondence shall be filed within seven (7) days of the utility's notice or receipt.
- (f) Any correspondence to and from TDEC related to the wastewater utility's State Operating Permit. Such correspondence shall be filed within the seven (7) days of the utility's notice or receipt.
- (g) The wastewater utility shall notify the Commission within thirty (30) days when any entity with which it has a contractual relationship in the development, construction, or operation, of a wastewater system upon which its CCN is based, in whole or in part, files for bankruptcy protection or otherwise becomes unable or unwilling to carry out its contractual obligations with respect to the wastewater system.

Authority: T.C.A. §§ 65-2-102, 65-4-104, and 65-4-201. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.05 MAPS AND RECORDS.

- (1) Each public wastewater utility shall keep on file in its main office suitable maps, plans, and records showing the entire layout of its wastewater system including the location, size and capacity of each component.
- (2) Each public wastewater utility shall keep a record of all interruptions of service of its wastewater system, including a statement of time, duration, and cause of such interruptions.
- (3) Records of inspections conducted as part of operating and maintenance procedures shall be maintained by the public wastewater utility for a minimum of three (3) years.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.06 ADEQUACY OF FACILITIES.

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local government agencies to ~~assure~~, ensure safe, adequate, and reliable service, and, as much as far as reasonably possible, continuity of service and uniformity in the quality of service so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to ~~assure~~ ensure safe, adequate and continuous service at all times by qualified staff, and shall make inspections on a regular basis and in accordance with the requirements stated in the TDEC issued permit for the wastewater treatment facility. ~~These inspection records shall be maintained by the public wastewater utility for a minimum of three (3) years.~~

(Rule 1220-4-13-.06 continued)

- ~~(3) If the Authority finds that any public wastewater utility has failed to provide service to any customer reasonably entitled thereto, the Authority may amend the CCN to delete the area not being properly served by the public wastewater utility, or it may revoke the CCN of that public wastewater utility.~~
- ~~(4) If wastewater service has not been provided in any part of the area which a public wastewater utility is authorized to serve within two (2) years after the date of authorization for service to such part, whether or not there has been a demand for such service, the Authority may require the public wastewater utility to demonstrate that it intends to provide service in the area or part thereof, or that based on the circumstances of a particular case, there should be no change in the certificated area, to avoid revocation or amendment of a CCN.~~
- ~~(5) In the case of a public wastewater utility authorized to provide service at the time these rules become effective, the requirements of paragraph (4) shall apply to such public wastewater utility two (2) years after the effective date of the rules.~~
- ~~(6) Any action by the Authority to revoke or amend a CCN shall be taken in accordance with Tenn. Code Ann. § 65-2-106 and after notice and an opportunity to be heard.~~

Authority: T.C.A. §§ 65-2-102, ~~65-2-106~~, 65-4-104, ~~65-4-203~~, and 65-4-114, ~~65-4-115~~. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.07 FINANCIAL SECURITY.

- (1) All public wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the ~~Authority Commission, prior to providing service to a customer, an acceptable financial security using a format prescribed by the Authority.~~ The public wastewater utility shall ensure that such financial security is maintained in continuous force in conformity ~~to~~ with these rules.
- (2) Proof of financial security shall be furnished to the ~~Authority Commission for review and approval as follows:~~
 - (a) A public wastewater utility submitting an initial application for a CCN shall present to the Commission, prior to approval of the application, proof of financial security in the amount of \$20,000. Prior to providing service the public utility shall file proof of financial security in the amount required by 1220-04-13-.07(2)(b) based on the annual revenue forecast in the CCN application submitted to the Commission. ~~On or before July 1 of each year, public wastewater utilities holding a CCN and providing service shall file proof with the Authority of a security in the amount of one hundred percent (100%) of the gross annual revenue in the most recent Authority Form UD20 or \$20,000, whichever is greater. If no UD20 has been filed, the public utility shall file proof of security in the amount of one hundred percent (100%) of the estimated gross annual revenue forecasted in the CCN application submitted to the Authority or \$20,000, whichever is greater. Utilities holding a CCN and not providing a service shall provide a security in the amount of \$20,000.~~
 - (b) On or before July 1 of each year, any public wastewater utility holding a CCN and providing service shall file proof with the Commission of a security in the amount of fifty percent (50%) of annual wastewater revenues in the most recent annual or \$20,000, whichever is greater. The minimum financial security amount is \$20,000. The maximum required security is \$300,000. When calculating wastewater revenues, no monies received from customers for bonding under this rule or for meeting bonding requirements of a local government shall be included in the calculation of wastewater revenues. ~~Public wastewater utilities submitting an initial application for a CCN shall be required to present to the Authority, prior to approval of this application,~~

(Rule 1220-4-13-.07, continued)

~~proof of financial security in the amount of \$20,000. Prior to providing service the public utility shall file proof of financial security in the amount of one hundred percent (100%) of the annual revenue forecasted in the CCN application submitted to the Authority or \$20,000, whichever is greater.~~

- (c) ~~Initial compliance revenue is defined as the amount of revenue upon which a public wastewater utility submits proof of financial security for the first time after the effective date of this rule. Notwithstanding 2(b), a public wastewater utility is not required to submit a new financial security until the initial compliance revenue increases by 10% as reported on its annual report. Once the public wastewater utility submits a new financial security, the revenues upon which the financial security is based shall become the new initial compliance revenue. The public wastewater utility must provide proof that its financial security is still in effect by July 1 or each year. The Authority shall review each subsequent UD20, existing financial securities pursuant to local government requirements and any other information that the Authority may request to determine the appropriate amount of financial security required for each public wastewater utility based upon the annual gross revenue information submitted.~~
- (3) ~~Sufficient Financial~~ security shall be provided in one of the following manners:
 - (a) A bond issued by any surety company that has been authorized to issue such security by the Tennessee Department of Commerce and Insurance, ~~duly licensed commercial bonding or insurance company authorized to do business in Tennessee;~~ or
 - (b) An irrevocable letter of credit issued by a financial institution ~~acceptable to the Authority~~ that is a designated state depository under Tenn. Code. Ann. § 9-4-107.
- (4) ~~The public wastewater utility shall ensure that the Commission is notified within thirty (30) days prior to any termination action concerning an irrevocable letter of credit that will not be renewed or the expiration date for a bond of non-perpetual duration that is not to be renewed. The public wastewater utility shall ensure that the Authority is notified within thirty (30) days prior to any termination action concerning an irrevocable letter of credit that will not be renewed or sixty (60) days prior to the expiration date for a bond of non-perpetual duration that is not to be renewed. Written notification by means of both certified mail (return receipt requested) and regular mail to the Authority shall be required.~~
- (5) The recurring cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that adjusts a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Commission for a public wastewater utility on a case-by-case basis.
 - (a) For the initial security, each public wastewater utility shall submit for the Commission's consideration a proposed tariff specifying the amount of the security, the amount of the monthly rate adjustment to be billed to its customers for recovery of the cost of such security, and the percentage rate increase this represents, based on currently approved rates. The tariff filing documentation shall contain at a minimum a calculation of the rate adjustment based on the annual cost of the security and the number of existing or projected customers at the time of the tariff filing. The resulting cost per customer (total security cost divided by the number of customers) shall be recovered from customers on a monthly basis (total cost per customer divided by 12).
 - 1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Commission within thirty (30) days of the effective date of the financial security.

