

TENNESSEE PUBLIC UTILITY COMMISSION



502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

January 27, 2020

Mr. Jeff Risen, CEO
Tennessee Wastewater Systems, Inc.
851 Aviation Parkway
Smyrna, TN 37167

RE: Docket No. 19-00085, *Petition of Tennessee Wastewater Systems, Inc. For Approval To Use its Escrow and Reserve Funds For Capital Improvement At Hidden Springs Resort.*

Dear Mr. Risen:

In order for the Commission to evaluate Tennessee Wastewater System's Inc. ("TWSI")' petition in Docket 19-00085, please respond to the following request.

Attached are the Commission's Rules relating to wastewater companies' transactions with affiliates. Please provide a narrative explaining in detail how TWSI plans to comply with the provisions set forth in Rule 1220-.04-13-.16 (4) and (5).

Pursuant to Commission Rule 1220-1-1-.03(4), submit either an electronic response along with an original and four (4) written copies or an original written response and thirteen (13) copies. Please note that the requisite number of written copies of all requested information should be provided to the Docket Manager no later than Monday, February 3, 2020 and electronic responses, if filed, must be in .pdf format. Should you have questions regarding the request, please call me at (615) 770-6884.

Sincerely,

A handwritten signature in blue ink that reads "D. Foster".

David Foster
Director, Utilities Division

Attachment

C: Docket File

(Rule 1220-04-13-.15, continued)

Commission,” “Authority” references were changed to “Commission,” “Authority Director” references were changed to “Commissioner,” and “Chief” references were changed to “Director.”

1220-04-13-.16 TRANSACTION WITH AFFILIATES.

- (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.

(Rule 1220-04-13-.16, continued)

- (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 affiliate 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

(Rule 1220-04-13-.16, continued)

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. **Administrative History:** Original rule filed September 5, 2018; effective December 4, 2018.

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

- (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