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Sequence Number: 05-20-20
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 File Date: 5/28/2020

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Public Utility Commission
Division:	Utilities
Contact Person:	Kelly Cashman-Grams, General Counsel
Address:	502 Deaderick Street, 4 th Floor, Nashville TN 37243
Phone:	615-770-6856
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Ectory Lawless, Docket & Records Manager
Address:	502 Deaderick Street, 4 th Floor, Nashville TN 37243
Phone:	615-770-6850
Email:	Ectory.R.Lawless@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	This meeting will be held by electronically by WebEx.
Address 2:	Join by phone +1-415-655-0003 Global call-in numbers are available online at: https://tngov.webex.com/tngov/globalcallin.php?MTID=m031bfd0601f3916472d2a3c60a4da915 Video conferencing is currently permitted by Executive Order. In the event that electronic hearings are no longer permitted on the scheduled hearing date, the rulemaking hearing will be held in the ground floor Hearing Room 201 (HR G.201) located within the Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, TN 37243. The entrance is located off 5th Street between Deaderick Street and Charlotte Avenue. Please bring a state-issued identification card (driver's license or ID) and arrive early enough to allow sufficient time to go through security screening and obtain a visitor's pass.
Hearing Date:	July 22, 2020
Hearing Time:	2:30 p.m. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Additional Hearing Information:

The Rulemaking Hearing will be held via WebEx platform. Meeting information will be posted on tn.gov/tpuc in Docket No. 20-00025 the day before the hearing on July 21, 2020.

Revision Type (check all that apply):

☒ Amendment
☒ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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-.14	Definitions
1220-04-01-.15	Powers and Standard of Review
1220-04-01-.16	Ratemaking Rate Base
1220-04-01-.17	Acquisition Premium
1220-04-01-.18	Post-Acquisition Capital Investments
1220-04-01-.19	Regulatory, Transaction, and Closing Costs.
1220-04-01-.20	Post-Acquisition Rates and Charges
1220-04-01-.21	Application for Acquisition and Filing Requirements

Place substance of rules and other info here. 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 1220-04-01 *General Public Utilities Rules* is amended by adding the following language in its entirety:

Rule 1220-04-01-.14 Definitions.

- (1) "Acquiring utility" means a public utility subject to the jurisdiction of the Commission.
- (2) "Acquisition premium" means all or a portion of the purchase price in excess of the net book value of the assets purchased from the selling utility that is added to the acquiring utility's ratemaking rate base.
- (3) "Acquired customers" means all customers of all classes served by the selling utility that will be served by the acquiring utility in the event the Commission approves the application for acquisition.
- (4) "Existing customers" means all customers of all classes served by the acquiring utility immediately prior to the Commission's hearing and consideration of the application for acquisition.
- (5) "Net book value" means the original cost of the selling utility's assets less accumulated depreciation less unamortized contributions in aid of construction.
- (6) "Ratemaking rate base" means the value of the selling utility's assets that is incorporated into the acquiring utility's rate base for ratemaking purposes.
- (7) "Selling utility" means any provider of public utilities services in Tennessee that is being purchased by an acquiring utility as a result of a voluntary arm's-length transaction.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.15 Powers and Standard of Review.

- (1) The Commission retains its regulatory authority, jurisdiction, and discretion as provided under Title 65 including as follows:
 - (a) The Commission has the authority after public notice and hearing to approve an acquiring utility's purchase of a selling utility upon finding the acquisition to be in the public interest.

- (b) The Commission shall maintain its existing statutory authority to set rates for the selling utility's system after it is purchased by the acquiring utility.
- (c) The Commission shall have the discretion to classify the acquired system as a separate entity for ratemaking purposes if such classification is in the public interest.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.16 Ratemaking Rate Base.

- (1) The acquiring utility shall incorporate the acquired assets of the selling utility into the acquiring utility's rate base at the lesser of the purchase price or the net book value of the acquired assets.
- (2) The Commission shall consider the addition of an acquisition premium to the acquiring utility's rate base in accordance with Rule 1220-04-01-.17 below.
- (3) The normal rules of depreciation shall apply to the acquiring utility's ratemaking rate base upon acquisition unless otherwise expressly approved by the Commission.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.17 Acquisition Premium.