(Rule 1220-4-13-.07, continued)

2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Commission with the CCN application.

~~If the public wastewater utility proposes to post financial security other than the type or amount permitted above, it must file with the Authority by May 1 of each year a petition requesting acceptance of the security. A hearing shall be held to determine the amount of the financial security and if the form of the proposed financial security serves the public interest. At this hearing, the burden of proof shall be on the public wastewater utility to show that the proposed financial security and the proposed amount will be in the public interest. The public wastewater utility shall comply with Rule 1220-4-13-.07(2) until the alternative financial security is approved by the Authority.~~

- (b) Thereafter, on or before July 1 of each year, each public wastewater utility shall file with the Commission the following information to update its financial security and true-up the recovery of its security costs:

1. Proof of financial security compliant with this rule.
2. A proposed revised tariff to become effective August 1, specifying the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents.
3. Documentation supporting the calculation of the updated monthly rate adjustment. The documentation shall include but not be limited to:
 - (i) the annual cost of the new security;
 - (ii) the current number of customers;
 - (iii) the total actual security costs paid in the previous reporting period or part thereof in the public wastewater utility's first year of operations or the first year this rule is in effect; and
 - (iv) the security cost recovered from customers in the previous reporting period or part thereof.
4. A true-up calculation of the new monthly rate adjustment, calculated as follows:

$$RA = \frac{(CP - CR + SC)}{C} \times 12$$

Where:

RA = New monthly rate adjustment to be effective August 1.

CP = Total security costs actually paid in the prior reporting period or part thereof netted against any credits or refunds received by the public wastewater utility from the holder of the financial security.

CR = Total security costs actually recovered from customers in the prior reporting period.

(Rule 1220-4-13-.07, continued)

SC = Annual security costs associated with the new security filed on July 1.

C = Number of customers at July 1.

- (6) Upon the filing of an initial CCN application, a determination shall be made regarding the establishment of a reserve/escrow account. The Commission may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established. The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Commission on a case-by-case basis. ~~Financial securities required by any local government may be counted by the Authority in fulfilling this financial security obligation. The public wastewater utility shall file with the Authority by May 1 of each year evidence of any financial security required by any local government and a written request that the Authority count the security toward fulfilling the requirements of this Chapter.~~
- (7) Reserve/escrow accounts established by a public wastewater utility shall be limited to paying for or reimbursing the utility for extraordinary expenses of the utility or for necessary capital projects, unless otherwise permitted by the Commission. Extraordinary expenses are those resulting from events which are infrequent and unusual in nature, and unrelated to the utilities' routine service or business activities. The utility must first receive authorization from the Commission via approved petition or, in emergency situations, authorization in writing from the Chairman of the Commission upon written request by a representative of the utility to use such funds. The Commission may require public wastewater utility employees having signature authority over such account to obtain a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account. ~~The cost of the financial security may be funded from customer contributions by means of a pass-through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on a case-by-case basis.~~
- ~~(a) For the initial security, each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the security, the amount of the monthly rate adjustment to be billed to its customers for recovery of the cost of such security and the percentage rate increase this represents, based on currently approved rates. The tariff filing documentation shall contain at a minimum a calculation of the rate adjustment based on the annual cost of the security and the number of customers existing or projected at the time of the tariff filing. The resulting cost per customer (total security cost divided by number of customers) shall be recovered from customers on a monthly basis (total cost per customer divided by 12).~~
- ~~1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Authority within thirty (30) days of the effective date of the financial security.~~
- ~~2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Authority with the CCN application.~~
- ~~(b) Thereafter, on or before July 1 of each year, each public wastewater utility shall file with the Authority the following information to update its financial security and true-up the recovery of its security costs:~~
- ~~1. Proof of financial security~~

(Rule 1220-4-13-.07, continued)

- (i) ~~in the amount of one hundred percent (100%) of the gross annual revenue reported in the most recent UD20 filed on April 1; or~~
 - (ii) ~~as determined by the Authority pursuant to 1220-4-13-.07(5) or (6).~~
2. ~~A proposed revised tariff to become effective August 1, specifying the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents.~~
3. ~~Documentation supporting the calculation of the updated monthly rate adjustment. Documentation shall include but not be limited to:~~
- (i) ~~annual cost of the new security;~~
 - (ii) ~~current number of customers;~~
 - (iii) ~~total actual security costs paid in the previous reporting period or part thereof in the case of the public wastewater utility's first year of operations or the first year this rule is in effect;~~
 - (iv) ~~security costs recovered from customers in the previous reporting period or part thereof.~~
4. ~~A true-up calculation of the new monthly rate adjustment, calculated as follows:~~

$$\begin{array}{rcl}
 & & \text{(CP - CR + SC)} \\
 & & \hline
 & & C \\
 \text{RA} & = & \hline
 & & 12
 \end{array}$$

~~Where:~~

~~RA = New monthly rate adjustment to be effective August 1.~~

~~CP = Total security costs actually paid in the prior reporting period or part thereof netted against any credits or refunds received by the public wastewater utility from the holder of the financial security.~~

~~CR = Total security costs actually recovered from customers in the prior reporting period.~~

~~SC = Annual security costs associated with the new security filed on July 1.~~

~~C = Number of customers at July 1.~~

- (8) The TPUC may waive or modify requirements of this rule for good cause shown, including but not limited to affordability of rates, minimization of rate shock or other operating characteristics of the utility.

~~The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. Within eighteen (18) months from the effective date of these rules, the Authority shall review the financial condition of any public wastewater utility holding a CCN to provide wastewater service as of the effective date of these rules to determine whether such wastewater utility shall establish or adjust the amount of a reserve/escrow account as described in this Chapter. Upon the filing of an initial CCN application, a determination shall be made~~

(Rule 1220-4-13-.07, continued)

~~regarding the establishment of a reserve/escrow account. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.~~

- (9) ~~Reserve/escrow accounts established by the public wastewater utility to pay for non-routine operation and maintenance expenses shall meet the conditions as specified by the Authority. The public wastewater utility shall file bank statements and a report that details the expenses on all disbursements from the escrow account with its annual report or as the Authority may direct. The Authority may require public wastewater utility employees having signature authority over such account to obtain a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.~~

Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-111, 65-4-201, and 65-4-305. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.08 STANDARD FORMS FOR FILING FINANCIAL SECURITY.

