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19-00108

# 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).*

<b>Agency/Board/Commission:</b>	Tennessee Public Utility Commission
<b>Division:</b>	Utilities
<b>Contact Person:</b>	Kelly Cashman-Grams, General Counsel Aaron J. Conklin, Senior Counsel
<b>Address:</b>	502 Deaderick Street, 4 <sup>th</sup> Floor, Nashville TN
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<b>Email:</b>	Kelly.Grams@tn.gov

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

☐ Amendment  
☒ New  
☐ Repeal

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
1220-04-01	General Public Utilities Rules
Rule Number	Rule Title
1220-04-01-.13	Extensions of Service to Contiguous Territory

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

<https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule 1220-01-04-.13 *Extensions of Service to Contiguous Territory* is created by the following language in its entirety:

- (1) For purposes of this Rule, "contiguous" means immediately adjacent, and sharing at least one significant common boundary line. A geographic feature such as a roadway or stream along the common boundary line will not negate contiguity. However, any intervening land or significant body of water will disqualify a territory from being contiguous. An extension that traverses unoccupied territory that will not be served by the extension is not contiguous.

- (2) Neither a Certificate of Public Convenience and Necessity ("CCN") nor an amendment to an existing CCN shall be required for the extension of public utility service into territory that is contiguous to the territory occupied by such public utility's plant, route, line, or system, when:
- (a) The contiguous territory is not receiving similar service from another utility service provider; and,
  - (b) The contiguous territory is not located within the designated service territory of another utility providing similar service.
- (3) A public utility shall provide written notice to the Commission of its intention to construct, acquire, or commence operation of a utility system or service in territory that is contiguous to the service territory already designated to the public utility for the provision of service of a like character. Concerning such written notice, the public utility shall:
- (a) File notice with the docket clerk for the Commission at least thirty (30) days before constructing, acquiring, or commencing operation of such utility system or service; and,
  - (b) Provide notice in a form approved by the Commission; which shall include identification of the area to be served by the extension and other information required by the Commission in the performance of its statutory general supervisory and regulatory duties.
- (4) In addition to the written notice to the Commission required by paragraph three (3) herein, the public utility shall provide to the Commission:
- (a) Proof of notice that may be required to any regulatory agency of the extension of service of contiguous territory;
  - (b) A complete description of the geographic contiguous territory to be served by the expansion including the name and location of the development (subdivision), number of acres, and the existing territory served by the utility proposing to expand its service area. A legible map of the area with the proposed contiguous service territory and the currently served territory shall also be provided.
  - (c) Documentation of permits, permit modifications and/or amendments, or other approval documents certifying the existence of appropriate capacity and/or ability to provide service issued by any regulatory agency; and,
  - (d) Documentation concerning any complaint(s), notices of violation, or administrative action filed with or issued by a regulatory agency concerning the operations of the utility plant, route, line, or system, to be extended. Such documentation shall also be provided for any complaint(s), notices of violation, or administrative action filed with or issued by a regulatory agency within sixty (60) days after the filing of the written notice required by paragraph three (3) herein.
- (5) In addition to the requirements of paragraphs three (3) and four (4), a public wastewater utility shall provide to the Commission:
- (a) Proof that the operating permit for the existing system has been modified and reissued by the Tennessee Department of Environment and Conservation ("TDEC") to reflect the additional wasteload; or, demonstrate that the existing system design has capacity to support the design flow of the original system and the design flow expected from the contiguous area, and a public notice confirming that the public utility appropriately announced its intention to serve the contiguous property at issue; and,
  - (b) Certification from a design engineer that the existing wastewater system, before any alteration needed to extend service, was constructed in accordance with TDEC-approved construction plans and specifications. The certification shall be filed in the docket prior to providing service.

- (6) Upon the filing of a written notice, the Commission shall open a docket for the review of the notice. A commission order, including appropriate findings of fact and conclusions of law, shall be entered not more than sixty (60) days from the filing of the written notice and all required documentation, and shall be limited to whether the intended expansion qualifies as an expansion into contiguous territory.

