

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:

JOINT APPLICATION OF AQUA
UTILITIES COMPANY, LLC, AND
LIMESTONE WATER UTILITY
OPERATING COMPANY FOR
AUTHORITY TO SELL OR TRANSFER
TITLE TO THE ASSETS, PROPERTY
AND REAL ESTATE OF A PUBLIC
UTILITY AND FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY

DOCKET NO. 19-00062

CONSUMER ADVOCATE'S RESPONSE TO JOINT APPLICANTS', AQUA
UTILITIES COMPANY, LLC AND LIMESTONE UTILITY OPERATING
COMPANY'S NOTICE OF OBJECTION TO PRE-FILED TESTIMONY
AND MOTION IN LIMINE

The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (Consumer Advocate), respectfully objects and responds to the June 30, 2020¹ "Objection to Pre-Filed Testimony and Motion in Limine" of the Joint Applicants, Aqua Utilities Company, LLC, and Limestone Water Utility Operating Company (the "Motion").

ARGUMENT

The Motion should be denied for a host of reasons. The Motion is contrary to the Hearing Officer's recent *Order on May 29, 2020 Status Conference*²; the Motion ignores the plain language of Tenn. Code Ann. § 65-4-113; the Motion seeks to exclude evidence which has probative value as would be accepted by reasonably prudent persons as set out Tenn. Code Ann. § 65-2-109(1);

¹ The Joint Applicants filed their Motion at 5:07pm on June 29, 2020. The Commission's Docket Room identifies the filing date as June 30, 2020.

² *Order on May 29, 2020 Status Conference*, TPUC Docket No. 19-00062 (June 1, 2020).

and the Motion seeks to limit information relevant to the consideration by the Tennessee Public Utility Commission (TPUC or Commission) regarding a sale or transfer of a water utility.

A. The Motion Conflicts with the Hearing Officer's Recent *Order on May 29, 2020 Status Conference*.

The Motion is the Joint Applicants' second official attempt to silence the Consumer Advocate. In *Joint Applicant's Issues List*³, the Joint Applicants sought to limit the issues to be presented to the Commission to whether Limestone "possesses sufficient managerial, financial and technical capability to provide the water and wastewater service described in the application other documents filed in this docket."⁴ However, the Consumer Advocate argued that the determination of whether the sale or transfer further the public interest necessarily includes issues such as "the acquisition premium, purchase price, potential rate impacts; regulatory methodology, rate base, and operating expenses, etc."⁵ The Consumer Advocate requests that the Hearing Officer uphold its previous decision that "the primary issues for consideration [in this docket] are whether Limestone has the technical, managerial, and financial ability to provide the utility services and whether the transaction is in the public interest and that the Commission is within its authority provided under the statute to consider other issues, as it deems appropriate."⁶ As the Hearing Officer already explained, the legislature provided guidance to the Commission on the evaluation of the transfer of control of utilities under Tenn. Code Ann. § 65-4-113 which provides:

(b) Upon petition for approval of the transfer of authority to provide utility services, the commission shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The commission shall

³ Applicants', *Aqua Utilities Company, LLC and Limestone Water Utility Operating Company's List of Issue for Determination*, TPUC Docket No. 19-00062 (May 19, 2020).

⁴ *Id.* at p. 1.

⁵ *Order on May 29, 2020 Status Conference* at p. 2.

⁶ *Id.* at p. 3 (emphasis added).

approve the transfer after consideration of all relevant factors and upon finding that such transfer furtheres the public interest.⁷

It appears that since the Joint Applicants were unable to limit this Docket to its three identified issues, they are now seeking the extraordinary remedy of requesting that the Hearing Officer strike 262 lines of the 419 lines (or approximately 63%) of the Consumer Advocate's Pre-Filed Testimony.⁸ The Motion, however, is contrary to the Hearing Officer's May 29, 2020, Order. Indeed, the testimony targeted by the Joint Applicants contains information that is relevant and will aid in the Commission's deliberations on whether the transfer is furtheres the public interest, and as such, the Motion should not be granted.

B. The Motion Conflicts with the Plain Language of Tenn. Code Ann. § 65-4-113.

The Consumer Advocate requests that the Motion be denied as it conflicts with the plain language of Tenn. Code Ann. § 65-4-113. The specific language of "sufficient managerial, financial, and technical capabilities" can be found in TPUC Rule 1220-04-13-.17(1), which addresses minimum filing requirements for requesting new and amendments to certificates of convenience and necessity (CCNs).⁹ However, Tenn. Code Ann. § 65-4-113 is more broadly written and it provides that

... the commission shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The commission shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furtheres the public interest.¹⁰

⁷ Tenn. Code Ann. § 65-4-113(b) (emphasis added).

⁸ The Joint Applicants seek to strike the Consumer Advocate's testimony on such topics as an Acquisition Premium; Gain on Sale; [REDACTED]; reasonableness of purchase price; impact on customer rates; the exclusion of regulatory and transaction costs; and a proposal for a rate cap. These issues will be discussed in more detail in Section D. of this Response.

⁹ *Tenn. Comp. R. & Regs Rule 1220-04-13-.17(1)* (December 2018).

¹⁰ Tenn. Code Ann. § 65-4-113(b) (emphasis added).

The Docket at hand is not simply a transfer of a CCN but also involves a sale/acquisition of a Tennessee utility. The complexity involving the evaluation of a sale/acquisition is illustrated by the Commission's recent rulemaking on acquisitions in TPUC Docket No. 20-00025.¹¹ While this rulemaking has not been finalized, the proposed rules provide a window into the factors considered by Commission for a sale/acquisition docket. The testimony targeted by the Joint Applicants contains relevant information that will aid in the Commission's deliberations on whether the sale/acquisition is a benefit to the consuming public and whether the sale/acquisition is in the public interest, and as such, the Motion should be denied.

C. The Motion Seeks to Exclude Evidence That Has Probative Value That Would Be Accepted by Reasonably Prudent Persons as set out Tenn. Code Ann. § 65-2-109(1).

The Motion seeks to exclude the admission of approximately 63% of the Consumer Advocate's Pre-Filed Testimony, which directly addresses the effects of a sale/acquisition on the consuming public and whether the transaction furthers the public interest.¹² "As an administrative agency, the [Commission] is not bound by the rules of evidence applicable in a court and conducts contested case hearings according to its own rules and the Tennessee Uniform Administrative Procedures Act."¹³ More specifically, the Commission is guided by Tenn. Code Ann. § 65-2-109(1), which states:

The commission shall not be bound by the rules of evidence applicable in a court, but it may admit and give probative effect to any evidence which possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs; provided, that the commission shall give effect to the rules of privilege recognized by law; and provided further, that the commission may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.¹⁴

¹¹ *Red Line Rule 1220-04-13, Rulemaking Proceeding to Promulgate Rules for the Evaluation of Utility Acquisitions*, Rule 1220-04-12.01(2), TPUC Docket No. 20-00025 (June 2, 2020).

¹² The Joint Applicants seek to strike the Consumer Advocate's testimony on such topics as an Acquisition Premium; Gain on Sale; [REDACTED]; reasonableness of purchase price; impact on customer rates; the exclusion of regulatory and transaction costs; and a proposal for a rate cap. These issues will be discussed in more detail in Section D. of this Response.

¹³ *Order Denying Request to Strike Legislator's Comments*, p. 3, TPUC Docket No. 12-00082 (November 29, 2012).

¹⁴ Tenn. Code Ann. § 65-2-109(1) (emphasis added).

Further, “information that is relevant to the proceedings may be considered, provided that the parties have adequate notice and opportunity to present counter evidence or argument.”¹⁵ In the matter at hand, the Joint Applicants seek to strike testimony regarding “issues that relate to the setting of consumer rates.”¹⁶ However, the Consumer Advocate’s Testimony they seek to strike relates, not to the setting of rates in this Docket, but to the effect on the consuming public if this sale/acquisition is approved.