- (1) ~~The following is a form to be used by public wastewater utilities under the jurisdiction of the Tennessee Regulatory Authority when filing a corporate surety bond pursuant to this Chapter. Corporate surety bonds or letter of credit filed to comply with TPUC Rule 1220-04-13-.07 shall include the following terms:~~
- (a) ~~The name and identification number assigned to the utility by TPUC;~~
 - (b) ~~The name and contact information for the providers of the corporate surety bond or letter of credit;~~
 - (c) ~~A statement identifying the TPUC as the beneficiary;~~
 - (d) ~~A statement of the amount of the surety bond or letter of credit;~~
 - (e) ~~A statement indicating that the financial security is required by Tenn. Code. Ann. §65-4-201 and TPUC Rule 1220-04-13.07;~~
 - (f) ~~A statement indicating that after action under TPUC 1220-04-13.09 the Commission may assess a sum sufficient of this bond, up to its maximum sum;~~
 - (g) ~~A statement that the provider of the corporate surety bond or letter of credit will promptly pay the Tennessee Public Utility Commission via wire transfer upon notice that the TPUC has taken action pursuant to TPUC Rule 1220-04-13.09; and~~
 - (h) ~~A statement that the provider of the corporate surety bond or letter of credit shall provide the TPUC at least a ninety (90) day notice in the event of a non-renewal or termination of the corporate surety bond or letter of credit.~~
- (2) ~~The Commission may require additional terms in a letter of credit to ensure access to funds in the event of action per TPUC Rule 1220-04-13.09.~~
- (3) ~~Providers of the corporate surety bond or letter of credit shall be authorized to do business in the state of Tennessee.~~

CORPORATE SURETY BOND

(Rule 1220-4-13-.08, continued)

~~Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505~~

~~REFERENCE:— Name of Company authorized by TRA:~~

~~Company ID # as assigned by the TRA:~~

~~Corporate Surety Bond #:~~

~~Effective Date:~~

~~Expiration Date:~~

~~(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety") are bound to the State of Tennessee in the sum of _____ Dollars (\$ _____), and Principal and Surety hereby bind themselves, their successors and assigns, to pay in accordance with the following terms:~~

~~THE CONDITION OF THIS BOND IS:~~

~~The Principal is or intends to become a public wastewater utility subject to the laws of the State of Tennessee and the rules and regulations of the Tennessee Regulatory Authority ("Authority"), relating to the operation of a public wastewater utility: (describe utility and location _____~~

~~_____).~~

~~Tennessee Code Annotated § 65-4-201 requires the holder of a franchise for wastewater service to furnish a bond with sufficient surety, as approved by the Authority, conditioned as prescribed in Tenn. Comp. R. & Regs. Chapter 1220-4-13.~~

~~The Principal and Surety have delivered to the Authority a Surety Bond with an endorsement as required by the Authority.~~

~~After notice to the Principal and Surety and a contested case hearing that results in the suspension or revocation of the Principal's Certificate of Public Convenience and Necessity (CCN), the replacement of an operator by the Authority, or the appointment of a receiver by a court, the Authority may assess a sum sufficient of this bond, up to its maximum sum, to enable the continued operation of the public wastewater utility.~~

~~The Principal and the Surety are held and firmly bound to the State of Tennessee, in accordance with the provisions of Tenn. Comp. R. & Regs. Chapter 1220-4-13, in the amount of _____ Dollars (\$ _____) lawful money of the United States of America to be used for the full and prompt payment of any monetary obligation imposed against the Principal, its representatives, successors or assigns, in any contested case proceeding brought under Chapter 1220-4-13, by or on behalf of the Authority, for which obligation the Principal and the Surety bind themselves, their representatives, successors and assigns, each jointly and severally, firmly and unequivocally by these presents.~~

~~Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, and delivery to the Surety of a Bond Notice, substantially in the form set forth below ("Notice"), the Surety promises to pay, by wire transfer of immediately available funds, the amount of the monetary obligation as stated in the Order and Notice.~~

~~If for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least sixty (60) days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Tennessee Regulatory Authority, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period. Before the date of expiration, the public wastewater utility shall provide the Tennessee Regulatory Authority with a replacement Surety Bond or petition consistent with Rule 1220-4-13-.07(5). Failure to have approved financial security in effect will subject the public wastewater utility to daily penalties~~

(Rule 1220-4-13-.08, continued)

~~pursuant to Tenn. Code Ann. § 65-4-120.~~

~~The bond shall become effective after execution by the Principal and Surety and upon filing with the Authority, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Authority in writing.~~

~~The Principal and Surety consent to the conditions of this Bond and agree to be bound by them.~~

~~This ____ day of _____ 20__.~~

(Principal)

(Surety)

By: _____

FORM OF
BOND NOTICE

(Name of Surety)
(Address)

Re: Bond No. (____)

Dear Sir or Madam:

~~You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars (\$_____) (the "Draw Amount") has been imposed against (name of the Principal) its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority.~~

~~Pursuant to the bond referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds:~~

Name of Bank Account:
Account Number:
ABA Routing Number:
Reference:
Name of Contact:
Telephone Number:
Facsimile Number:

~~Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above.~~

Sincerely,

(Rule 1220-4-13-.08, continued)

TENNESSEE REGULATORY AUTHORITY

Name:

Title:

(2) — The following is a form to be used by public wastewater utilities under the jurisdiction of the
— Tennessee Regulatory Authority when filing an irrevocable letter of credit pursuant to this Chapter.

LETTER OF CREDIT

Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

REFERENCE: — Name of Company authorized by TRA:

Company ID # as assigned by the TRA:

Irrevocable Letter of Credit #:

Effective Date:

Sir/Madam:

You have requested of (name of Financial Institution, hereinafter called the "Lender") that we establish an irrevocable letter of credit which will remain available on behalf of (name of the Principal, hereinafter the "Company") who has applied to the Tennessee Regulatory Authority (the "Authority") for authority to provide public wastewater services in the State of Tennessee. The purpose of this letter of credit is to secure payment of any monetary obligation imposed against the Company, its representatives, successors or assigns, in any contested case proceeding brought under Tenn. Comp. R. & Regs. Chapter 1220-4-13 by or on behalf of the Authority.

We hereby establish and issue, in favor of the Authority, an irrevocable letter of credit in the amount of _____ Dollars (\$ _____) lawful money of the United States of America. Upon entry of an Order that finds a monetary obligation pursuant to Chapter 1220-4-13, the Authority may draw upon this letter of credit, at any time and from time to time, by delivering a Letter of Credit Notice, substantially in the form set forth below ("Notice"), which Notice shall specify the amount (the "Draw Amount") to be drawn and the account (the "Bank Account") to which the Draw Amount should be delivered and shall be signed by an official designated and duly authorized by the Authority, to Lender at the address listed below, or to such other address as the Lender shall notify the Authority in writing by certified mail. Promptly after the delivery of each Notice, the Lender hereby covenants and agrees to deliver, by wire transfer of immediately available funds, the Draw Amount to the Bank Account.

This letter of credit shall be deemed automatically renewed without amendment for successive one-year periods and may be canceled by the Lender by giving thirty (30) days advanced written notice by certified mail of such cancellation to the Authority and the Company, it being understood that the Lender shall not be relieved of liability that may have accrued under this letter of credit prior to the date of cancellation.

Failure to renew this letter of credit shall allow the Authority to draw upon it without the necessity of the Authority being required to hold a hearing concerning the Principal's operation or Certificate of Public Convenience and Necessity. In such an event and upon a directive from the Authority, the Lender hereby covenants and agrees to deliver by wire transfer of immediately available funds the maximum sum of this letter of credit to the Bank Account to enable the continued operation of the public wastewater utility.