**Authority:** T.C.A. §§ 4-5-201 *et seq.*, 65-2-102, and 65-4-201.

\* 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)
Chair Kenneth C. Hill	X				n/a
Vice Chair Herbert H. Hilliard	X				n/a
Commissioner Robin L. Morrison	X				n/a
Commissioner David F. Jones	X				n/a
Commissioner John A. Hie	X				n/a

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 October 12, 2020, 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: 05/28/2020

Rulemaking Hearing(s) Conducted on: (add more dates). 07/22/2020

Date: November 11, 2020

Signature: Kelly Cashman Grams

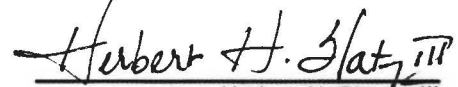
Name of Officer: Kelly Cashman Grams

Title of Officer: General Counsel

Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): 1220-04-01-.13

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



Herbert H. Slatery III  
Attorney General and Reporter

1/25/2021

Date

**Department of State Use Only**

Filed with the Department of State on: 2/4/2021

Effective on: 5/5/2021



Tre Hargett  
Secretary of State

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SECRETARY OF STATE  
PUBLICATIONS

**Public Hearing Comments**

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

See attached.

## **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.

This proposed rule will impact the approximately 150 investor-owned utilities under the jurisdiction of the Commission. The rule will impact companies that chose to become certificated public utilities. The Commission believes that a small portion of the public utilities under its jurisdiction that will be potentially impacted by this rule are small businesses.

The proposed rule is not anticipated to significantly increase reporting, recordkeeping, or other costs administrative costs relative to existing rules. Rather, the rule allows for a streamlined process for a specific set of matters concerning the proposed expansion of the service territory of a public utility. Some matters that are currently addressed in contested case proceedings can be addressed through this streamlined procedure.

The proposed rule does not overlap, duplicate, or conflict with any federal, state, or local government rules. A small business exemption from this rule is not in the public interest because the procedure allows for orderly expansions in a manner that prevents service territory conflicts and ensures that ratepayers receive adequate, safe, quality utility services.

### **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 have an impact on local governments.



**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rule is a new rule that addresses an issue previously unaddressed in the Commission's rules. By statute, public utilities are required to obtain a certificate of convenience and necessity (CCN) prior to constructing, operating, or providing service to customers. An amendment to the CCN is required when an expansion of service to additional territory is sought. However, no CCN or amendment is required where the public utility's expansion of service is to an area that is contiguous to its current territory, plant, or line and the area is not served by another service provider. The rule has been drafted to allow for an orderly process that prevents service territory conflicts among public utilities, ensures the provision of adequate, safe, and quality service, and to properly perform the Commission's supervisory and regulatory function.

- (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;

T.C.A. § 65-2-102(1) requires the Commission to "adopt rules governing the procedure prescribe or authorized by this chapter or by any other statute applicable to the commission;" In addition, T.C.A. § 65-2-102(2) provides that the Commission may "adopt rules implementing, interpreting, or making specific the various laws which it enforces or administers."

- (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 proposed rule impacts the investor-owned utility industry and their customers. No public utility has urged rejection of the rule. Certain public utilities have provided comments supporting and offering recommendations to improve the procedure delineated in the rule.

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

N/A

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No changes to state or local government revenues are expected.

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

Kelly Cashman-Grams, General Counsel; Aaron J. Conklin, Senior Counsel

- (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; Aaron J. Conklin, Senior Counsel

- (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, 4<sup>th</sup> Floor, Nashville, TN 37243, 615-770-6856, Kelly.grams@tn.gov; Aaron J. Conklin, Senior Counsel, 502 Deaderick Street, 4<sup>th</sup> Floor, Nashville, TN 37243, 615-770-6856, aaron.conklin@tn.gov



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

N/A

# TENNESSEE PUBLIC UTILITY COMMISSION

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General Counsel  
(615) 770-6856



Andrew Jackson State Office Bldg.  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243-0001

## MEMORANDUM

From: Kelly Cashman Grams, General Counsel  
Aaron J. Conklin, Senior Counsel

RE: Tenn. Code Ann. § 4-5-222  
Public Hearing Comments, Rule 1220-04-01-.13  
TPUC Docket No. 19-00108

