

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:)
)
RULEMAKING TO PROMULGATE RULES) DOCKET NO. 20-00025
RELATED TO EXTENSION OF SERVICE TO)
UTILITY ACQUISITIONS)

COMMENTS OF THE CONSUMER ADVOCATE
CONCERNING PROPOSED ACQUISITION RULES

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (“Consumer Advocate”), pursuant to Tenn. Code Ann. § 65-2-102(a)(4), respectfully submits its *Comments* to the Tennessee Public Utility Commission’s (“TPUC” or “Commission”) *Rulemaking to Promulgate Rules Related to Extension of Service to Utility Acquisitions*. A redlined version of the proposed rules with the Consumer Advocate’s suggestions is attached as **Exhibit A** and a clean version is attached as **Exhibit B**.

The Consumer Advocate’s comments are related to six parts of the rules: 1) Definitions; 2) Powers and Standards of Review; 3) Ratemaking Rate Base; 4) Acquisition Premium; 5) Regulatory, Transaction, and Closing Costs; and 6) Application for Acquisition and Filing Requirements. The Consumer Advocate contends that modifications to these portions of the rules are appropriate, will result in more efficient proceedings at the Commission, and are in the public interest. Moreover, because each situation will vary in circumstance, the Consumer Advocate’s proposals are intended 1) to ensure that the Commission be allowed to consider as many factors as it deems necessary to review the action and 2) to allow reasonable flexibility for

the Commission to hear and consider proposals rather than binding TPUC's review.

Rule 1220-04-01-.14, Definitions and Rule 1220-04-01-.15, Powers and Standard of Review.

The initial sections provide important insight into both the intent of the rules as well as how the rules should be applied in specific cases. Therefore, it is vital that these sections be constructed in a manner that promotes accuracy and precision.

- A. The definition for "Acquisition Premium" should be updated to accurately capture what an Acquisition Premium is and how it impacts regulatory proceedings.**

As proposed, the definition indicates that an Acquisition Premium is essentially included in every rate base. This is not necessarily true. An Acquisition Premium is simply the amount paid in excess of the net book value of the assets, net of liabilities, being acquired by the purchasing utility. An Acquisition Premium may or may not then be included in Rate Base, and the Commission must be able to consider whether all, part, or none of the Acquisition Premium is appropriate to use for such a purpose. If a company pays in excess of net book value and the excess is not permitted to be included in Rate Base, the Company still has an Acquisition Premium, but it is simply recorded "below the line," meaning it is not eligible for inclusion in the ratemaking formula and is outside of rate base.

The Consumer Advocate proposes the following definition be inserted into the list of definitions and separate from rate base:

(2) "Acquisition Premium" means that portion of the purchase price in excess of the net book value of the (net) assets purchased from the selling utility. Whether the Acquisition Premium is recovered from ratepayers will be determined based upon considerations identified below.

This change will accurately reflect the meaning of Acquisition Premium while ensuring that the Commission retains its ability to determine if public utility capture of the Acquisition Premium is in the public interest.

B. “Public Interest” should be expounded upon in the rules.

As with many topics presented to TPUC, the Commission must determine whether a proposal is or is not in the public interest. The proposed rules include items that the Commission may consider in determining whether an Acquisition Premium is appropriate.¹ The Consumer Advocate believes that a list of factors that relate to whether a proposal is in the public interest would likewise be useful. Doing so will help public utility companies present their initial pleadings in a way that identifies useful information from the outset and will further guide parties throughout the course of a docket on factors that should be included in pre-filed testimony.² Therefore, the Consumer Advocate proposes that this section include a list of factors that the Commission will consider in determining whether a proposal is in the public interest:

(2) Public Interest

Pursuant to these rules, the Commission will determine whether proposed ratemaking treatment is in the public interest. The public interest review shall include:

- (a) An evaluation of the likely impact of the acquisition on customer rates subsequent to the acquisition relying upon the anticipated cost of the acquiring entity to provide service, notwithstanding the costs of any infrastructure necessary to enhance the provision of safe, reliable service or to comply with environmental requirements.*
- (b) An evaluation of the qualifications of the acquiring entity to provide safe, reliable service.*
- (c) An evaluation of the financial capability of the acquiring entity to provide safe reliable service.*
- (d) The benefits, if any, accruing to customers from an enhanced level of service under the acquiring entity contrasted with the legacy entity.*

¹ See Proposed Rule 1220-04-01-.17(2).