The Lender hereby represents and warrants that it is qualified and authorized to issue this letter of credit and is a bank designated by the Treasurer of the State of Tennessee as an authorized depository bank for the deposit of state

(Rule 1220-4-13-.08, continued)

~~funds.~~

~~Except as otherwise expressly stated, this letter of credit is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision) International Chamber of Commerce Publication No. 500, or any revisions thereto.~~

~~Very Truly Yours,~~~~(Name of Lending Institution)~~~~Name:~~~~Title:~~~~Address of Lender:~~~~APPROVAL AND ENDORSEMENT~~

~~This is to certify that I have examined the foregoing letter of credit and found the same to be sufficient and in conformity to law and that the same has been filed with the Tennessee Regulatory Authority, State of Tennessee, this ____ day of _____, 20__.~~

~~Name:~~~~Title:~~

FORM OF
LETTER OF CREDIT NOTICE

(Name of Lender)

(Address)

Re: Irrevocable Letter of Credit No. (____)

Dear Sir or Madam:

~~You are hereby notified, and the undersigned hereby certifies, that the undersigned is an official designated and duly authorized by the Tennessee Regulatory Authority to deliver this notice and that a monetary obligation in the amount of _____ Dollars (\$_____) (the "Draw Amount") has been imposed against (name of the Principal), its representatives, successors or assigns, in a contested case proceeding brought under Title 65 of Tennessee Code Annotated by or on behalf of the Authority.~~

~~Pursuant to the Irrevocable Letter of Credit referenced above, we hereby request that you deliver payment of the Draw Amount to the bank account listed below by wire transfer of immediately available funds:~~

Name of Bank Account:

Account Number:

ABA Routing Number:

Reference:

Name of Contact:

Telephone Number:

Facsimile Number:

~~Please confirm receipt of this Notice and the Federal Reserve wire confirmation number of the delivery of the Draw Amount by sending a facsimile to the person at the number listed above.~~

Sincerely,

TENNESSEE REGULATORY AUTHORITY

(Rule 1220-4-13-.08, continued)

Name:

Title:

Authority: T.C.A. §§ 65-2-102, ~~65-2-106~~, and 65-4-104, ~~65-4-114~~, ~~65-4-203~~. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.09 PROCEDURE FOR SUSPENSION OR REVOCATION OF CCN, FORFEITURE OF WASTEWATER UTILITY FUNDS, AND CLAIMS AGAINST FINANCIAL SECURITY ~~EXPIRED AND TERMINATED CCNS.~~

- (1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, ~~inability~~, or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the ~~Authority Commission shall take appropriate action based on good cause~~ ~~cause has authority to take appropriate action based on good cause~~ that may include suspension or revocation of all or a portion of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.
- (2) Good cause ~~shall~~ includes, but is not limited, to the following:
 - (a) A finding by the ~~Authority Commission~~ of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code ~~Annotated~~ dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Authority relating to the same, or
 - (b) A finding by the ~~Authority Commission~~ of:
 1. Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, gross mismanagement on the part of the public wastewater utility, ~~or conviction of the utility or a principal of the utility of a crime related to management or operation of the utility or any crime that may interfere with the effective management or operation of the utility;~~
 2. ~~Actual, threatened or impending insolvency of the public wastewater utility Criminal conduct on the part of the public wastewater utility;~~
 3. ~~Actual or threatened abandonment of the public wastewater utility by its owners, or operators Actual, threatened or impending insolvency of the public wastewater utility;~~
 4. ~~Persistent, serious, or substantial violations of statutes or regulations governing the public wastewater utility Actual or threatened abandonment of the public wastewater utility by its owners or its operators;~~
 5. ~~Failure or inability on the part of the public wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance; Persistent, serious, substantial violations of statutes or regulations governing the public wastewater utility;~~ or
 6. ~~Failure to provide service to any customer reasonably entitled thereto. Failure or inability on the part of the wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance.~~

(Rule 1220-4-13-.09, continued)

- (3) In addition to the above, the ~~Authority-Commission~~ may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security:
 - (a) Whether, to the extent practicable, service to customers will remain uninterrupted ~~under an alternative public wastewater utility or a designated third party capable of providing adequate wastewater service, including a trustee or receiver appointed by the appropriate court;~~
 - (b) Whether ~~there are certain~~ methods ~~are available~~ to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or whether there are no practicable methods to mitigate the financial consequences to customers; ~~and~~
 - (c) Whether the utility had opportunity to correct the conditions that are alleged to constitute the grounds for action; ~~and~~
~~Such other factors as the Authority deems relevant to the determination.~~
 - (d) Such other factors as the Commission deems relevant to the determination.
- (4) Proceedings before the ~~Authority~~ Commission for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security shall be conducted in accordance with ~~the contested case provisions of the Tennessee Uniform Administrative Procedures Act Tenn. Code Ann. § 4-5-101, et seq. which includes notice and an opportunity to be heard, which may, but is not required to include a proceeding commenced under Tenn. Code. Ann. § 65-2-106 Notice of opportunity to be heard may be excused when the circumstances or the conduct of a public wastewater utility poses an imminent threat to the health, safety, or welfare of the public and after notice to the public wastewater utility and its surety, and an opportunity to be heard, unless the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public.~~ In such exigent circumstances, the Authority may order the summary suspension of the utility's CCN and follow the procedures as set forth in Tenn. Code. Ann. § 4-5-320.
- (5) In the event the Commission revokes or suspends all or a portion of a public wastewater utility's CCN, orders the forfeiture of wastewater utility funds, and/or makes a claim against the public wastewater utility's financial security, the Commission may order all necessary actions to ensure continuous utility service and operation of the wastewater plant consistent with statutory requirements and TPUC rules and orders. The Commission may take, but is not limited to, the following actions:
 - (a) Ordering the divestiture of public wastewater utility assets.
 - (b) Ordering the hiring of a replacement operator.
 - (c) Ordering specific repairs or upgrades to wastewater plant to comply with applicable regulations.
 - (d) Petitioning a court of competent jurisdiction for the appointment of a receiver.
 - (e) Other actions necessary to provide for continuous public wastewater utility operations.

(Rule 1220-4-13-.09, continued)

~~The Authority will not seek to suspend or revoke a public wastewater utility's CCN, to forfeit the wastewater utility funds, or make a claim against the public wastewater utility's financial security for good cause without first affording the public wastewater utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for such action unless:~~

~~(a) the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public; or~~

~~(e) a public wastewater utility is unable to provide safe, adequate, and reliable wastewater service.~~

- (6) An order under paragraph (5) may provide cost recovery mechanisms for costs associated with improvements to the wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:

- (a) A mechanism for expediting any adjustments to the rates of the public wastewater utility.
- (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.
- (c) Incentives to facilitate acquisition or long-term operation of the public wastewater utility.

- (7) A wastewater CCN holder shall file a written notice of completion that the wastewater system is fully constructed, operational, and providing service not less than three (3) years from the date of the written order granting a CCN. If the written notice of completion is not filed within three (3) years, the CCN shall automatically expire and be terminated without the institution of proceedings under Rule 1220-04-13.09 (4).