The consideration of both the costs and benefits to consumers from a proposed sale/acquisition is wholly appropriate and not out of the ordinary.¹⁷ Recently, the Tennessee Valley Authority (TVA) consented to the acquisition of the City of Murfreesboro Electric Department by Middle Tennessee Electric Membership Corporation after conducting its review and determining that its standard of *Material Net Benefit for Ratepayers* was met.¹⁸ In accordance

¹⁵ *Order Denying Request to Strike Legislator’s Comments*, p. 4, TPUC Docket No. 12-00082 (November 29, 2012).

¹⁶ *Joint Applicants’ Motion in Limine* at p. 1.

¹⁷ For example, the Arkansas Public Service Commission stated that the “analysis of the public interest must include consideration of the impact of the sale on the customers of the utility” including whether customers receive the same or higher quality of service at reasonable rates after the sale. *Order*, p. 11, Docket No. 99-220-U (March 29, 2000) (The order can be accessed at <http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=286257&NotType='WebDocket'>). In West Virginia, the Public Service Commission stated that it “believes that one of the primary indicia for the ‘adverse impact on the public’ that results from any proposed acquisition is whether the transaction, in and of itself and without corresponding benefits or other adequate reasons, will result in a rate increase to the customers.” p. 6, Case No. 08-1761-G-PC (December 12, 2009) (A copy of the order can be accessed at <http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=286257&NotType='WebDocket'>).

¹⁸ *Determination and Disposition of Comments – Acquisition of City of Murfreesboro Electric Department (MED) by Middle Tennessee Electric Membership Corporation (MTEMC)*, p. 3, Tennessee Valley Authority (June 2020) (A copy of the document is located at https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/about-tva/guidelines-reports/lpc/mtmc-med-acquisition-tva-determination-and-disposition-of-stakeholder-comments.pdf?sfvrsn=e6e7a12b_2). For convenience, a copy of this document is attached as CA Exhibit 1.

with its *2017 Mergers, Acquisitions, and Consolidation – Guidelines*, TVA considers nine factors¹⁹ such as synergies and cost savings; rates; and operational, quality of service, and safety.²⁰

The testimony targeted by the Joint Applicants should be admitted by the Commission and be given probative effect, as it involves relevant information that easily would be “accepted by reasonably prudent persons in the conduct of their affairs.” Furthermore, the Joint Applicants have been provided adequate notice with the Consumer Advocate’s Pre-Filed Testimony, filed on April 2, 2020, and opportunity to present counter evidence or argument through its Pre-filed Rebuttal Testimony which is now due on July 27, 2020.²¹ Therefore, the Joint Applicants’ Motion should be denied.

D. The Motion Seeks to Limit Information Relevant for the Consideration by the Commission Regarding a Sale or Transfer of a Water Utility.

Under the broad language of Tenn. Code Ann. § 65-4-113, the Consumer Advocate’s Pre-Filed Testimony seeks to provide relevant information for consideration by the Commission as to whether the transfer “furthers the public interest” and whether the transfer is a “benefit to the consuming public.”²²

1. The Financial Stability of Limestone Utility Operating Company to Operate the Utility.²³

The Joint Applicants seek to strike the Consumer Advocate’s Pre-Filed Testimony regarding the financial stability of Limestone Utility Operating Company (Limestone) as too

¹⁹ The nine factors include: (1) overall long-term well-being of LPC and its ratepayers; (2) financial terms and allocation of proceeds; (3) synergies and cost savings; (4) rates; (5) rate parity plans; (6) financial integrity and strength of LPC(s); (7) operational and reliability impacts, quality of service, and safety; (8) existing programs; (9) other benefits and risks as may be determined from time to time by TVA.

²⁰ Email from Denise Smith, TVA FOIA Officer, to Karen H. Stachowski, Assistant Attorney General, regarding TVA 2017 Guidelines Document (June 23, 2020, 13:01CDT). A copy of the email and guidelines are attached as CA Exhibit 2.

²¹ *Joint Filing of Proposed Procedural Schedule*, TPUC Docket No. 19-00062 (June 29, 2020). The Joint Applicants will now have 116 days from the date of the Consumer Advocate’s Pre-Filed Testimony to file their Rebuttal Testimony.

²² Tenn. Code Ann. § 65-4-113(b).

²³ David N. Dittmore’s Pre-Filed Direct Testimony, p. 8, ln. 1 – p. 9, ln. 1, TPUC Docket No. 19-00062 (April 2, 2020) (Confidential).

speculative.²⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]²⁵ [REDACTED]

[REDACTED]

[REDACTED]²⁶

[REDACTED]²⁷

2. Reasonableness of the Purchase Price²⁸ and an Acquisition Premium²⁹.

The Joint Applicants seek to strike the Consumer Advocate's Pre-Filed Testimony regarding the reasonableness of the purchase price³⁰, the existence of an Acquisition Premium³¹ and its recovery from ratepayers³² as not relevant since the Joint Applicants are not seeking an Acquisition Premium and rates are to remain the same for now. However, in its testimony, the Consumer Advocate explained that an Acquisition Premium does exist based on the information currently provided in the Docket.³³ The Commission is familiar with the Consumer Advocate's definition of an Acquisition Premium as it is consistent with the defined term in Commission's proposed rulemaking on Utility Acquisitions.³⁴ Further, the Consumer Advocate's Pre-Filed Testimony explained that the recovery of the Acquisition Premium should be prohibited in a future

²⁴ *Joint Applicants, Aqua Utilities Company, LLC and Limestone Utility Operating Company's Notice of Objection to Pre-Filed Testimony and Motion in Limine* at p. 3, No. 3, (June 29, 2020).

²⁵ David N. Dittimore's Pre-Filed Direct Testimony, p. 8, ll. 1-8 (Confidential).

²⁶ *Id.* at p. 8, ll. 9-19 (Confidential).

²⁷ *Id.*

²⁸ *Id.* at p. 9, ln. 2 – p. 11, ln. 16.

²⁹ *Id.* at p. 20, ll. 4 – p. 21, ln. 1.

³⁰ *Joint Applicants Motion in Limine* at pp. 3-4, No. 4.

³¹ *Id.*

³² *Joint Applicants' Motion in Limine* at p. 5, No. 8.

³³ David N. Dittimore's Pre-Filed Direct Testimony at p. 9, ll. 3-21.

³⁴ *Red Line Rule 1220-04-13, Rulemaking Proceeding to Promulgate Rules for the Evaluation of Utility Acquisitions*, Rule 1220-04-12.01(2), TPUC Docket No. 20-00025 (June 2, 2020).

rate case since the Joint Applicants have failed to show any cost savings or enhanced quality of service to materially offset the cost of this sale/acquisition to the consuming public.³⁵

3. Impact of Transaction on Customer Rates³⁶ and Proposal of a Phase-In for Future Rates³⁷.

The Joint Applicants seek to strike the Consumer Advocate's Pre-Filed Testimony regarding the potential effect on customer rates from this sale/acquisition and a proposal for a phase-in for future rates³⁸ as not relevant since Limestone plans to adopt the existing rate schedule.³⁹ However, Limestone admits that "given the additional capital investment needed for the system upgrades and improvements – or as our own operating experience dictates, in the near-term future Limestone may petition the Commission to increase rates."⁴⁰ In response to discovery, Limestone provided Pro Forma Income Statements for the first three years of its operation, including customer rates which are as follows: [REDACTED]

[REDACTED].⁴¹ In dockets involving wastewater CCNs, the Commission requires and considers three years of Pro Forma Income Statements.⁴² Since this Docket involves the transfer or issuance of a CCN, the review and consideration of three years of Pro Forma Income Statements is not unexpected or out of the ordinary.

³⁵ David N. Dittmore's Pre-Filed Direct Testimony at p. 20, ll. 4 – p. 21, ln. 1.

³⁶ *Id.* at p. 11, ln. 17 – p. 13, ln. 16.

³⁷ *Id.* at p. 22, ll. 1-10.

³⁸ *Joint Applicants' Motion in Limine* at p. 4, No. 5 and p. 5, No. 9.

³⁹ *Joint Applicants' Motion in Limine*, at p. 2, No. 1 and p. 4, No. 5.