² This is especially important in light of the proposed 120-day deadline.

The public interest review may also include:

- (e) The impact of the transaction on the economy of Tennessee.*
- (f) Other factors presented during the course of a proceeding.*

Other states include definitions or standards of review for the term “public interest” in rules. For instance, Iowa has the following provision that accounts for the public interest:

Iowa Admin. Code r. 199-32.4(476): “Proposal for Reorganization Requirements”

“Any person who intends to accomplish a reorganization shall file supporting testimony and evidence with its proposal for reorganization, which shall include, but not be limited to, the following information:”

32.4(4): Impact of Reorganization

“(c) An analysis of the effect on the public interest. Public interest means the interest of the public at large, separate and distinct from the interest of the public utility's ratepayers. The analysis should include a discussion of the reorganization's impact on the economy of the state and the communities where the utility is located.”

Moreover, in Utah, that State's rules include the following:

Utah Admin. Code r. R746-420-3

(1) General Requirements of a Solicitation Process.

- (a) All aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest.
- (b) A proposed Solicitation and Solicitation Process must be reasonably designed to:
 - (i) Comply with all applicable requirements of the Act and Commission rules;
 - (ii) Be in the public interest taking into consideration:
 - (A) whether they are reasonably designed to lead to the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of the Soliciting Utility located in this state;
 - (B) long-term and short-term impacts;
 - (C) risk;
 - (D) reliability;

- (E) financial impacts on the Soliciting Utility; and
- (F) other factors determined by the Commission to be relevant;
- (iii) Be sufficiently flexible to permit the evaluation and selection of those resources or combination of resources determined by the Commission to be in the public interest.”

Similar to these states’ treatments of the issue, and analogous to the term public interest, the Tennessee Valley Authority has adopted a “Material Net Benefit” test to determine whether to approve a merger or acquisition. The TVA looks to the following in determining whether approval is appropriate: 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.³

The rule concerning the public interest as proposed by the Consumer Advocate to the Commission in this proceeding will provide discretion to the Commission as well as guidance to parties concerning pleadings, testimony, and argument. It will also provide acquiring utilities additional guidance during their negotiations with sellers of a system.

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

Proposed Rule 1220-04-01-.16(3) states that the “normal rules of depreciation shall apply to the acquiring utility’s ratemaking rate base upon acquisition unless otherwise expressly approved by the Commission.” While the ability for the Commission to address this issue separately is important, the Consumer Advocate contends that the phrase “normal rules of depreciation” is vague and can be better defined. Therefore, the Consumer Advocate proposes the following language be inserted to subsection (3):

³ DETERMINATION AND DISPOSITION OF COMMENTS - ACQUISITION OF CITY OF MURFREESBORO ELECTRIC DEPARTMENT (MED) BY MIDDLE TENNESSEE ELECTRIC MEMBERSHIP CORPORATION (MTEMC), S&P Global

The Depreciation rates approved by the Commission applicable to the seller's assets shall be maintained by the acquiring entity. This may require maintaining separate asset records for the acquired assets from any legacy assets of the acquiring entity.

This will provide notice to parties in acquisition dockets that it is necessary to provide appropriate proposals within respective pre-filed testimonies concerning depreciation.

Rule 1220-04-01.17, Acquisition Premium

A. Background

The subject of an Acquisition Premium has been raised many times throughout the history of this Commission.⁴ While public utilities often argue that they should be able to recover the full purchase price of a system, this purchase price can represent an amount paid above the net book value of the system. One troubling aspect of such treatment is that the dynamic between buyers and sellers, if left unchecked, changes drastically. While buyers in competitive markets negotiate to achieve the lowest price possible, when a public utility purchases a system and is allowed to utilize the negotiated purchase price to set raises for consumers, such a buyer suddenly has an interest in negotiating a high purchase price. Thus, the arm's length nature of a negotiation with a public utility buyer does not necessarily exist. Instead, both the buyer and seller have an incentive to set a higher price for a system. Regulation must address this dynamic and ensure that buyers and sellers do not share an incentive to drive up the price.⁵

Another issue stemming from the allowance of recovery for an Acquisition Premium is

Market Intelligence, June 2020.