- (1) Upon request by the acquiring utility, the Commission may allow the acquiring utility to recover an acquisition premium from acquired and/or existing customers if the Commission determines that such recovery will not result in unjust or unreasonable rates and charges.
- (2) The Commission may consider the following factors when determining whether an acquisition premium should be allowed:
 - (a) Cost savings resulting from consolidation of the selling utility's system into the acquiring utility's operations;
 - (b) Improvements in public utilities services resulting from the acquisition;
 - (c) Remediation of public health, safety, and welfare concerns of the selling utility's system resulting from the acquisition;
 - (d) Incentives for acquisition of a financially or operationally troubled system, which may be demonstrated by bankruptcy, receivership, financial distress, notice of violation, order of abatement, or inability to continue as a going concern of the selling utility; and
 - (e) Any other known and measurable benefits inuring to the acquired and/or existing customers resulting from the acquisition.
- (3) The acquiring utility shall have the burden of showing:
 - (a) The existence of one or more factors supporting the proposed acquisition premium;
 - (b) The reasonable value of each factor supporting the proposed acquisition premium; and
 - (c) that the proposed acquisition premium will not result in unjust or unreasonable rates and charges.

- (4) The Commission shall allow the acquiring utility to amortize any acquisition premium over a reasonable period of time which shall not exceed the remaining useful life of the underlying assets acquired from the selling utility unless otherwise expressly approved by the Commission.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.18 Post-Acquisition Capital Investments.

- (1) Post-acquisition capital investments in property, plant, and equipment attributable to the selling utility's system or service area shall be reasonable, prudent, and used and useful in the provisioning of public utilities services.
- (2) Post-acquisition capital investments shall be depreciated over the economically useful lives of the assets placed in service using the straight-line depreciation method unless another method is expressly approved by the Commission.
- (3) In cases when the costs of necessary post-acquisition capital investments are too great to be recovered from customers due to rate shock or rate affordability concerns, the Commission may allow the acquiring utility to defer all or a portion of such costs into a regulatory asset account for probable future recovery.
- (4) Upon request of the acquiring utility, the Commission shall allow cost recovery of post-acquisition capital investments through an alternative regulatory method pursuant to T.C.A. § 65-5-103(d) or through another alternative regulatory method that the Commission, after public notice and hearing, finds to be in the public interest.
- (5) The acquiring utility's return on post-acquisition capital investments shall be the rate of return approved by the Commission at the acquiring utility's most recent general rate case unless otherwise expressly approved by the Commission.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.19 Regulatory, Transaction, and Closing Costs.

- (1) All regulatory, transaction, and closing costs related to the acquiring utility's purchase of the selling utility shall be reasonable and prudent.
- (2) For purposes of setting post-acquisition rates and charges, the Commission may in the exercise of its lawful discretion allocate the regulatory, transaction, and closing costs between the acquiring utility's owners/shareholders and its customers in recognition of the relative benefits of the acquisition to each and in consideration of the affordability of post-acquisition rates.
- (3) The Commission shall allow regulatory, transaction, and closing costs recoverable from customers to be deferred into a regulatory asset account and included as a regulatory asset in the acquiring utility's rate base for future recovery by the acquiring utility unless such costs are to be recovered through another method approved by the Commission.
- (4) The Commission shall allow the acquiring utility to amortize any deferred regulatory, transaction, and closing costs included as a regulatory asset in the acquiring utility's rate base over a reasonable period of time which shall not exceed the remaining useful life of the underlying assets acquired from the selling utility unless otherwise expressly approved by the Commission.

- (5) Regulatory, transaction, and closing costs related to an acquisition application that is withdrawn by the acquiring utility or denied by the Commission shall not be recoverable from the acquiring utility's existing customers.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.20 Post-Acquisition Rates and Charges.

- (1) The Commission shall have the authority, after public notice and hearing, to fix post-acquisition rates and charges for acquired customers and existing customers.
- (2) Post-acquisition rates and charges shall be just and reasonable.
- (3) In fixing post-acquisition rates and charges, the Commission may in the exercise of its lawful discretion allocate the recovery of costs between the acquired customers and existing customers on a rational basis that may, among other things, consider the relative benefits, costs, and intrinsic value of service.
- (4) Costs that may be rationally allocated between acquired and existing customers for purposes of fixing post-acquisition rates and charges include, but are not confined to the following:
 - (a) Cost of service;
 - (b) Return on post-acquisition capital investments;
 - (c) Acquisition premium; and
 - (d) Regulatory, transaction, and closing costs related to the acquisition.
- (5) The Commission may in the exercise of its lawful discretion require the phase in of post-acquisition rates and charges over a reasonable period of time in circumstances when post-acquisition rates and charges are substantially higher than pre-acquisition rates and charges or in consideration of affordability concerns.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.21 Application for Acquisition and Filing Requirements.