⁴⁰ Josiah Cox's Pre-Filed Direct Testimony, *Amended and Restated Joint Application of Aqua Utilities Company, Inc., and Limestone Water Utility Operating Company, LLC, for Authority to Sell or Transfer Title to the Assets Property, and Real Estate of a Public Utility and for a Certificate of Public Convenience and Necessity*, Exhibit 9, p. 12 (December 12, 2019).

⁴¹ *Limestone Water Utility Operating Company's Response to the Consumer Advocate's First Discovery Request*, CA DR No. 1-28, Exhibit "DR1-28b," TPUC Docket No. 19-00062 (February 14, 2020) (Confidential). [REDACTED]

⁴² *Tenn. Comp. R. & Regs Rule 1220-04-13-.17(2)(e)2* (December 2018).

4. Gain on the Sale.⁴³

The Joint Applicants seek to strike the Consumer Advocate's Pre-Filed Testimony regarding the issue of Gain on Sale as not relevant, undefined and not applicable to Aqua Utilities once a sale/acquisition is approved.⁴⁴ The Consumer Advocate explained that the Gain on Sale is estimated to be equal to the Acquisition Premium and lists factors to be considered for the Commission to consider when determining a Gain on Sale.⁴⁵ Further, the Commission has addressed the issue of Gain on Sale in two previous dockets as cited in the Consumer Advocate's Pre-Filed Testimony.⁴⁶ The Joint Applicants set forth an argument that a credit cannot be applied to the consuming public once the sale/acquisition is completed.⁴⁷ Therefore, it is timely for the Commission to consider the topic of a Gain on the Sale and its counterpart, the Acquisition Premium, in this current Docket.

5. Transactional and Regulatory Costs.⁴⁸

The Joint Applicants seek to strike the Consumer Advocate's Pre-Filed Testimony regarding the exclusion of costs mapping of the systems⁴⁹; costs associated with the transaction⁵⁰; and costs associated with existing title issues and any currently existing (but unknown) environmental or easement issues⁵¹ as not relevant since rates will initially remain the same and all costs associated with this sale/acquisition are unknown. The Consumer Advocate explained that the deficiency of existing maps should be borne by the seller, not the customers as contemplated by this proposed

⁴³ David N. Dittmore's Pre-Filed Direct Testimony, p. 13, ln. 17 – p. 18, ln. 14.

⁴⁴ *Joint Applicants Motion in Limine* at p. 3, No. 2 and p. 4, No. 6.

⁴⁵ David N. Dittmore's Pre-Filed Direct Testimony at p. 15, ll. 4-12. The Consumer Advocate's expert also cites two occasions in which the Commission assigned Gain on Sale. *Id.* at p. 17, ll. 1-3.

⁴⁶ *Id.* at p. 17, n. 18 citing *Order on Remand, In re A+ Communications, Inc.*, TPUC Docket No. 92-1398 (May 18, 1994) and *Order, In re Kingsport Power Company*, TPUC Docket No. U-84-7308 (November 15, 1984).

⁴⁷ *Joint Applicants Motion in Limine* at p. 4, No. 6.

⁴⁸ David N. Dittmore's Pre-Filed Direct Testimony, p. 18, ln. 15 – p. 22, ln. 20.

⁴⁹ *Joint Applicants Motion in Limine* at p. 4, No. 7.

⁵⁰ *Id.* at p. 5, No. 8.

⁵¹ *Id.* at p. 5, No. 9.

transaction⁵², and any future costs associated with title, easement, and environmental issues should be borne by Limestone.⁵³ Due to the likelihood of significant cost increases as a result of this sale/acquisition, the regulatory costs associated with this transaction should not be borne by the consuming public.⁵⁴

It is the Consumer Advocate's position that this testimony targeted by the Joint Applicant, as described in detail above, contains information that is relevant and will aid in the Commission's deliberations on whether the sale/acquisition is a benefit to the consuming public and whether the sale/acquisition is in the public interest, and as such, the Motion should not be granted. Also, the Joint Applicants can address these issues raised by the Consumer Advocate in their Pre-filed Rebuttal Testimony which is now due on July 27, 2020.

CONCLUSION

It is the Consumer Advocate's position that the Joint Applicants' extraordinary remedy of requesting that the Hearing Officer strike 262 lines of the 419 lines of the Consumer Advocate's Pre-Filed Testimony should be denied on the grounds that it is contrary to the Hearing Officer's recent *Order on May 29, 2020 Status Conference*; the Motion conflicts with the plain language of Tenn. Code Ann. § 65-4-113; the Motion seeks to exclude evidence which has probative value as would be accepted by reasonably prudent persons as set out Tenn. Code Ann. § 65-2-109(1); and the Motion seeks to limit information relevant to the consideration by the Commission regarding a sale or transfer of a water utility. The testimony targeted by the Joint Applicant, as described above, contains information that is relevant and will aid in the Commission's deliberations on

⁵² David N. Dittmore's Pre-Filed Direct Testimony at p. 19, ll. 1-3.

⁵³ *Id.* at p. 21, ll. 14-20.

⁵⁴ *Id.* at p. 21, ll. 2-8.

whether the sale/acquisition is a benefit to the consuming public and whether the sale/acquisition is in the public interest, and as such, the Motion should be denied.

RESPECTFULLY SUBMITTED,



KAREN H. STACHOWSKI (BPR #019607)

Assistant Attorney General

VANCE L. BROEMEL (BPR # 011421)

Senior Assistant Attorney General

Office of the Tennessee Attorney General

Financial Division, Consumer Advocate Unit

P.O. Box 20207

Nashville, Tennessee 37202-0207

Phone: (615) 741-2370

Fax: (615) 741-1026

Email: karen.stachowski@ag.tn.gov

Email: vance.broemel@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Charles B. Welch, Jr., Esq.
Tyler A. Cosby, Esq.
Farris Bobango PLC
414 Union Street, Suite 1105
Nashville, TN 37219
Telephone: (614) 726-1200
Email: cwelch@farris-law.com
Email: tcosby@farris-law.com

Aqua Utilities Company, Inc.
c/o Montana Land Company, LLC
Attn: James E. Clausel
408 Main Street
Savannah, TN 38372
Telephone: (731) 925-4834
Email: jamesclausel@yahoo.com

Limestone Water Utility Operating
Company, LLC
c/o Josiah Cox
Central States Water Resources, Inc.
500 Northwest Plaza Drive, Suite 500
St. Ann, MO 63074-2220
Telephone: (314) 736-4672
Email: jcox@cswrgroup.com

This the 14th day of July 2020.


KAREN H. STACHOWSKI

TPUC Docket No. 19-00062

Consumer Advocate's Response to Joint Applicants', Aqua Utilities Company, LLC and Limestone
Utility Operating Company's Notice of Objection to Pre-Filed Testimony and Motion in Limine

EXHIBIT CA 1

Determination and Disposition of Comments - Acquisition of City of Murfreesboro Electric Department (MED) by Middle Tennessee Electric Membership Corporation (MTEMC)

June 2020

Table of Contents

Proposal Overview.....	3
TVA's Role as Regulator	3
Standard of Review - Material Net Benefits	3
Determination.....	3
Disposition of Comments.....	3
Appendix A - Determination Letter to MTEMC / City / MED.....	5
Appendix B - Disposition of Comments.....	10
Comment Process for LPCs and Associations	11
Key Issues from Stakeholders & TVA's Responses	11

Proposal Overview

On January 16, 2020, Middle Tennessee Electric Membership Corporation and the City of Murfreesboro, Tennessee submitted a formal joint proposal for TVA's consent to assign the City's wholesale power contract to MTEMC. This action was in light of MTEMC's pending purchase of the Murfreesboro Electric Department for \$245M. In February, MTEMC and MED responded to follow-up questions from TVA, which enabled TVA to commence its review of the proposed acquisition.

TVA's Role as Regulator

TVA regulates local power companies, such as MED and MTEMC, to ensure that TVA power is sold at low rates and electric consumers are treated fairly and consistently. TVA's regulatory framework and oversight ensures transparency, engagement, and compliance. In its regulatory role, TVA must consent to assign an LPC's WPC, and TVA's determination is based on whether the proposed acquisition is in the best interest of the electric consumers of both systems.

