

16-00113

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Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)**For Department of State Use Only**Sequence Number: 04-13-18  
Rule ID(s): 6742  
File Date: 4/11/18  
Effective Date: 7/10/18

# 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<sup>th</sup> Floor, Nashville, Tennessee  
**Zip:** 37243  
**Phone:** (615) 770-6856  
**Email:** [kelly.grams@tn.gov](mailto:kelly.grams@tn.gov)**RECEIVED**

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**ATTORNEY GENERAL'S  
OFFICE****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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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
1220-04-03	Water Regulations
Rule Number	Rule Title
1220-04-03-.06	Disposition Of Water

Chapter Number	Chapter Title
Rule Number	Rule Title

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

Rule 1220-04-03-.06 Disposition of Water is amended by deleting the second sentence of subparagraph (3), which currently provides as follows:

- (3) Separate premises shall be separately metered and billed. Combined billing or submetering shall not be permitted.

After amendment to the rule, the subparagraph reads as follows:

- (3) Separate premises shall be separately metered and billed.

Authority: T.C.A. § 65-2-102.

\* 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				
Commissioner Keith Jordan	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 January 16, 2018 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: 2/16/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 4/11/2017

Date: 3/6/18

Signature: Kelly Cashman Grams

Name of Officer: Kelly Cashman Grams

Title of Officer: General Counsel



Subscribed and sworn to before me on: 3/8/2018

Notary Public Signature: Carlos C. Black

My commission expires on: 3/3/2020

Agency/Board/Commission: \_\_\_\_\_

Rule Chapter Number(s): 1220-04-03

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  
Herbert H. Slatery III  
Attorney General and Reporter  
4/2/2018  
Date

Department of State Use Only

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

4/11/18

Effective on: \_\_\_\_\_

7/10/18

*Tre Hargett*

Tre Hargett  
Secretary of State

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**Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

See attached Memorandum.

## **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 change eliminates the portion of the rule that prohibits investor-owned public utilities subject to the Commission's jurisdiction from allowing combined billing or submetering of water service. The purpose of this rulemaking is to clarify the rule and eliminate confusion that may be created by outdated language in the existing rule. As such, the proposed rule change does not impose additional regulation on any party and not expected impose costs on any small business.

### **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 rule is not anticipated to impact 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;

Submetering is the practice of a landlord, property management firm, condominium association, or a third party, purchasing water from a utility and then billing tenants for individual measured utility usage. Combined billing is the same practice, but without individual metering. The rule, as it currently exists, was adopted in by the agency in 1974, and since its inception, the agency has not instituted a single proceeding to enforce the rule's prohibition on submetering. The proposed change simply deletes the outdated portion of the existing rule provision that prohibits combined billing or submetering. By removing the phrase related to submetering, the agency's rules are consistent with Tennessee law, in that submetering entities are not public utilities, and clears up any ambiguity surrounding the Commission's regulatory treatment of such entities.

Removal of the water submetering rule also brings the Commission's rules into agreement with the policies of other governmental entities with water regulation authority; specifically, the Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC). In 2003, the EPA revised its policy with regard to the "Applicability of the Safe Drinking Water Act to Submetered Properties," and determined that landowners that install submetering to accurately track water usage by tenants on the landowner's property are not deemed to be public water systems, and therefore, not subject to the Safe Drinking Water Act solely as a result of taking action to submeter and bill. Thereafter, TDEC examined the EPA's policy revision and issued the Tennessee Submetering Policy, which determined that public water systems that meet certain characteristics are excluded from TDEC's drinking water rule 1200-05-01-.03. TDEC cited examples of systems that might qualify for exemption include apartment complexes, condominiums, mobile home parks, and shopping malls.

- (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;

Applicability of the Safe Drinking Water Act to Submetered Properties, 68 Fed. Reg. 74233 (Dec. 16, 2003). TDEC Rule 1200-05-01-.03 and Submetering Policy Memorandum dated January 5, 2007 (see attached). Tenn. Code Ann. 65-4-101(6)(A), which defines "public utility" and, see *Nashville Water Co. v. Dunlap*, 138 S.W.2d 424 (Tenn. 1940), which discusses the characteristics of a public utility.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The rule impacts the Commission's seven (7) investor-owned water public utilities and their customers. Such entities include the Tennessee-American Water Company; Tennessee Water Service, Inc.; Aqua Utilities Company, Inc.; Condo Villas of Gatlinburg Association, Inc.; Newport Resort Water System; Old Hickory Water, LLC; and Shiloh Falls Utilities, Inc. No one, including any of these utilities, filed any comment or made any comment during the hearing either for or against the change to 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;

None

- (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 changes anticipated in state or local government revenues as a result of the amendment of this rule.



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

Kelly Cashman-Grams, General Counsel and Aaron Conklin, Staff Attorney

- (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 and Aaron Conklin, Staff Attorney

- (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

Aaron Conklin, Staff Attorney  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
615-770-6896  
aaron.conklin@tn.gov

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

See attached.

(Rule 1220-4-3-.05, continued)

- (i) The lists of the items which the utility furnishes, owns, and maintains on the customer's premises, such as water services, meters, and shut-off valves.
  - (ii) General statement of the utility's policy in making adjustments for wastage of water when such wastage occurs without the knowledge of the customer.
  - (iii) A statement indicating the minimum number of days allowed for payment of a customer's bill before service will be discontinued for non-payment.
  - (iv) The utility's extension plan as required in Rule 603.7.
- (b) A copy of each special contract for service.
  - (c) A copy of each type of customer bill form.
  - (d) The name, title, address, and telephone number of the person who should be contacted in connection with:
    - 1. general management duties;
    - 2. customer relations (complaints);
    - 3. engineering operations;
    - 4. meter tests and repairs; and
    - 5. emergencies during non-office hours.
  - (e) Conform with all applicable rules and regulations contained in Section 1 (General Public Utilities Rules Applicable to all Utilities).

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974. Editorial changes made by the Secretary of State pursuant to Public Chapter 305 of 1995; "Commission" and references to the "Commission" were changed to "Authority" and references to the "Authority"; effective March 28, 2003.

**1220-4-3-.06 DISPOSITION OF WATER.**

- (1) All water sold by a utility shall be on a basis of meter measurement or as otherwise provided in its rate schedule.
- (2) Wherever practicable, consumption of water within the utility itself, or by administrative units associated with it, shall be metered.
- (3) Separate premises shall be separately metered and billed. ~~Combined billing or submetering shall not be permitted.~~

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974.

**1220-4-3-.07 METER READING SHEETS OR CARDS.**

- (1) The meter reading sheets or cards shall show:
  - (a) customer's name, address and service classification;
  - (b) identifying number and/or description of the meter(s);

**MEMORANDUM**

From: Kelly Cashman Grams  
General Counsel

RE: Public Hearing Comments  
Rulemaking 1220-04-03-.06 Water Regulations

Date: March 6, 2018

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The Tennessee Public Utility Commission filed its Notice of Rulemaking Hearing with the Secretary of State on February 23, 2017, and held a rulemaking hearing on the proposed rule amendment on April 11, 2017. No person filed written comments in the docket file, nor requested to be heard or presented comments during the rulemaking hearing.