Date: November 11, 2020

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The Tennessee Public Utility Commission filed its Notice of Rulemaking Hearing with the Secretary of State on May 28, 2020 and held a rulemaking hearing on the proposed rule on July 22, 2020. Before the hearing, the Tennessee Public Utility Commission (Commission) issued a Notice requesting written comments on the proposed rule and received comments from three parties. All three of these parties participated in the public hearing and their remarks are summarized below. One additional party submitted comment at the public hearing. In satisfaction of T.C.A. § 4-5-222, the substance of the comments and the response of the Commission thereto are provided as follows:

1) One commenter suggested deletion of the words “if applicable” from the opening text of paragraph four (4) concerning additional documentation to be provided to the Commission. The Commission accepted this recommendation, deleting the words “if applicable” in order to provide unambiguous direction concerning additional documentation to be filed.

2) One commenter suggested modification of subparagraph 4(a) to require proof of modification and reissuance of the TDEC operating permit reflecting additional wasteload or demonstration of capacity to support design flow of the original system expected from the additional service area with regard to a wastewater utility rather than proof that TDEC received notice of the proposed expansion. The commenter also suggested that such revision to subparagraph 4(a) would allow for deletion of subparagraph 4(b). A second commenter endorsed this suggested modification and encouraged its adoption. The Commission accepted this

recommendation which relates specifically to public wastewater utilities. As the rule applies generally to all public utilities, the proposed paragraph 4 was revised to address filing requirements for all public utilities to include any permits, permit modifications, or approvals by a regulatory agency, and an additional paragraph 5 was added to address the concerns of the commenter specific to public wastewater utilities and includes the language concerning the commenter's recommendation.

3) One commenter suggested that the words "or other enforcement action" be added to subparagraph 4(c) to require disclosure of all forms of enforcement communication concerning the operation of a system. A second commenter agreed that the proposed language was too narrow and suggested using language found in another Commission rule. The second commenter also suggested that the requirement to disclose enforcement action continue for a period of sixty (60) days after the public utility files notice of expansion to a contiguous territory. While both commenters related the recommendation to public wastewater utilities, the Commission accepted this recommendation as applicable to all public utilities and revised the filing requirements language accordingly.

4) One commenter suggested addition of language requiring filing of a certification that a system has been constructed in accordance with TDEC-approved plans and specifications. This comment addresses specifically wastewater utilities. The Commission accepted this recommendation and added the requirement to the new proposed paragraph 5 listing additional filing requirements for wastewater utilities.

5) One commenter recommended that the rule clarify whether the written notice will be filed in a docket so that utility customers, the Consumer Advocate, and other interested parties would be able to access, comment upon, and intervene into the matter if necessary. The Commission accepted this recommendation and added a new paragraph 6 that specifies that the Commission will open a docket for review and approval of the written notice and issue an order denying or approving the proposed expansion.

6) One commenter recommended the addition of language requiring the issuance of an order within thirty (30) days of the filing of the written notice in order to address the local government requirements that a Certificate of Convenience and Necessity ("CCN"), or an amendment to a CCN, be issued prior to obtaining local government approval of site plans or plats. While the suggestion is targeted to an issue currently encountered by public wastewater utilities, the Commission accepted that some time limitation should be applicable to contiguous territory

expansion notice matters and included language in the new paragraph 6 requiring an order approving or denying the expansion to be filed within sixty (60) days of the filing of the notice and all required documentation.

7) One commenter at the public hearing requested that the rule contain language requiring updated service territory maps be filed with the Commission as part of the process. The Commission accepted this recommendation, adding a requirement that the public utility file a description of the proposed expansion area as well as a map depicting the proposed expansion and contiguous service territory.

Respectfully Submitted:

Kelly Cashman Grams  
Kelly Cashman Grams, General Counsel  
On Behalf of the Tennessee Public Utility Commission

Sworn to and subscribed before me this  
24th day of November, 2020.

Rebecca L. Lawless, J.D.  
NOTARY PUBLIC

My commission expires: 3/8/2022