(a) Not less than thirty (30) days before the expiration of the three (3) year period, a CCN holder may file a written request for an extension of time, not to exceed one year from the original deadline, to file the required notice of completion of the wastewater system. The filing of an extension request does not entitle the CCN holder to a contested case proceeding or constitute grounds for a proceeding under 1220-04-13.09(4); however, the commission may initiate such a proceeding upon such request or its own motion. Subject to the conditions herein, an extension request shall not be the basis for a proceeding under Rule 1220-04-13.09(4).

(b) A request for an extension of time under this section shall include the following:

- 1. Documentation of all phases of the project that have been constructed or completed;
- 2. Documentation reflecting the timeline for completion of any unconstructed or incomplete portions of the system;
- 3. Documentation that the property developer, at the time the CCN was awarded, intends to proceed with the project; and
- 4. Such other documentation as the Commission may request.

(c) In the event that a CCN expires, then the holder shall file a new application pursuant to Rule 1220-04-13.17 to obtain authority to serve the service area previously covered by the expired or terminated CCN.

- (8) Upon a complaint or the TPUC's own motion wherein it is alleged that a wastewater system has not been completed or is not operational and providing service to the designated service area after three (3) years from the date of the CCN Order, as noted in (7) above, there shall a rebuttal presumption that the CCN granted to public wastewater utility is no longer valid or in effect.

(Rule 1220-4-13-.09, continued)

Authority: T.C.A. §§ 4-5-320, 65-2-102, 65-2-106, 65-4-104, and 65-4-201. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.10 TITLE OF PHYSICAL ASSETS AND SALE, TRANSFER, MERGER, TERMINATION, ACQUISITION, OR ABANDONMENT.

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.
- (2) Any person, ~~lessee, trustee, or receiver~~ owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer or merge with another public wastewater utility, or intends to terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers. ~~This procedure shall also be followed to enact any valid third-party beneficiary agreement guaranteeing the continued operation of the wastewater system by a personal representative, surviving partner, receiver, trustee or other fiduciary. The provisions of this rule are intended to prevent service interruptions to the public wastewater utility customers.~~
- (3) ~~The~~ Any P petition filed with the ~~Commission~~ under this part ~~Authority-Commission~~ shall include a description of the proposed transaction and the following:
 - (a) The names, address~~es~~, and telephone numbers of the public wastewater utility ~~and other partners to the transaction.~~
 - (b) The identity and contact information of the person(s) to contact regarding the P petition. ~~with their address, telephone number, and fax number.~~
 - (c) ~~The location of the public wastewater utility's books and records.~~ The proposed effective date of the transaction;
 - (d) ~~The purpose and filing date of the Petition.~~ A list of outstanding citations issued by TDEC and a discussion concerning how the acquiring party will correct any outstanding citations or violations;
 - (e) ~~The proposed effective date of the transaction.~~ A statement detailing the effect of the transaction upon customers; and
 - (f) ~~The name, address, and telephone number of any potential buyer.~~ A copy of the customer notification letter, to be approved by the Commission, which will be mailed by the current provider of wastewater services to its customers no fewer than thirty (30) days prior to the customer transfer. Once approved by the Commission, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, any portion of this Rule 1220-04-13-.10(3)(f) may be waived or notice may be given using alternate means.
 - (g) ~~A statement as to whether the proposed action impacts a water system in addition to the wastewater system, together with sufficient identifying information for any affected water system.~~
 - (h) ~~A statement as to the reason(s) for the sale, transfer, merger, termination, acquisition, or abandonment of the wastewater system.~~

(Rule 1220-4-13-.10, continued)

- ~~(i) — A statement from TDEC regarding the status of the wastewater system including any outstanding citations or violations.~~
- ~~(j) — A statement detailing the effect of the transaction upon customers.~~
- ~~(k) — A copy of the customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no fewer than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope.~~

Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-4-112, and 65-4-113. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

~~1220-4-13-.11 — RECEIVERSHIPS OR OTHER TRANSFERS OF OPERATION OR OWNERSHIP.~~

- ~~(1) — Where the actions of a public wastewater utility demonstrate an unwillingness or inability to effectively operate and manage the wastewater system(s) as set forth in Rule 1220-4-13-.09 above, the funds of that public wastewater utility, including escrow accounts and any other financial security posted under this rule, shall be available to the receiver, after notice and hearing, in the event that the public wastewater utility goes into receivership or is transferred, for any reason, to another owner or operator. In addition, after notice and hearing, the Authority may take the following actions:~~
 - ~~(a) — Provide for the acquisition of the public wastewater utility by another public wastewater utility, a local government, or by another entity that has demonstrated the ability to:~~
 - ~~1. — Operate the wastewater system(s) in compliance with law and the Authority's orders; and,~~
 - ~~2. — Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.~~
 - ~~(b) — Petition the appropriate court for the appointment of a receiver that has demonstrated the ability to:~~
 - ~~1. — Operate the wastewater system(s) in compliance with law and the Authority's orders; and,~~
 - ~~2. — Remedy any deficiencies in the operation and management of the wastewater system(s) as determined by the Authority.~~
- ~~(2) — Before taking such action as provided in subparagraphs (1)(a) or (b), the Authority shall give notice of the hearing to the following:~~
 - ~~(a) — The subject public wastewater utility.~~
 - ~~(b) — Other public wastewater utilities in Tennessee.~~
 - ~~(c) — All agencies and political subdivisions, including all local governments, located in or in reasonable proximity to the public wastewater utility's service territory for the subject wastewater system.~~
 - ~~(d) — Holder of the financial security.~~
- ~~(3) — An order under subparagraph (1)(a) shall provide:~~

(Rule 1220-4-13-.11, continued)

- ~~(a) — that the entity acquiring the subject wastewater system(s) shall pay the fair market value at the time of acquisition; and~~
- ~~(b) — the specific accounting methods and appraisal procedures and terms by which the fair market value of the subject wastewater system(s) is to be determined.~~
- ~~(4) — An order under paragraph (1) may provide cost recovery mechanisms for costs associated with improvements to the acquired wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:~~
 - ~~(a) — A mechanism for expediting any adjustments to the rates of the entity acquiring the subject public wastewater utility.~~
 - ~~(b) — A plan for deferring or accelerating certain improvement costs and recovering costs in phases.~~
 - ~~(c) — Other incentives to the entity acquiring the subject public wastewater utility.~~
- ~~(5) — If a receiver is appointed by the court as provided in subparagraph (1)(b), the Authority authorizes the receiver to:~~
 - ~~(a) — Have the same rights and duties under Tennessee law as a public wastewater utility.~~
 - ~~(b) — Continue to operate the subject wastewater system(s) until the court finds that the subject public wastewater utility~~
 - ~~1. — has the ability to comply and shall comply with Tennessee law and the Authority's orders relating to the operation and management of the subject wastewater system(s); and~~
 - ~~2. — has the ability to operate and manage the subject wastewater system(s) without any of the deficiencies determined by the Authority.~~
- ~~(6) — Upon appointment of a receiver or transfer to another owner or operator, the receiver or new owner or operator shall immediately notify customers affected by the changes and inform them of the nature of the receivership or transfer.~~
- ~~(7) — If a receiver is appointed by the court:~~
 - ~~(a) — The receiver shall, within thirty (30) days of appointment, file a proposed revision to the tariff of the subject public wastewater utility amending the title page to reflect the name, address and telephone number of the receiver;~~
 - ~~(b) — The receiver appointed to operate, maintain, and repair the wastewater system(s) shall be or employ a person that holds a valid, current, and applicable license issued by TDEC's Water and Wastewater Operator's Certification Board;~~
 - ~~(c) — The receiver shall record all transactions in a general ledger and supply a copy of the ledger and bank statements to the Authority; and~~
 - ~~(d) — The duties of the receiver may also include responsibility for billing and collection, customer service, and administration of the wastewater system(s).~~
- ~~(8) — At the conclusion of services rendered by the receiver, the Authority shall approve a final accounting of all monies and disbursement of surplus funds.~~