Standard of Review - Material Net Benefits for Ratepayers

Using benchmarking data and research, TVA developed a robust and detailed framework for reviewing and evaluating proposed mergers, acquisitions, and consolidations of LPCs. TVA's 2017 Mergers, Acquisitions, and Consolidations Guidelines are consistent with the standards applied by peer regulators across the nation. The Guidelines require quantitative and qualitative analyses to determine if a proposed transaction's benefits to ratepayers will be in excess, or net, of the costs to achieve those benefits such that the transaction is likely to produce material net benefits for ratepayers as defined and determined under the framework of the Guidelines. TVA will consent to a WPC assignment only if the Material Net Benefits standard is met. Per the Guidelines, a proposed transaction will not be deemed to provide Material Net Benefits if it is likely to have an adverse impact on rates, financial strength of the surviving LPC, or reliability and quality of its electric service. The Guidelines' nine evaluation factors for analyzing whether there are Material Net Benefits are: (1) overall long-term well-being of the LPC and its ratepayers, (2) financial terms and allocation of proceeds, (3) synergies and cost savings, (4) rates, (5) rate parity, (6) financial integrity and strength of LPC, (7) operational and reliability impacts, quality of service, and safety, (8) existing programs, and (9) other benefits and risks.

Determination

Based on the Material Net Benefits standard, including the quantitative and qualitative results, TVA consents to assign the City's WPC to MTEMC, subject to some conditions.

See Appendix A - Determination Letter to MTEMC / City / MED.

Disposition of Comments

In its role as regulator, TVA is committed to remaining neutral and transparent. One way TVA achieved this throughout the entirety of its comprehensive and objective review of the acquisition proposal was by establishing an open, formal process for TVA's stakeholders and business partners to provide their valued input on the acquisition proposal in writing to TVA. TVA carefully considered all input received from stakeholders through this process as TVA conducted its thorough evaluation of the acquisition proposal. To ensure transparency continues beyond TVA's determination announcement,

TVA has compiled a summary of the comments received through the stakeholder feedback process for public review. In addition, TVA has provided responses and observations to the comments received from stakeholders and its business partners in relation to the acquisition proposal.

See Appendix B – Disposition of Comments.

Appendix A

Determination Letter to MTEMC / City / MED



Tennessee Valley Authority, 400 West Summitt Hill Drive, Knoxville, Tennessee 37902

June 9, 2020

Mr. Chris Jones
President
Middle Tennessee Electric Membership Corporation
555 New Salem Highway
Murfreesboro, Tennessee 37129

Mr. P.D. Mynatt
General Manager
Murfreesboro Electric Department
205 North Walnut Street
Murfreesboro, Tennessee 37133

The Honorable Shane McFarland
Mayor of Murfreesboro
City of Murfreesboro
111 West Vine Street
Murfreesboro, Tennessee 37130

Dear Mr. Jones, Mr. Mynatt, and Mayor McFarland:

Thank you for Middle Tennessee Electric Membership Corporation ("MTEMC") and Murfreesboro Electric Department's ("MED") recent request for TVA to consent to assign the wholesale power contract ("WPC") with the City of Murfreesboro ("City") to MTEMC. TVA appreciates MTEMC, MED, and City ("Parties") submitting a copy of the Asset Purchase and Sale Agreement and other documents for TVA's review and consideration. Similarly, we appreciate the Parties responding to TVA's questions and providing additional information that facilitated our review and determination.

After performing a comprehensive and conservative evaluation of the submitted materials, TVA has determined that MTEMC's proposed acquisition of MED ("Transaction") is consistent with TVA's pre-established requirements, and TVA offers its consent to assign the WPC. TVA's consent to assign City's WPC to MTEMC is conditioned, however, on the Parties agreeing to certain terms and conditions (described below) that are necessary to safeguard the ratepayers' interests.

TVA applied its 2017 Mergers, Acquisition, and Consolidations Guidelines ("Guidelines") to information and data submitted by the Parties to make its determination. Under the Guidelines, TVA evaluates nine factors to determine whether a transaction will likely result in "Material Net Benefits for Ratepayers." The Material Net Benefits for Ratepayers standard is designed to determine whether a transaction's benefits will likely exceed the costs necessary to achieve those benefits. This standard is consistent with that used by other peer regulatory bodies across the nation. Through it, the Guidelines allow TVA to employ a consistent and transparent process to determine if a proposed merger, acquisition, or consolidation is in the best interest of LPCs' electric ratepayers prior to consenting to any assignment of its WPC.

Mr. Chris Jones
Mr. P.D. Mynatt
The Honorable Shane McFarland
Page 2
June 9, 2020

TVA identified and evaluated several costs of the Transaction. These were:

- the 15-year capital outlay required to acquire MED;
- contractually mandated purchase-price increase should the City decide to terminate the ED Pension Plan within a certain time;
- projected renovation costs for MTEMC's existing facilities to accommodate MED personnel and assets; and
- information technology integration expenses.

The cumulative total of these projected costs are \$201 million.

However, the Transaction is also expected to produce certain cost savings. These savings were:

- reduced labor and benefits costs (mainly due to efficiency gains and natural workforce attrition over 20 years);
- elimination of duplicative contractor services;
- reduced capital expenditures; and
- operational and maintenance savings.

The cumulative total of these projected cost savings are more than \$226 million.

Thus, TVA's estimated 20 year net present value of the transaction was over \$25 million. (TVA's conservative evaluation of the proposed benefits is \$195 million lower than that of the Parties' due to TVA including the purchase price as a cost of the transaction, reducing the estimated labor savings by \$50 million due to adjustments to assumptions, and omitting (unduly attenuated) benefits not projected to accrue until after year 20.)

Further, during the evaluation of the Transaction, TVA determined that MED and MTEMC ratepayers are likely to benefit from the Transaction by avoiding potential rate impacts in the short and long term. MTEMC and MED both have long-term financial plans that include rate increases to support anticipated capital expenditures over the next five to ten years. The synergies and savings expected to result from this Transaction will reduce upward pressure on rates and allow the combined system to maintain lower rates than the Parties are projected to have separately. Specifically, customers currently served by MED are expected to see on average (across all rate classes) a 1.4% increase in rates over the next five years following the Transaction, which is less than the 4.1% increase they are expected to see if the entities were to remain separate. Current MTEMC customers are expected to see on average (across all rate classes) a 0.5% decrease in their rates over the next five years in comparison to a 2% rate increase if the entities were to remain separate. Combined ratepayers are projected to experience an approximately \$68 million benefit compared to the entities operating separately (but note that due to overlap of rate savings and synergies savings discussed below, only a portion of this amount is included in TVA's cumulative total for Material Net Benefits). In the long term, the Transaction is thus projected to lead to lower rates.

Mr. Chris Jones
Mr. P.D. Mynatt
The Honorable Shane McFarland
Page 3
June 9, 2020

MTEMC's average rate currently differs from MED's by approximately 2%. Rather than moving the rates together immediately after the Transaction, MTEMC's includes an initial two-year rate freeze for all ratepayers. Further, under the plan, over the succeeding three years, rates will move towards each other to achieve rate parity (a "meet-in-the-middle" approach). Rate parity will be achieved five years after the Transaction, and no other rate actions are projected to occur during the five-year period.

Two other important benefits of the Transaction identified related to the financial health of the LPCs and their provision of electric service. First, from a financial standpoint, the Parties each currently have strong financial health. The projected financial metrics for the combined system also indicate strong financial health, though MTEMC may need to evaluate future planned capital spending to sustain financial performance. Second, from a power supply perspective, the merging of the electric distribution systems is anticipated to have positive impacts on work load, capital budgets, system capability, and system reliability.

Other, qualitative benefits to the ratepayers that will result from the Transaction include the following:

- enhanced economic development;
- improved customer service;
- cost savings due to elimination of annexation actions;
- voting rights for all ratepayers to elect LPC leadership; and
- cost savings from elimination of duplicative information technology hardware, licensing, and telecommunication services.

These benefits are among many others enumerated by the Parties and validated as reasonable following review by TVA, which taken as a whole, will likely have a positive impact on ratepayers of a combined system.

All the quantitative and qualitative benefits taken together led to TVA's determination that the Transaction meets the Material Net Benefit to Ratepayers standard.