⁴ See e.g., TPUC Docket No. 18-00099 (filed September 7, 2018); TPUC Docket No. 15-00042 (filed April 2, 2015).

⁵ Indeed, the necessity for regulatory bodies like this Commission to ensure that monopolies operate as if there was normal competition goes to the fundamental core of the need for regulation. Regulators ensure that public utilities charge just and reasonable rates rather than monopoly rates. The principle here is the same. Public utilities who purchase an existing system should not have an incentive to drive up the purchase price. Instead, they should

that in instances where the seller is another public utility or municipal body, either ratepayers or taxpayers (depending on the type of entity operating the system) may have already compensated the seller for some or all of the system. For instance, in the case of a municipal-owned water system, customers may have entirely remunerated the municipality that built and operated the system through their water rates as well as taxes. If that system is then sold to an investor-owned public utility, these customers could find themselves paying for the water system a second time. As discussed previously, this Commission must retain the ability to consider a multitude of factors to ensure that regulatory treatment is in the public interest.

B. The standard for considering an Acquisition Premium should be changed, and the Commission must be able to consider a broad range of factors rather than simply those that may support recovery of an Acquisition Premium.

The proposed rules include the following standard for acquisition premiums:

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.

This appears to be a very easy standard for a public utility to meet. Instead, acquiring utilities should be required to demonstrate that the acquisition is in the public interest and will not result in unjust or unreasonable rates, including a demonstration that the inclusion of an Acquisition Premium is not unreasonable. The Consumer Advocate proposes the following language be inserted:

The Commission shall allow the acquiring utility to recover all or part of an acquisition premium from acquired and/or existing customers only if the acquiring utility can demonstrate that such rates (including the acquisition premium recovery) are not unreasonable.

Such a requirement will put the burden appropriately on the acquiring utility, which is logical as

have an incentive to negotiate the lowest price possible, just as their counterparts do in competitive markets.

the acquiring utility is making the request. Intervening parties should not bear the burden to prove that proposed treatment by the acquiring utility is not in the public interest or that rates would not be just and reasonable. That burden clearly lies with the petitioner, as it does in any other docket before this Commission. Moreover, with this language the Commission maintains its discretion in reviewing a proposal rather than having its decision-making authority usurped. The Consumer Advocate has also proposed additions within these rules mandating that utilities provide specific types of proof alongside their requests, such as a demonstration that cost savings have been achieved if an entity makes such a claim in its petition or testimony.

This section should include an acknowledgement that the Commission may allow a portion of the Acquisition Premium to be recovered rather than only its entirety. As currently written, the rules seem to indicate an “all or nothing” approach, but it is feasible that some future proceedings may conclude that a portion of the Acquisition Premium may be recovered in rates. Further, the Consumer Advocate suggests that this section should include a provision affirming that the Commission may permit a return of and/or a return on the Acquisition Premium in rates.

Proposed Rules 1220-04-01-.17(2)(a) – (e) include a list of instances that an Acquisition Premium may be appropriate. But there are also many occasions that recovery of an Acquisition Premium is inappropriate. As discussed above, the burden of proving that a factor seeming to favor an Acquisition Premium must be explicitly noted as belonging to the acquiring utility. And even if such a factor is demonstrated by the acquiring utility, this Commission should still retain its authority to make a determination on whether recovery of the Acquisition Premium is in the public interest based on the totality of the evidence in a proceeding.

Demonstrable and verifiable cost savings should be a prerequisite to recovery of an Acquisition Premium, notwithstanding those situations involving the seller of a system with low

or deteriorating quality of service. Moreover, the party seeking to implement an Acquisition Premium in rates should bear the burden of proving that doing so is in the public interest. The Consumer Advocate recommends the following language be added to subpart (2)(a):

The acquiring entity shall have the burden of proof to demonstrate the likelihood of cost savings in the acquisition proceeding, and an after the fact analysis demonstrating that such cost savings were achieved.