(Rule 1220-4-13-.11, continued)

Authority: T.C.A. §§ 65-2-102, 65-4-104, 65-2-106, and 65-4-114. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.12 CUSTOMER RELATIONS.

- (1) Each public wastewater utility shall comply with applicable provisions of Rule 1220-4-3-.14 including, but not limited to, the following:
 - (a) ~~Each public wastewater utility shall maintain a customer service telephone number at which it may be contacted directly by customers, applicants, or the Commission during its regular business hours. Each public wastewater utility shall maintain a business location and a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.~~
 - (b) The public wastewater utility shall make a full and prompt investigation and maintain an accurate record of all written customer complaints that are received. ~~by the public wastewater utility.~~ If the written complaint relates to a service problem, the record shall include appropriate identification of the customer or service issue, the time, the date, and the action taken to alleviate the trouble or satisfy the written complaint. This record shall be available to the Authority upon request.
 - (c) Each public wastewater utility, within ten (10) business days after being notified of a customer complaint filed with the Consumer Services Division of the Authority, shall file a written response to that complaint with the Authority's Consumer Services Division.
 - (d) Each public wastewater utility shall provide a means by which it may be contacted at any time in the event of a service failure or emergency or by which a customer or applicant may leave a message reporting such failure or emergency.
 - (e) Insofar as practicable, every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for more than twenty-four (24) hours, but such notice shall not be required in case of interruption due to situations beyond the control of or not reasonably foreseeable by the public wastewater utility.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.13 CUSTOMER BILLING.

- (1) The Authority shall approve the rates that are included in the tariff submitted by the public wastewater utility before customers are charged for wastewater services. All bills for wastewater service shall state how the charge is calculated. The bill/statement shall contain the name, address, and telephone number of the public wastewater utility's main office. A bill based upon water usage shall include applicable language as found in Rule 1220-04-03-.16.
- (2) Bills shall be rendered at regular intervals as described in the public wastewater utility's approved tariff. Public wastewater utilities shall not send a customer two successive estimated bills, except due to extenuating circumstances.
- (3) No public wastewater utility shall charge, demand, collect or receive any greater, less, or different compensation for provision of wastewater service or for any service connected therewith, than those rates and charges approved by the Authority and in effect at the time of service. Each customer within a given classification (i.e., residential, commercial, or industrial) shall be charged the same approved rate, including tap fees, as every other customer within that classification, unless reasonable

(Rule 1220-4-13-.13, continued)

justification is shown for the use of a different rate (e.g., high strength effluent), and a contract or tariff setting the different rate has been filed and approved by the Authority.

- (4) Where a public wastewater utility finds that through no fault of the customer the customer's wastewater service is interrupted and remains out of service in excess of twenty four (24) hours after the customer has notified the public wastewater utility of the interruption, the public wastewater utility shall refund to that customer the pro-rata portion of the month's charges for the period of days during which the service was not provided. The public wastewater utility may refund the amount owed as a credit toward the customer's subsequent bill for service. This paragraph applies only to public wastewater utilities having service tariffs that provide for charges on a non-metered rate.
- (5) Bills which are incorrect due to meter or billing errors shall be adjusted as found in Rule 1220-4-3-.18.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.14 DENYING OR DISCONTINUING SERVICE.

- (1) No public wastewater utility shall ~~deny or~~ discontinue service to any customer without first providing adequate notice to the customer; provided, however, where an emergency exists, ~~or where~~ fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider. ~~When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority. A customer who has had service denied or discontinued has the right to a contested case hearing.~~
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these rules unless a customer agrees in writing to a "Subscription Service Contract" that would for the reasons listed in this part allow either:
 - (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the ~~Authority, Commission~~ and this rule, or
 - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service ~~shall be~~ is discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the ~~Authority-Commission~~ prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.
- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:
 - (a) Non-payment for service by a previous occupant of the premises to be served.
 - (b) Failure to pay for merchandise or special services purchased from the public wastewater utility.
 - (c) Failure to pay the bill of another customer as guarantor thereof.
 - (d) Failure to pay for a different type or class of public wastewater utility service.

(Rule 1220-4-13-.14, continued)

- (4) The public wastewater utility's tariff on file with the ~~Authority-Commission~~ shall define all terms and conditions ~~as they- that~~ relate to denying or discontinuing wastewater service.
- (5) When a prospective customer is refused service, or an existing customer has service disconnected under the specific provisions included in the public wastewater utility's tariff approved by the Commission, the public wastewater utility shall notify the customer or prospective customer promptly of the reason for refusal. The notification shall include an explanation of the Commission's dispute resolution process found in Rule 1220-01-03. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Commission. If service is disconnected using a water shut-off valve, the utility is not required to notify the county health department.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.15 RECONNECTION.

- (1) The public wastewater utility's tariff on file with the Authority shall define actions of the public wastewater utility to promptly restore service to the customer in all cases of discontinuance of service where the cause for discontinuance has been corrected, and there has been compliance with all rules of the public wastewater utility on file with the Authority.

Authority: T.C.A. §§ 65-2-102 and 65-4-104. **Administrative History:** Public necessity rule filed December 29, 2005; effective through June 12, 2006. Original rule filed March 29, 2006; effective June 12, 2006.

1220-04-13-.16 TRANSACTIONS WITH AFFILIATES IS CREATED.

- (1) This rule shall apply to all affiliate transactions between a public wastewater utility and any affiliate thereof. The primary purpose of this rule is to protect the ratepayers of a public wastewater utility from unauthorized or unwarranted cross-subsidies.
- (2) For purposes of this rule, the following definitions shall apply:
 - (a) Affiliate – any person who, directly or indirectly, is in control of, is controlled by, or is under common control with a public wastewater utility.
 - (b) Affiliate Transaction – any sale, lease trade, purchase, or transfer of goods, or services between a public wastewater utility and any affiliate thereof. The term also means any sale, lease, trade, purchase, or transfer of assets, goods, or services between the accounts for the regulated and nonregulated activities of a single public wastewater utility.