As part of the review process, TVA received comments from the Tennessee Municipal Electric Power Association and other interested parties related to the Transaction. The issues identified in those comments included whether the City has authority to sell its electric system; whether a referendum must take place before the sale; whether the financing structure is consistent with Tennessee law; who is entitled to the proceeds from the sale; and whether the Transaction is consistent with the purpose of the WPC.

To address various legal issues raised, TVA recommended that the City and/or MTEMC seek a State of Tennessee Attorney General opinion (which the Attorney General ultimately declined to give). TVA took further measures to look into the issues raised, including:

- conducting an independent legal analysis;
- requiring the City Attorney to submit a detailed legal opinion addressing all the issues that had been raised;
- requiring the City to provide a complete list of bonds it issued for its electric system since 1939;

Mr. Chris Jones
Mr. P.D. Mynatt
The Honorable Shane McFarland
Page 4
June 9, 2020

- requiring that the City's outside counsel review the City Attorney's legal opinion and the bond listing, and ascribe to their accuracy and completeness; and
- retaining outside counsel with experience interpreting Tennessee State municipal law to independently review the legal issues and provide TVA with its opinion on them.

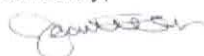
After reviewing the relevant facts and law, examining the City's legal opinion, and obtaining advice from outside counsel, TVA concluded that the issues raised have been adequately addressed and do not prevent TVA from making a determination of a Material Net Benefit to Ratepayers.

Therefore, because TVA is satisfied that the Transaction satisfies TVA's standard of reviews and has a sound legal basis, TVA will consent to assign the City's WPC to MTEMC subject to the Parties agreeing to certain conditions that are necessary to safeguard the interest of the affected ratepayers. The conditions are: (1) MTEMC agrees to follow its plan to forego building the new headquarters campus for at least ten years and not exceed its estimate for refurbishing their other properties to integrate MED; (2) MTEMC agrees to follow its rate parity plan, which includes a two-year freeze to MTEMC and MED's rates as well as a meet-in-the middle approach to rates to achieve rate parity for both sets of ratepayers within five years of the closing date of Transaction; (3) MTEMC agrees to discuss and seek authorization from TVA for any deviations from the submitted rate parity plan; (4) the City agrees to pay MED prior to closing, or credit MED at closing, \$2,134,930 for the fiber connections, MED headquarters building, and storage lot; (5) the Parties agree to sign a WPC Assignment Agreement that includes a clause that will make the assignment void *ab initio* if the Transaction is unwound for any purpose; and (6) MTEMC and the City confirm that they will abide by the Asset Purchase and Sale Agreement's terms concerning the MED Pension Plan.

By agreeing to and meeting the above requirements, the Parties will ensure that the Transaction is consistent with the interests of MTEMC's and MED's electric ratepayers both before and after the Transaction.

Again, thank you for sharing the Transaction documents and requesting TVA's regulatory review. We greatly appreciate your diligence in making sure that the proposed Transaction is carried out in a way that is consistent with the public power model.

Sincerely,



Jeannette Mills
Executive Vice President and
Chief Executive Relations Officer

cc: Jeff Lyash
Sherry Quirk
Justin Maierhofer
Dan Pratt
Melanie Farrell
Jennifer Brogdon

Appendix B

Disposition of Comments

Comments Process for LPCs and Associations

In response to the joint proposal submitted by MTEM and the City, LPCs and Valley associations—including Tennessee Electric Cooperative Association, Tennessee Municipal Electric Power Association and Kentucky Municipal Utilities Association—provided TVA with comments regarding the proposed acquisition. On February 3, 2020, TVA formally requested TECA and TMEPA to submit written comments on behalf of their associations and LPC members. Of the thirty-two responses TVA received from Valley stakeholders, twenty-two were from individual LPCs. TVA considered all comments as it conducted its objective and comprehensive review of the joint proposal.

Key Issues from Stakeholders & TVA's Responses

The following summarizes the key stakeholder issues, observations, and TVA's responses:

Issue 1 – Taxes & Use of Sale Proceeds

A. Issues Under Consideration - The majority of LPCs and associations voiced objections to the City's right to the proceeds from the sale. Comments included electric sales revenue will benefit MTEM rather than MED's electric consumers. One stakeholder objected to MED's cash reserves being used as MTEM's down payment for the purchase, such that MED's cash is being paid to the City for the transaction. Some commented that the City, as a tax-funded entity, will profit from the sale of an electric-rate-funded entity. A couple LPCs questioned the transfer of cash reserves to the City, given some Murfreesboro taxpayers are MTEM members. Other stakeholders voiced that TVA should execute its regulatory authority, prevent revenues from the sale being transferred to the City's budget, and deny consent to assign the municipal utility to a not-for-profit cooperative. One LPC offered that TVA could consider requiring proceeds to be used for electrical improvements in MED's service territory or rebates for impacted MED customers. Several respondents noted that local politicians should be prevented from using cash from the sale to avoid substantial tax increases.

B. Observation - The City owns the electric system assets and appears authorized under state law to sell its electric system and to keep the excess proceeds from that sale. The WPC does not address proceeds from the sale of an electric system. TVA's Guidelines do not prevent the City from retaining any excess proceeds resulting from the sale and depositing them into its general fund, if the Material Net Benefits standard is otherwise met. The heightened level of scrutiny required by this standard is intentional, as the standard is specifically designed to ensure that the transaction is consistent with the best interests of all ratepayers served by the electric system.

C. TVA Response - Given that the City owns the electric system assets, the apparent absence of state law prohibiting the City from retaining proceeds from sale of its electric system, and because the proposal has met TVA's Material Net Benefits standard, TVA does not object to the City retaining proceeds from the sale of its system. TVA determined that no basis existed under applicable state law or the wholesale power contract to restrict the City's use of excess proceeds from the sale of its electric system.

Issue 2 - Violation of WPC Provisions

A. Issues Under Consideration - A few stakeholders commented that the provisions of the WPC prohibit revenue from the operation of a municipal electric system being used to benefit the City. It was cited that the WPC states a City's general fund may only receive payments-in-lieu-of-tax, which is the lowest priority required in the WPC's use of revenue

provisions. Some LPCs shared TVA's past efforts to remedy Cities' noncompliance with the WPC in cases where they used electric assets or investments of electric revenue in City operations. In light of these past efforts, some stakeholders expressed difficulty in understanding how TVA would approve sales proceeds being transferred to the City's general fund.

B. Observation - The City owns the electric system assets, and appears authorized under applicable law to sell the assets, and keep the excess proceeds from the sale. The WPC's use of revenues provision does not apply to proceeds resulting from the sale of an electric system, only the revenues derived from electric system's "normal operation." Proceeds from the sale of the entire electric system is not considered a "normal operation" of the electric system. Once the WPC is assigned to MTEMC, these terms of the WPC no longer apply to the City.

C. TVA Response - TVA has determined that in the case of a sale and proper assignment of the WPC, the use-of-revenues provision is not applicable to the sale of an entire electric system. Further, after the sale and proper assignment of the contract, the use of revenues requirements are no longer binding obligations of the municipality.

Issue 3 - Material Net Benefits

A. Issues Under Consideration - Several stakeholders commented that TVA must carefully employ its Material Net Benefits standard and ensure the transaction is in the best interest of ratepayers.

B. Observation - The Guidelines provide a detailed framework for evaluating, analyzing, and comparing the costs of the transaction and the benefit to both sets of ratepayers in order for TVA to consent to assign the WPC. The Guidelines, which are designed to ensure the protection of ratepayers, provide for TVA's consent of an assignment only if the probable benefits of the proposed transaction exceed the projected costs in a material manner, as specifically defined and analyzed thereunder (Material Net Benefits standard) – a considerably high standard that is thoroughly tested by TVA through a diligent and complete evaluation process that is consistent with those used by other peer regulators within the industry. These Guidelines make certain that TVA conducts a robust evaluation of the proposed transaction by requiring an in-depth analysis of the nine different factor categories, each of which contains its own unique list of additional subcategories requiring further assessment of required information, data, and/or or financial metrics. The Material Net Benefits standard is further bolstered through benchmarking analysis and research that enables a better understanding of the data and information.