Such a clarification ensures fair outcomes in acquisition dockets.

C. Troubled systems are not appropriate candidates to earn a return on an Acquisition Premium.

Proposed Rules 1220-04-01-.17(4) includes the following:

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.

The Consumer Advocate proposes that this section be deleted. There is no justification for a financially or operationally troubled entity to sell a system for a price greater than book value. Such a situation would result in a failure to hold the incumbent utility accountable, and the entity that mismanaged the system would essentially be encouraged to receive unjust gains.

D. In reviewing a proposal concerning an Acquisition Premium, the Commission should consider assigning a portion of the gain-on-sale to the benefit of ratepayers.

If the Commission determines that it is appropriate for an acquiring utility to recover the costs of an Acquisition Premium from the ratepayers of a financially distressed or operationally troubled utility in some future rate proceeding, the Commission should consider attributing all or some portion of the resulting gain-on-sale to ratepayers. Utility owners are not entitled to returns in excess of those authorized by the Commission. And shareholder retention of gains on the sale of utility assets may result in such excessive returns. The gain-on-sale amount translates to an

Acquisition Premium on the buyer's side of the ledger, the costs of which will either be absorbed by the acquiring entity's shareholders or its ratepayers. Therefore, the Consumer Advocate proposes the following addition:

If the Commission determines that the acquiring utility may be eligible for recovery of the costs of the acquisition in a future ratemaking proceeding, it should then determine the appropriate treatment of the gain-on-sale proceeds within the acquisition docket.

E. The Commission should retain the option to permit recovery of an Acquisition Premium over a period of time.

Last, the Consumer Advocate proposes to include a provision allowing the Commission to permit recovery of an Acquisition Premium to be amortized over a period of time, which will be at the discretion of the Commission. The Commission may determine that the remaining lives of the assets should constitute the appropriate Acquisition Premium amortization period. However, there may be situations in which assets are nearly fully depreciated, resulting in an abnormally short amortization period that is not in the public interest. The determination of the appropriate amortization period should therefore be determined on a case-by-case basis.

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

The first portion of the proposed rules indicate that “[a]ll regulatory, transaction, and closing costs related to the acquiring utility's purchase of the selling utility shall be reasonable and prudent.”⁶ This seems to suggest that all such costs shall be deemed to be reasonable and prudent – and therefore recoverable from ratepayers – which may not be the case. Under the current construction of the rule, utilities again would have no incentive to keep costs down. They would simply submit any costs incurred, and the current construction of this rule seems to indicate that they would be automatically recovered. Instead, the Consumer Advocate proposes

⁶ Proposed Rule 1220-04-01-.19(1).

language requiring that such costs will be *evaluated* for reasonableness and prudence. The Commission can then decide whether the petitioner has met its burden of proof and should be allowed to recover these costs.

In a similar vein, the Consumer Advocate proposes that subsection (3) read as follows:

If determined by the Commission that some portion of regulatory, transaction, and closing costs should be recovered from ratepayers, the Commission shall allow such costs to be deferred into a regulatory asset account and included as a regulatory asset on the acquiring utility's books and records unless such costs are to be recovered through another method approved by the Commission.

This method allows parties to propose regulatory treatment to the Commission rather than binding the Commission to certain findings. It also continues to hold acquiring utilities accountable to a reasonable standard for transactions.

Rule 1220-04-01.21, Application for Acquisition and Filing Requirements

This section includes a 120-day review deadline for a final determination by this Commission. Because both sellers and acquiring utilities will have had months or even years to prepare for an acquisition filing, this timeline creates an undue burden on intervenors and Commission Staff. Moreover, if discovery disputes arise, this timeline could become untenable if there is no provision allowing for an extension.