(Rule 1220-4-13-.16 continued)

- (c) Asset – any tangible or intangible property, or other right, entitlement, item, or thing of value that is recorded or should be recorded in the public wastewater utility's Balance Sheet Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).
 - (d) Control – the ownership of twenty percent (20%) or more of the shares of stock entitled to vote for the election of directors in the case of a corporation, or twenty percent (20%) or more of the equity interests in the case of any other type of entity, or status as a director or officer of a corporation or limited liability company, or status as a partner of a partnership, or status as an owner of a sole proprietorship, or any other arrangement whereby a person has the power to choose, direct, or manage the board of directors or equivalent governing body, officers, managers, employees, proxies, or agents of another person.
 - (e) Cross-subsidy – the unauthorized over-allocation of cost to a public wastewater utility resulting in an under-allocation of cost to an affiliate.
 - (f) Direct cost – with regard to a particular good or service, the cost solely attributable, on a cost-causative basis, to the production or provision of such individual good or service, where the attribution does not require the use of allocations to separate the common costs incurred in the production or provision of other goods or services.
 - (g) Fair market Value – the sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entry in an open market.
 - (h) Fully Allocated Cost – with regard to a particular good or service, the sum of the direct cost and indirect cost of such individual good or service.
 - (i) Good – any tangible or intangible property, item, or other thing of value that is recorded or should be recorded in the public wastewater utility's Income Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).
 - (j) Indirect Cost – with regard to a particular good or service, the cost, other than direct cost, properly attributable to the production or provision of such individual good or service; including the allocation of all common and overhead costs.
 - (k) Market Rate – the lowest price that is available for comparable goods or services from nonaffiliated entities in an open market.
 - (l) Net Book Value – the original cost of an asset less accumulated depreciation.
 - (m) Person – a corporation, limited liability company, partnership, sole proprietor, enterprise, association, trust, cooperative, concern, individual, or any other entity.
 - (n) Service – any labor-related activity including but not confined to, auditing, accounting, consulting, engineering, managing, operating, financing, and legal, that is recorded or should be recorded in the public wastewater utility's Balance Sheet and Income Accounts prescribed by the Uniform System of Accounts under 1220-04-01.11(1)(h).
- (3) A public wastewater utility shall record all affiliate transactions in its accounts as prescribed by the Uniform System of Accounts required under Rule 1220-04-01-.11(1)(h).
- (4) When a public wastewater utility is a party to an affiliate transaction, as defined in this rule, the following methods must be used to record the transaction in the public wastewater utility's accounts:

(Rule 1220-4-13-.16 continued)

- (a) When an affiliated sells, leases, trades, or transfers an asset to a public wastewater utility, such transactions shall be recorded in the public wastewater utility's accounts at the lower of the affiliate's net book value or the fair market value of the asset.
 - (b) When a public wastewater utility sells, leases, trades, or transfers an asset to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Commission. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the higher of the public wastewater utility's net book value or the fair market value of the asset.
 - (c) When an affiliate sells, leases, trades, or transfers goods or services to a public wastewater utility, such transaction shall be recorded in the public wastewater utility's accounts at the affiliate's fully allocated cost or the market rate, whichever is lower.
 - (d) When a public wastewater utility sells, leases, trades, or transfers goods or services to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Commission. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the public wastewater utility's fully allocated cost or the market rate, whichever is higher.
- (5) A public wastewater utility shall record the following minimum information regarding each affiliate transaction:
- (a) The name of the affiliate involved in the transaction.
 - (b) A description of the transaction, including:
 - 1. The date of execution;
 - 2. The business purpose underlying the transaction;
 - 3. The starting date and termination date if the transaction is to be performed over a period of time; and
 - 4. Identification of the assets), good(s), or service(s) related to the transaction.
 - (c) If the transaction involves an asset, the net book value and the fair market value of the asset. Fair market value may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.
 - (d) If the transaction involves a good or service, the fully allocated cost incurred to produce or provision the good or service and the market rate of the good or service. The market rate may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.
- (6) A public wastewater utility shall preserve and maintain all records and information related to affiliate transactions required under subsection (4) of this rule for a minimum period of three (3) years as specified in Rule 1220-04-13.03.
- (7) In the Annual Report required to be filed with the Commission pursuant to Rule 1220-04-13.04(1)(c), the public wastewater utility shall state for the reporting period whether or not it was a party to any affiliate transactions, as defined in this rule. If the public wastewater utility engaged in such affiliate transactions during the reporting period, it shall in its Annual Report:
- (a) Identify each affiliate by name and business address:

(Rule 1220-4-13-.16 continued)

- (b) Describe the affiliate relationship between each affiliate and the public wastewater utility; and
- (c) For each affiliate, report the total dollar amount of affiliate transactions recorded in the public wastewater utility's accounts as follows:
 - 1. The total dollar amount of assets, goods, and services sold, leased, traded, or transferred to each affiliate by the public wastewater utility during the reporting period; and
 - 2. The total dollar amount of assets, goods, and services sold, leased, traded, or transferred to the public wastewater utility by each affiliate during the reporting period.
- (8) A public wastewater utility and each affiliate thereof shall provide the Commission, its staff, and its agents with full access to all relevant books and records of such entities in connection with the Commission's regulatory responsibilities to examine any costs sought to be recovered by the public wastewater utility in rate proceedings or to determine a public wastewater utility's compliance with this rule.
- (9) For good cause the Commission may waive any of the requirements or provisions of this rule on the written application of any interested party or on its own motion. The Commission shall, after hearing, state the basis of any such waiver and may impose conditions or limitations on any such waiver consistent with the purpose of this rule.

1220-04-13-.17 MINIMUM REQUIREMENTS FOR NEW AMENDMENTS TO CERTIFICATE OF CONVENIENCE AND NECESSITY IS CREATED.

- (1) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") in accordance with Tenn. Code Ann. § 65-4-201, *et seq.*, shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann § 65-4-201, and these rules.
- (2) Applications for a new or expanded CCN shall include the following information:
 - (a) General information about the applicant and the proposed system:
 - 1. The legal corporate name, physical address and mailing address of the applicant.
 - 2. An organizational chart showing each officer and any other key personnel by name and title.
 - 3. A list of owners, members and officers of the wastewater utility. Provide the address, telephone number, and percentage ownership of each individual. If different, list the names of owners, members and officers located in Tennessee.
 - 4. If the applicant has affiliated companies, provide a corporate organization chart showing all affiliate relationships. Describe in detail any transactions, direct or indirect, that occur or are expected to occur between affiliated entities.
 - 5. A copy of the applicant's articles of incorporation, partnership agreement, and/or by-laws.