C. TVA Response - Based on the nine factors considered by TVA in its comprehensive evaluation of the joint proposal, the transaction satisfies the Material Net Benefits standard, and thus is considered in the long-term best interest of both sets of electric consumers, subject to some conditions.

Issue 4 - Ownership of the Electric System

A. Issues Under Consideration - A few LPCs responded that the owners of MED should be able to choose whether or not to sell an electric distribution system. Some respondents consider the City to be the owner of the electric system and others view MED's consumers as the owners of the public utility. Many LPCs expressed concern that more municipal electric systems may be at risk of being sold if politicians want to leverage municipal utilities for cash.

B. Observation - The City owns and operates the electric system for the benefit of its ratepayers served by the system. Case law supports that utility customers generally pay for services of the utility and do not gain a property interest in the utility system assets merely by paying rates. Additionally, the City has powers granted by state statute, and in Tennessee,

municipalities appear to have authority to sell their electric systems. As the legal owner of the electric system, the City is able to sell its electric system under applicable state law.

C. TVA Response - The City may sell its municipal electric system, subject to TVA's consent to assign the wholesale power contract.

Issue 5 - Public Power

A. Issues Under Consideration - Many LPCs raised concerns that the public power model will be violated by this proposed acquisition. Several stakeholders consider this to be a precedent-setting determination for public power, and all future and similar transactions will be impacted by TVA's evaluation of the MTEMC-MED joint proposal. TVA was asked to uphold the public power model, protect electric consumers from the political and financial interests of individual LPCs, and withhold consent to assign the WPC.

B. Observation - Public power is the provision of power for the public good, and local control and self-governance, subject to TVA's regulation, are key principles of public power. Local governments operate public power utilities and are accountable to their residents through locally-elected or appointed officials.

C. TVA Response - The public power model is grounded in the belief that the provision of electricity is for the public good. In order to protect both the public power model and Valley ratepayers, TVA comprehensively reviewed the proposed transaction. Because under the Material Net Benefits standard the acquisition must be deemed in the best interest of both sets of ratepayers, TVA's rigorous evaluation is designed to protect and promote the public power model.

Issue 6 - Rates

A. Issues Under Consideration - A couple of stakeholders stated that the equalization of rates for the two systems will be discriminatory, given that (former) MED customers within the same class as MTEMC customers will pay different rates for a period of time.

B. Observation - A rate equalization plan was proposed by MTEMC and MED to achieve rate parity without significant impacts on electric consumers. TVA evaluated the submitted rate proposal and worked with the parties to reach agreement on a revised plan that includes greater ratepayer benefits. As a condition of TVA's consent to the assignment of the City's WPC, prior MED customers will pay different rates from MTEMC customers for a limited duration as rates are equalized for the combined MTEMC system. TVA does not consider this discriminatory pricing under the WPC. Importantly, the acquisition agreement incorporates a rate equalization plan meant to achieve rate parity as soon as practicable. Further, the Material Net Benefits analysis indicates that customers of both electric systems will likely on average pay lower rates, both under the five-year rate plan and over the long term, than if MTEMC were not to acquire MED.

C. TVA Response - Rates and rate parity are separate factors analyzed for Material Net Benefits under TVA's Guidelines. TVA's determination of Material Net Benefits ensures that the transaction is not likely to have an adverse impact on rates and that discriminatory pricing is avoided through application of a rate plan that achieves rate parity as soon as is practicable.

Issue 7 - Referendum

A. Issues Under Consideration - Some stakeholders think TVA should require a public or ratepayer referendum prior to the sale of an electric utility. Many thought a referendum would afford electric consumers an opportunity to ask questions before ultimately voting on the transaction. A few respondents suggested that TVA provide a process for gathering community input and enabling LPCs to provide testimony regarding the proposed acquisition. Others asked that TVA obtain an opinion from the Tennessee Attorney General on the public referendum issue and to not proceed until that opinion had been received.

B. Observation - Tennessee state law requires a referendum if an electric system is purchased with bonds issued under the Tennessee Municipal Electric Plant Law. Information provided by the parties and their legal counsels showed that the City has not issued bonds for its electric system under this statute. However, the City provided documentation that bonds were issued under an alternative state statute that appears to provide authority for a municipality to sell its electric system assets and real property, without requiring a referendum. Additionally, while TVA requested MTEMC and MED to obtain an opinion from the Tennessee Attorney General addressing the matter of a referendum, the Attorney General declined to issue such an opinion. Despite this, the legal opinions offered by the parties and TVA's legal counsel, including a previously-issued Tennessee Attorney General opinion concerning a potential sale of an unrelated municipal LPC's electric department, provide support for the parties' legal position that a referendum is not required in this circumstance.

C. TVA Response - TVA's regulation does not require the City to conduct a referendum prior to the sale of the electric system. Further, the parties have satisfactorily demonstrated that no such requirement applies under state law. Therefore, TVA will consent to assign the WPC without the Attorney General opinion or a public referendum. The analysis of the transaction has adequately demonstrated that the acquisition is projected to result in efficiencies and synergies and satisfies TVA's Material Net Benefits standard in order to assign the WPC, subject to some conditions.

Issue 8 - Regulation

A. Issues Under Consideration - Several stakeholders opined that TVA's decision as a federal agency should prevail, not state law. The majority of respondents thought TVA, as the regulator, should ensure that the transaction is best for all consumers. TVA was asked to thoroughly research, evaluate, and address all risks, questions, costs, and benefits associated with the acquisition and make a fair and impartial decision for the benefit of all ratepayers.

B. Observation - TVA's consent is necessary for an LPC to assign the WPC. TVA has broad authority under the WPC to decide whether to provide its consent; the WPC provides no standard for TVA to exercise this right. TVA created the Guidelines as a fair and transparent process that is consistent with TVA's mission and statutory obligations.

C. TVA Response - TVA has conducted a thorough, complete, and impartial evaluation of the transaction pursuant to the Guidelines. Based on TVA's comprehensive analysis, the Material Net Benefits standard has been met, and TVA has consented to assign the WPC, subject to some conditions. Also, TVA required the parties to certify that they had complied with all legal requirements and approvals, including local, state, and federal laws and regulations, prior to TVA's consent to assign the WPC.

Issue 9- Synergies

A. *Issues Under Consideration* - A couple of commenters questioned projected efficiencies of the combined system, claiming that MTEMC will improve its operations at the expense of MED customers. A few stakeholders also thought the different system voltages will lead to significant inefficiencies.

B. *Observation* - Synergies and cost savings make up one factor for determining Material Net Benefits under the Guidelines' framework, and operational and reliability impacts, quality of service, and safety make up another. While no single factor under the Guidelines is controlling, a transaction cannot be considered in the best interest of ratepayers if it is projected to adversely impact rates, electrical reliability or service quality.

C. *TVA Response* - TVA evaluated the combined system and determined that adequate projected synergies have been demonstrated for TVA's consent to the assignment of the WPC under the Material Net Benefits standard. Importantly, TVA's detailed review also determined that system reliability and service quality will not be adversely impacted by combining the two systems.

TPUC Docket No. 19-00062

Consumer Advocate's Response to Joint Applicants', Aqua Utilities Company, LLC and Limestone
Utility Operating Company's Notice of Objection to Pre-Filed Testimony and Motion in Limine

EXHIBIT CA 2

From: [FOIA](#)
To: [Karen H. Stachowski](#)
Subject: TVA 2017 guidelines document
Date: Tuesday, June 23, 2020 1:04:12 PM
Attachments: [Mergers 2017 Guidelines and Template.pdf](#)

Dear Karen – attached is a copy of the document you requested. If you have questions or need further information you may contact me.