While public utilities may desire to set short timeframes or have matters expedited, there must be consideration for proceedings that call for flexibility. In order to balance the utilities' desire for quick decisions while providing flexibility if a situation requires it, the Consumer Advocate proposes the following language:

- (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. Upon a showing of good cause, any party in a proceeding may request that the Commission extend this period by up to 60 days.*

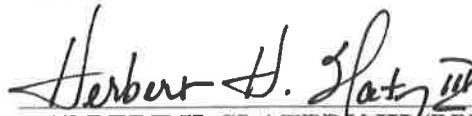
This change is a modest one as the 120-day time period remains the baseline for acquisition dockets. And the Commission will retain the discretion to extend dockets in appropriate cases.

CONCLUSION

Commission rules provide guidance to parties. In crafting rules, it is necessary to ensure that they accurately reflect the subject matter addressed. And in regulatory dockets presented to this Commission for consideration, it is in the public interest that the Commission be allowed reasonable discretion in making decisions and issuing final orders. Each of the changes included in the Consumer Advocate's proposed rules is intended to allow for Commission discretion. Moreover, the Consumer Advocate believes that the changes make the rules more precise and better serve the public interest.

WHEREFORE the Consumer Advocate respectfully requests that this Commission consider and adopt these proposed rules.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail on July 20, 2020.

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EXHIBIT A

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. Whether the acquisition premium is recovered will be determined based upon considerations identified in these rules.
- (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.
- (2) Public Interest

Pursuant to these rules, the Commission will determine whether proposed ratemaking treatment is in the public interest. The public interest review shall include:

- (a) An evaluation of the likely impact of the acquisition on customer rates subsequent to the acquisition relying upon the anticipated cost of the acquiring entity to provide service, notwithstanding the costs of any infrastructure necessary to enhance the provision of safe, reliable service or to comply with environmental requirements.
- (b) An evaluation of the qualifications of the acquiring entity to provide safe, reliable service.
- (c) An evaluation of the financial capability of the acquiring entity to provide safe reliable service.
- (d) The benefits, if any, accruing to customers from an enhanced level of service under the acquiring entity contrasted with the legacy entity.

The public interest review may also include:

- (e) The impact of the transaction on the economy of Tennessee.
- (f) Other factors presented during the course of a proceeding.

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 The Depreciation rates approved by the Commission applicable to the seller's assets shall be maintained by the acquiring entity. This may require maintaining sperate asset records for the acquired assets from any legacy assets of the acquiring entity. normal rules of depreciation shall apply to the acquiring utility's ratemaking rate base upon acquisition unless otherwise expressly approved by the Commission.
- (3)

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

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

- (1) Upon The Commission shall only allow the acquiring utility to recover all or part of an acquisition premium from acquired and/or existing customers only if the acquiring utility can demonstrate that such rates (including the acquisition premium recovery) are not unreasonable. 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 permit a return of and/or a return on the acquisition premium in revenue requirement of the acquiring utility. The Commission may consider the following factors, as well as other factors that counter an acquiring utility's recovery of an acquisition premium, when determining whether all or some portion of an acquisition premium should be allowed for recovery from ratepayers:

- (a) Cost savings resulting from consolidation of the selling utility's system into the acquiring utility's operations (The acquiring utility shall have the burden of proof to demonstrate the likelihood of cost savings in the acquisition proceeding, and an after the fact analysis demonstrating that such cost savings were achieved);
- (b) Improvements in public utilities services resulting from the acquisition, which the acquiring utility shall demonstrate through verifiable metrics;
- (c) Remediation of public health, safety, and welfare concerns of the selling utility's system resulting from the acquisition; and
- (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)~~(d) 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 may allow the acquiring utility to amortize (either above or below the line for ratemaking purposes) the acquisition premium over a period of time established by the Commission. The Commission may consider the remaining book lives of the acquired assets or may determine a definitive time period unrelated to the remaining book lives of the acquired assets if such remaining life results in an abbreviated amortization period that is not in the public interest. 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.

(4)(5) If the Commission determines that the acquiring utility may be eligible for recovery of the costs of the acquisition in a future ratemaking proceeding, it should then determine the appropriate treatment of the gain-on-sale proceeds within the acquisition docket.

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 must be reasonable, prudent, and used and useful in the provisioning of public utilities services if being sought for recovery.