(Rule 1220-4-13.17 continued)

6. A copy of the applicant's license to engage in business within the State of Tennessee registered with the Secretary of State, inclusive of any assumed names of the company.
 7. A complete description of the geographic territory to be served by the applicant, including the name and location of development (subdivision) and the number of acres. Include the name of the subdivision or development and the name of the wastewater system as stated in the TDEC permit. In addition, provide a legible map of the area with the proposed service territory clearly and accurately plotted. The map should include:
 - (i) The location of the wastewater system, i.e., treatment plant, pre-application treatment facilities, collection infrastructure, building(s) for equipment, drip fields, disposal fields and/or wetland cells. Include the physical address of the wastewater system and the associated latitude and longitude coordinates.
 - (ii) The names of surrounding streets and roads.
 - (iii) A map to show access roads and names of access roads (if available) and other utilities necessary to provide wastewater service.
 - (iv) All residences and habitable structures served by the wastewater system.
 - (v) Any portion of the areas that will not be served when the wastewater system becomes operational. If the wastewater system will be operational in phases, show the phases on the map.
 8. A description of the type of proposed wastewater system to be constructed including the design capacity and the maximum potential number of customers the public wastewater utility will service in the proposed service area. Indicate the technology used for the wastewater system (e.g., membrane, sand filter, wetland cell and/or lagoon). The type of system and design capacity should match the type and design capacity of the associated TDEC permit and permit application.
 9. The estimated dates for the commencement and completion of the construction of the system and the estimated date the wastewater system will be placed into service. If the wastewater system will be constructed or placed into service in phases, provide the anticipated dates for each phase.
 10. If portions of the wastewater system will be built in phases, state how many phases and the number of houses or units to be connected in each phase.
 11. Identify the builder or developer that has requested the utility to provide wastewater service. Include name of company, name of primary contact, title, mailing address, email address, and phone number.
 12. Respond completely to all information requests by Commission staff.
- (b) Evidence that the requisite property rights and public need exists for wastewater services in the proposed service area:
1. A letter(s) from local government(s) and public wastewater utilities in or near the proposed service area stating that they do not provide wastewater service to the proposed service area and that they are unable or unwilling to provide wastewater service to the proposed service area within the ensuing twelve (12) months.

(Rule 1220-4-13-.17, continued)

2. As applicable, a copy of any application for a franchise and the franchise agreement issued by a city or county.

3. All contracts or agreements between the builder(s) of the treatment and/or collection system, the utility, and the property and/or subdivision developer that show entitlement or ownership to the land, system specifications, costs for the wastewater system, timeline for the system to be built, and rights to the system once it is completed. Documents presented by the applicant should be signed by all parties and bear marks or stamps, such as those provided by notaries or public officials, as necessary.

(c) Evidence that the applicant possesses sufficient managerial ability:

1. Biographies of officers and/or key wastewater utility staff that demonstrate managerial ability. Include a list of certifications or professional licenses held by officers or wastewater utility staff with documentation.

2. Identify all states where the applicant is certified as a wastewater provider and/or the status of certification in states where an application is pending.

3. Copies of all contracts related to any pending merger or acquisition of the applicant, corporate parent or affiliate.

4. Proof that the party contracted to install the proposed system has a valid and current contractor's license by the applicable licensing board of the State of Tennessee.

(d) Evidence that the applicant possesses sufficient technical ability:

1. A copy of the application for the State Operating Permit ("SOP") filed with TDEC. Include the letter from TDEC indicating the receipt of a complete application. Include any engineering and/or design reports submitted to TDEC, such as the Design Development Report and the Detailed Soils Investigation Report. If an operating permit has been issued, provide a copy of the permit. The utility shall file a copy of the TDEC permit in the docket file prior to providing service.

2. A copy of the State Operator Certificate for the wastewater system operator of record. If the operator is a contract employee of the utility, provide a copy of the employment contract.

3. The name, address, and telephone number of the technical contact person responsible for and knowledgeable about the applicant's proposed operations in Tennessee.

4. A list of any complaint(s), notices of violation or administrative action filed with or issued by a regulatory agency. Identify the nature of the complaint notices of violation or administrative action, which agency is involved, and how the issue was or is being resolved.

5. A certification from a design engineer that the wastewater system was constructed in accordance with the TDEC-approved construction plans and specifications. The certification shall be filed in the docket file prior to providing service.

(e) Evidence that the applicant possesses sufficient financial capability:

1. Financial statements for the applicant covering the most recent year ended. Include a balance sheet, income statement, and statement of cash flows.

(Rule 1220-4-13-.17, continued)

2. Pro forma income statements for the wastewater utility for the first three (3) years of operations or for an expanded amended CCN, the first three years after the latest year-end financials. In the calculations of utility revenues show the number of consumers and the rates used in the calculations. Show operation and maintenance expenses by account number and provide the basis and/or assumptions used to arrive at these amounts.
3. A chart of accounts for the wastewater utility, following the NARUC Uniform System of Accounts (USA) for wastewater utilities.
4. A list of all plant-in-service account numbers with account names and estimated account balances as of the state of operations.
5. The depreciation rates the applicant intends to use for each plant account that will be on the wastewater utility's books. Include the estimated useful life of each account. If no depreciation study has been performed, explain the basis for these rates.
6. The total estimated detailed cost of construction of the wastewater system to be constructed for the proposed service area. If the wastewater system will be constructed in phases, provide detailed construction cost estimates for each phase. Indicate whether the developer or the applicant will pay for the construction of the system.
7. Indicate the identity of the owner(s) of the wastewater system once construction is complete. If a party other than the utility pays the cost of construction and transfers ownership of the wastewater system to the applicant, provide a detailed breakdown of the estimated amount of contributed capital that will be recorded on the applicant's financial books.
8. A tariff showing products, services, terms, conditions and proposed rates to be charged for wastewater service. A tariff should include all pass-through fees, including but not limited to, customer deposits, disconnect or reconnect fees, late fees, tap fees, escrow fees, bond fees, franchise fees and taxes.
9. Provide estimates of costs and customers added by month for the first five (5) years based upon the construction build-out schedule for developers in the service area of the proposed wastewater system. For each year, by month, provided an estimated number of customers by customer class anticipated to be served by the wastewater system. Include the utility's basis and assumptions used for this projection. Provide this information in a spreadsheet in Microsoft Excel format with all assumptions clearly documented.
10. Documentation describing bonding requirements imposed by municipal governments for the proposed wastewater system.
11. Demonstrate that the applicant has acquired a performance bond from the developer or builder of the wastewater system made payable to the Utility to ensure construction of the wastewater system. The performance bond should be for an amount equal to or greater than the cost of the system as provided in contracts between builder, developer and/or utility.
12. List all funding sources available to the applicant for the wastewater system proposed by the applicant.
13. Provide information demonstrating compliance with the financial security requirement of Rule 1220-04-13.07.

(Rule 1220-4-13-.17, continued)

- (f) Sworn pre-filed written testimony by the applicant's owner, member, officer or other principal having knowledge of the applicant's operations and the proposed wastewater system. The testimony should, at a minimum, include the following information:
1. Evidence that a public need exists for wastewater services in the proposed service area.
 2. A description of the wastewater system and the services to be provided.
 3. A statement that the applicant is aware of and will abide by all applicable Tennessee statutes and TPUC Rules.
 4. A discussion and demonstration of technical, managerial, and financial capability of the applicant to provide the proposed wastewater service.
 5. A statement that the applicant is aware of the requirement of Rule 1220-04-13.09(7) concerning the completion of the construction of the wastewater system within three years of TPUC's written approval of the CCN.
 6. A signed affidavit stating that all information submitted concerning the wastewater CCN application is true and correct to the best of the witness' knowledge and belief.