- (1) The Commission shall approve or deny an application for acquisition within 120 days of the filing of a complete application by the acquiring utility.
- (2) An application for acquisition shall, at a minimum, contain all the following information prior to such application being deemed complete unless otherwise determined by the Commission:
 - (a) A fully executed acquisition agreement, including all attachments, reflecting the terms and provisions of the acquisition;
 - (b) Financial statements, including a balance sheet and income statement of the selling utility's three most recently completed fiscal years or reporting periods at the time the application for acquisition is filed;
 - (c) All tariffs, schedules, or lists detailing the rates, charges, and terms of service in effect for the selling utility at the time the application for acquisition is filed;

- (d) A schedule detailing the number of customers by customer class served by the selling utility at the time the application for acquisition is filed;
- (e) A statement and, if available, maps that comprehensively describe the service area of the selling utility;
- (f) A forecasted income statement detailing the projected operating revenues, expenses, taxes, and net income attributable to the selling utility's operations for the twelve-month period following the estimated closing date of the acquisition transaction;
- (g) Capital budgets detailing by project all projected post-acquisition capital investments in property, plant, and equipment attributable to the selling utility's system or service area for the three-year period following the estimated closing date of the acquisition transaction;
- (h) A schedule detailing the computation of regulatory, transaction, and closing costs related to the proposed acquisition;
- (i) A schedule detailing the computation of any proposed acquisition premium;
- (j) A statement discussing the factor(s) supporting any proposed acquisition premium, including the particular benefits or cost savings, if any, that inure to the benefit of
 - 1. Acquired customers and/or
 - 2. Existing customers;
- (k) A statement discussing the methodology and rate design used to recover any proposed
 - 1. Acquisition premium and/or
 - 2. Costs of post-acquisition capital investments and/or
 - 3. Regulatory, transaction, and closing costs from
 - 4. Acquired customers and/or
 - 5. Existing customers;
- (l) A schedule detailing the computation of the net book value of the assets being acquired from the selling utility as determined by the books and records of the selling utility or, if such books and records are unavailable or insufficient, by a study of the selling utility's plant in service performed by a consultant approved by the Commission;
- (m) A schedule detailing the computation of the acquiring utility's post-acquisition ratemaking rate base;
- (n) A schedule detailing the computation of post-acquisition rates and charges proposed for acquired customers by customer class;
- (o) A schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for acquired customers by customer class;
- (p) A schedule detailing the computation of post-acquisition rates and charges proposed for existing customers by customer class; and

- (q) A schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for existing customers by customer class.
- (3) The acquiring utility shall possess a Certificate of Public Convenience and Necessity (CCN) or demonstrate its eligibility for a CCN to operate the selling utility's system in accordance with applicable statutory law and Commission rules and regulations.
- (4) The acquiring utility shall file a proposed tariff incorporating the acquired customers into the acquiring utility's rates, charges, and terms of provisioning public utilities services.
- (5) The acquiring utility shall file a copy of a notice published in the area where the selling utility operates informing the public of the acquiring utility's proposed acquisition of the selling utility, the terms of the acquisition, and the date(s) and location(s) of the public meeting(s) scheduled to be held on the acquisition.
- (6) The acquiring utility shall furnish any other pertinent information as determined and requested by the Commission.
- (7) The Commission shall approve the acquiring utility's acquisition of the selling utility if, after public notice and hearing, the Commission finds the acquisition to be in the public interest.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: May 28, 2020

Signature: Kelly Cashman Grams

Name of Officer: Kelly Cashman Grams

Title of Officer: General Counsel

Subscribed and sworn to before me on: May 28, 2020

Notary Public Signature: Rebecca R. Lawless, J.D.



My commission expires on: 3/8/2022

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Tre Hargett
Secretary of State

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