Sincerely,

Denise Smith
FOIA Officer
Tennessee Valley Authority
400 W. Summit Hill Drive (WT 7D)
Knoxville, TN 37902-1401
foia@tva.gov

2017 Mergers, Acquisitions, and Consolidations - Guidelines

I. Overview

With these 2016 Merger, Acquisition, and Consolidation Guidelines (2016 Guidelines) TVA establishes the standard, requirements, and process that will apply when a Local Power Company (LPC) requests assignment of the wholesale power contract pursuant to a proposed merger, acquisition or consolidation (together, “Transaction”).¹ In particular, Section II describes the Material Net Benefits for Ratepayers Standard that TVA will apply when reviewing the assignment of a wholesale power contract associated with a proposed Transaction. Section III outlines factors TVA will consider and the information the LPCs may provide to demonstrate compliance with the material net benefits standard. Section IV details the administrative process that TVA will employ. Finally, Section V and Appendix A provide a template of the information that LPCs should provide when seeking assignment of a wholesale power contract in connection with a proposed Transaction.

II. Standard of Review

An LPC requesting assignment of its wholesale power contract with TVA in connection with a Transaction must demonstrate that the proposed Transaction, including the assignment of the wholesale power contract, is consistent with the interests of the ratepayers who are and/or will continue to be supported by the wholesale power contract (hereafter referred to as “ratepayers”).² To determine whether the proposed Transaction is consistent with the interests of ratepayers, TVA will consider whether the proposed Transaction is likely to produce Material Net Benefits for Ratepayers (i.e., the Material Net Benefits For Ratepayers Standard).³

In reviewing an LPC’s demonstration that the proposed Transaction is likely to produce Material Net Benefits for Ratepayers, TVA will consider the impact of the proposed Transaction on rates, on the financial integrity of the LPC(s), and on reliability and service quality, as well as the allocation of proceeds, legal considerations, and other benefits of the Transaction presented by the LPC(s). Section III identifies in detail a breadth of the factors which may be considered by TVA when evaluating an LPC’s Transaction-related request. As a threshold matter, a proposed Transaction will not be considered in the interest of ratepayers if it has an adverse impact on rates, financial integrity of the LPC, or reliability and service quality.

III. Satisfying the Standard of Review

In considering whether an LPC has demonstrated that a proposed Transaction, including the assignment of a wholesale power contract, has met the Material Net Benefits for Ratepayers Standard, TVA will consider the following nine factors: (1) overall long-term well-being of LPC and its ratepayers; (2) financial terms and allocation of proceeds; (3) synergies and cost savings; (4) rates; (5) rate parity plans; (6) financial integrity and strength of LPC(s); (7) operational and reliability

¹ TVA’s review of Transactions is based on TVA’s mission, authority, objectives and policy as articulated in the TVA Act and the wholesale power contract. These include to ensure that LPCs operate the electric system for the benefit of ratepayers and keep power rates as low as feasible.

² If a counterparty to a Transaction is not currently served by TVA, TVA may conduct additional review according to TVA Act.

³ Net benefits are defined as the benefits to ratepayers which will be created by a proposed Transaction in excess, or net of the costs to achieve those benefits. The term “material” indicates that the net benefits should be meaningful in scale, but does not indicate a particular quantitative measure or percentage.

2017 Mergers, Acquisitions, and Consolidations - Guidelines

impacts, quality of service, and safety; (8) existing programs; (9) other benefits and risks as may be determined from time to time by TVA. Table 1 below provides additional information and description regarding these factors.

A demonstration of Material Net Benefits for Ratepayers in each individual category is not necessary; rather Material Net Benefits for Ratepayers will be considered on an aggregate basis. Further, TVA provides the following context to inform LPCs Transaction-related requests:

- In presenting these factors, TVA notes that no single factor is controlling.
- LPCs should provide quantitative analysis to the extent feasible, but TVA will also consider qualitative description of benefits and costs where appropriate.
- TVA recognizes that applying the standard of review, including assessing analyses performed and information filed, must be done in light of the size, sophistication, benefits and costs of a Transaction.
- LPCs will be required to satisfy outstanding TVA regulatory requirements and/or demonstrate progress satisfying the same as determined at the sole discretion of TVA prior to an assignment of the wholesale power contract.
- LPCs must certify that they have complied, or how they will comply, with all legal requirements and approvals (including local, state, and federal) related to the proposed Transaction.
- TVA may issue data requests to LPCs or request meetings if additional information is required for efficient and effective review (i.e., if certain information is not provided in the initial materials submitted to TVA).
- TVA may contact LPC personnel including but not limited to subject matter/technical experts, executive, administrative or operational staff, etc. as part of its review of a proposed transaction.
- The LPCs cannot close the proposed Transaction without notification from TVA of its consent to assign the wholesale power contract, based on its review and assessment of the proposed Transaction.

Table 1, below, lists the nine factors and identifies the type of information that LPCs may provide which TVA would review to determine whether a proposed Transaction satisfies the Material Net Benefits for Ratepayers Standard. Note that the column “How will the standard be satisfied? (may include but not be limited to)” is not meant to suggest that all the identified information must be provided, nor that this list identifies all types of information that may be provided. Further, the Template provided in Appendix A offers additional guidance on what the LPCs may provide in order to satisfy the standard.

Table 1 – List of Factors and Information to Satisfy the Standard	
Factor	How will the standard be satisfied? (may include but not be limited to)
1. Overall long-term well-being of LPC and its ratepayers	<ul style="list-style-type: none"> • Summary of proposed Transaction and copies of Transaction agreements • Description of the rationale for the proposed Transaction • Demonstration of how the long-term health and well-being of LPC and its customers will be preserved, if not enhanced, by the proposed Transaction • Demonstration of overall benefits of the Transaction in excess of any costs to effectuate it or risks which may be created by its execution
2. Financial terms and allocation of proceeds	<ul style="list-style-type: none"> • Description of financial terms of the Transaction, e.g., purchase price (including how it was determined), financing, treatment of liabilities • Demonstration that the reasonable value of the system is being conveyed (e.g., appraisal) • Description of treatment of capital credits, cash on hand, member contributions, etc. • Description of how Transaction will be funded and impact of such funding on post-Transaction LPC • Description of how proceeds⁴ from sale will be used/allocated including how proceeds may be used to the benefit of ratepayers • Demonstration that financial metrics (e.g., debt service ratio, tier ratio, cash ratio) will exceed the minimum thresholds established by TVA in rate setting. For certain metrics, improving metrics to the top of the range is an appropriate use of proceeds.⁵
3. Synergies and cost savings	<ul style="list-style-type: none"> • Quantitative analysis of any expected synergies or costs savings and the anticipated costs to achieve such synergies/savings • Qualitative assessment of other synergies which are expected to benefit ratepayers
4. Rates	<ul style="list-style-type: none"> • Description of impact on rates from the proposed Transaction • Quantitative analysis and comparison of rates, by customer class, pre-Transaction and over the five years post-Transaction • A comparison of key cost drivers that will be impacted by the Transaction, including a forecast with and without the Transaction over a 10-year period • Note – rate plans which will benefit ratepayers (e.g., rate reductions, rate freezes, rate action deferrals) will be considered by TVA
5. Rate parity	<ul style="list-style-type: none"> • Plans to merge the rates of the LPCs including timeframe • Quantitative analysis of rate parity plans/ comparison to no-Transaction baseline • Rate parity-related commitments

⁴ “Proceeds” refers to the purchase price for an acquired LPC, net of the retirement of debt, reserves or other means of addressing other liabilities. In some cases, proceeds may also be net of the costs incurred to effectuate the transaction.

⁵ Striving for the top of the range does not apply to a metric such as the cash ratio, for which LPCs should seek the middle of the acceptable range between eight and 33 percent.