- (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 at the selling utility's approved depreciation rates 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~~ The Commission shall determine the appropriate rate of 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 ~~must~~ be reasonable and prudent in order for them to be recovered from ratepayers, and the acquiring utility bears the burden to prove reasonableness and prudence.
- (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) If determined by the Commission that some portion of regulatory, transaction, and closing costs should be recovered from ratepayers, ~~t~~The Commission shall allow regulatory, transaction, and closing costs recoverable from customers such costs to be deferred into a regulatory asset account and included as a regulatory asset on the acquiring utility's books and records 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. Upon a showing of good cause, any party in a proceeding may request that the Commission extend this period by up to 60 days.
- (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.*

EXHIBIT B

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. Whether the acquisition premium is recovered will be determined based upon considerations identified in these rules.
- (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.
- (2) Public Interest

Pursuant to these rules, the Commission will determine whether proposed ratemaking treatment is in the public interest. The public interest review shall include:

- (a) An evaluation of the likely impact of the acquisition on customer rates subsequent to the acquisition relying upon the anticipated cost of the acquiring entity to provide

service, notwithstanding the costs of any infrastructure necessary to enhance the provision of safe, reliable service or to comply with environmental requirements.

- (b) An evaluation of the qualifications of the acquiring entity to provide safe, reliable service.
- (c) An evaluation of the financial capability of the acquiring entity to provide safe reliable service.
- (d) The benefits, if any, accruing to customers from an enhanced level of service under the acquiring entity contrasted with the legacy entity.

The public interest review may also include:

- (e) The impact of the transaction on the economy of Tennessee.
- (f) Other factors presented during the course of a proceeding.

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 Depreciation rates approved by the Commission applicable to the seller's assets shall be maintained by the acquiring entity. This may require maintaining separate asset records for the acquired assets from any legacy assets of the acquiring entity.

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

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

- (1) The Commission shall allow the acquiring utility to recover all or part of an acquisition premium from acquired and/or existing customers only if the acquiring utility can demonstrate that such rates (including the acquisition premium recovery) are not unreasonable.
- (2) The Commission may permit a return of and/or a return on the acquisition premium in revenue requirement of the acquiring utility. The Commission may consider the following factors, as well as other factors that counter an acquiring utility's recovery of an acquisition premium, when determining whether all or some portion of an acquisition premium should be allowed for recovery from ratepayers:
 - (a) Cost savings resulting from consolidation of the selling utility's system into the acquiring utility's operations (*The acquiring utility shall have the burden of proof to demonstrate the likelihood of cost savings in the acquisition proceeding, and an after the fact analysis demonstrating that such cost savings were achieved*);

- (b) Improvements in public utilities services resulting from the acquisition, which the acquiring utility shall demonstrate through verifiable metrics;
 - (c) Remediation of public health, safety, and welfare concerns of the selling utility's system resulting from the acquisition; and
 - (d) 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 may allow the acquiring utility to amortize (either above or below the line for ratemaking purposes) the acquisition premium over a period of time established by the Commission. The Commission may consider the remaining book lives of the acquired assets or may determine a definitive time period unrelated to the remaining book lives of the acquired assets if such remaining life results in an abbreviated amortization period that is not in the public interest.
- (5) If the Commission determines that the acquiring utility may be eligible for recovery of the costs of the acquisition in a future ratemaking proceeding, it should then determine the appropriate treatment of the gain-on-sale proceeds within the acquisition docket.

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 must be reasonable, prudent, and used and useful in the provisioning of public utilities services if being sought for recovery.
- (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 at the selling utility's approved depreciation rates 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 Commission shall determine the appropriate rate of return on post-acquisition capital investments.

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 must be reasonable and prudent in order for them to be recovered from ratepayers, and the acquiring utility bears the burden to prove reasonableness and prudence.
- (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) If determined by the Commission that some portion of regulatory, transaction, and closing costs should be recovered from ratepayers, the Commission shall allow such costs to be deferred into a regulatory asset account and included as a regulatory asset on the acquiring utility's books and records 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.
- (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. Upon a showing of good cause, any party in a proceeding may request that the Commission extend this period by up to 60 days.
- (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.