2017 Mergers, Acquisitions, and Consolidations - Guidelines

6. Financial integrity and strength of LPC(s)	<ul style="list-style-type: none"> • Description of the impact of the Transaction on the financial integrity and strength of the LPCs (required) • Bond ratings pre- and post-Transaction, (if applicable) • Other “access to capital” considerations (if applicable) • Any studies or reports conducted to assess the feasibility of the Transaction • If post-Transaction LPC is a muni – confirmation of continued segregation from General Fund • If Transaction involves only coops – implications for capital credits, coop by-laws, interstate issues • If muni is becoming part of a coop - treatment of patronage capital of coop members
7. Operational and reliability impacts, quality of service, and safety	<ul style="list-style-type: none"> • Description of operational capability of post-Transaction entity and how Transaction does/does not impact operational capability • Description of impact on operational performance (e.g., capital project planning and execution) • Description of plans for investment in infrastructure and capital improvements, with and without the Transaction • Description of impact on reliability (e.g., metrics that measure average customer outages) • Description of impact on customer service metrics (e.g., call center) and safety metrics (e.g., Occupational Safety and Health Administration (OSHA)) • Note – the pursuit or acceleration of infrastructure improvement, deployment of technologies such as Automated Metering Infrastructure (AMI), etc. will be considered as a benefit of a Transaction and an appropriate use of proceeds
8. Existing programs	<ul style="list-style-type: none"> • Description of impact of proposed Transaction on low density, low income, demand side management, and any other programs beneficial to ratepayers
9. Other benefits and risks	<ul style="list-style-type: none"> • Identification and description of any other benefits and/or risks which may be created by the proposed Transaction (e.g., impacts on employees, economic development, and/ or local communities) • Whether LPCs commit to offer TVA programs or pursue public policy goals (e.g., innovative rate structures, AMI investment)

IV. Review/Administrative Process

TVA contemplates the following steps in its administrative process to review requests to assign a wholesale power contract in connection with a proposed Transaction:

1. Prior to making a formal request to TVA, the LPC(s) should informally notify TVA of the impending request. If desired, TVA will also meet with the LPC(s).
2. Following this informal notification, the LPC(s) will make a formal, written request for contract assignment with TVA. This formal written request should be based upon the template provided in Section V and Appendix A and must demonstrate that the proposed Transaction, including the assignment of the wholesale power contract, is likely to produce Material Net Benefits for Ratepayers.

2017 Mergers, Acquisitions, and Consolidations - Guidelines

3. TVA will then conduct its regulatory review of proposal, which may include issuing data requests or requesting additional meetings. TVA will endeavor to complete its regulatory review within 60-90 days
4. Following TVA's regulatory review, TVA will issue a determination letter. If the determination letter concludes that the LPC has demonstrated that that Material Net Benefits for Ratepayers are likely to be created as a result of the Transaction, TVA will assign the wholesale power contract following TVA Power Customer Contracts group's due diligence review of power supply arrangements and preparation of any agreements that facilitate assignment of the wholesale power contract (estimated to be 30-90 days depending on the size and scale of the transaction).
5. Finally, if requested, TVA will provide assistance regarding FERC accounting.

V. Template of a Request to Assign Wholesale Power Contract

Provided below as Appendix A is the formatting template which the LPCs should use as they submit information to support a request for assignment of a wholesale power contract in connection with a proposed Transaction.

2017 Mergers, Acquisitions, and Consolidations - Guidelines

Appendix A - Template for Providing Information pursuant to 2016 Guidelines

LPCs submitting a request for assignment of the wholesale power contract pursuant to a proposed Transaction should provide information according to the 2016 Guidelines using the following Template. LPCs should fill out each section of the Template, using the same enumeration as provided below. If subsections are not applicable, e.g., if the LPCs have not identified benefits for a certain subsection, that should be clearly stated. Any quantitative analyses, studies, extensive tables, copies of Transaction related documents, etc. should be included as appendices.

1. Overview and Request of Assignment (required)

1.1. Overview of Transaction

- *Brief, high-level summary of the proposed Transaction.*

1.2. Description of all local, state, and/or other required authorizations and approvals

- *Including those that been secured and those that still need to be secured, with a timeline.*

1.3. Statement of Request of Assignment of Wholesale Power Contract

- *Including specific requests, if any, e.g., regarding timing of consent.*

2. Description of Pre-Transaction LPCs and Post-Transaction LPC (required)

2.1. Description and key information of pre- and post-Transaction LPCs

- *Description of service territory, customers by rate class, population density, other relevant demographic information, etc.*
- *Energy information, including annual sales, demand*

2.2. Description of pre- and post-Transaction LPC organizational structure

3. Supporting Information Corresponding to Nine Factors in 2016 Guidelines⁶

3.1. Overall long-term well-being of LPC and its ratepayers (required)

- *Description of the rationale for the proposed Transaction*
- *Description of how the long-term health and well-being of LPC and its customers will be preserved, if not enhanced, by the proposed Transaction*
- *Demonstration of overall benefits of the Transaction in excess of any costs to effectuate it or risks which may be created by its execution.*

3.2. Financial terms and allocation of proceeds (required)

- *Description of financial terms of the Transaction, e.g., purchase price (including how it was determined), financing, treatment of liabilities*
- *Demonstration that the reasonable value of the system is being conveyed (e.g., appraisal)*
- *Description of treatment of capital credits, cash on hand, member contributions, etc.*
- *Descriptions of how Transaction will be funded and impact of such funding on post-Transaction LPC*
- *Description of proceeds from the Transaction and how they will be used including for the benefit of ratepayers*
- *Demonstration that financial metrics (e.g., debt service ratio, tier ratio, cash ratio) will exceed the minimum thresholds and/or meet the target as established by TVA in rate setting.*

⁶ Subheadings 3.1-3.9 correspond to the nine Factors outlined in Section III of the 2016 Guidelines.

2017 Mergers, Acquisitions, and Consolidations - Guidelines

3.3. Synergies and cost savings (if applicable)

- *Quantitative analysis of any expected synergies or costs savings and the anticipated costs to achieve such synergies/savings. Actual analyses, etc. should be included as an appendix.*
- *Qualitative assessment of other synergies which are expected to benefit ratepayers*

3.4. Rates (required)

- *Description of impact on rates from the proposed Transaction*
- *Quantitative analysis and comparison of rates, by customer class, pre-Transaction and over the five years post-Transaction. Actual calculations, etc. may be included as an Appendix.*
- *A comparison of key cost drivers that will be impacted by the Transaction, including a forecast with and without the Transaction over a 10-year period*
- *Note – rate plans which will benefit ratepayers (e.g., rate reductions, rate freezes, rate action deferrals) will be considered by TVA*

3.5. Rate Parity Plan (required)

- *Description of plans to merge the rates of the LPCs including timeframe*
- *Quantitative analysis of rate parity plans/ comparison to no-Transaction baseline*
- *Rate parity-related commitments*

3.6. Financial integrity and strength of LPC(s)

- *Description of the impact of the Transaction on the financial integrity and strength of the LPCs (required)*
- *Bond ratings pre- and post-Transaction, (if applicable)*
- *Other “access to capital” considerations (if applicable)*
- *Any studies or reports conducted to assess the feasibility of the Transaction, (if applicable)*
- *If post-Transaction LPC is a muni – confirmation of continued segregation from General Fund (required)*
- *If Transaction involves only coops – implications for capital credits coop by-laws, interstate issues (required)*
- *If muni is becoming part of a coop - treatment of patronage capital of coop members (required)*

3.7. Operational and reliability impacts, quality of service, and safety

- *Description of operational capability of post-Transaction entity and how Transaction does/ does not impact operational capability (required)*
- *Description of impact on operational performance (e.g., capital project planning and execution) (required)*
- *Description of plans for investment in infrastructure and capital improvements, with and without the Transaction*
- *Description of impact on reliability (e.g., metrics that measure average customer outages) (if applicable)*
- *Description of impact on customer service metrics (e.g., call center) and safety metrics (e.g., Occupational Safety and Health Administration (OSHA)) (if applicable)*

2017 Mergers, Acquisitions, and Consolidations - Guidelines

- *Note – the pursuit or acceleration of infrastructure improvement, deployment of technologies such as Automated Metering Infrastructure (AMI), etc. will be considered as a benefit of a Transaction and an appropriate use of proceeds*

3.8. Impact on Existing Programs (required)

- *Impact of proposed Transaction on low density, low income, demand side management, and any other programs beneficial to ratepayers*

3.9. Other Benefits and Risks (if applicable)

- *Identification and description of any other benefits and/or risks which may be created by the proposed Transaction (e.g., impacts on employees, economic development, and/or local communities)*
- *Whether LPCs commit to offer TVA programs or pursue public policy goals (e.g., innovative rate structures, AMI investment)*

4. Appendices

- *Appendices should include quantitative analyses, studies, extensive tables, copies of Transaction-related documents, etc.*