

July 20, 2020

VIA ELECTRONIC FILING

TPUC.DocketRoom@tn.gov

Hon. Kenneth C. Hill, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243

**RE: *Rulemaking Proceeding to Promulgate Rules for the Evaluation of Utility Acquisitions*, TPUC Docket No. 20-00025
Comments of Tennessee-American Water Company**

Dear Chairman Hill:

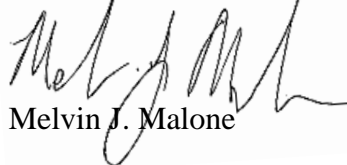
Tennessee-American Water Company ("TAWC") submitted comments and proposed revisions in the above-captioned matter on July 8, 2020. Enclosed please find a substitute filing to correct an omission in the proposed revisions. More specifically, in the proposed revisions submitted on July 8th, Rule 1220-04-01.20 (5) was inadvertently deleted when it should have been re-numbered (2). Also, the comments filed on July 8th have been amended to include the Tennessee Department of Environment and Conservation's TN H2O Report and a citation to the Handy-Whitman Index. The following substitute documents are submitted on behalf of Tennessee-American Water Company in the above-captioned matter:

1. Comments of Tennessee-American Water Company
2. Tennessee-American Water Company's Redlined Revisions to Proposed Rules

TAWC very much appreciates the opportunity provided by the Commission to submit both comments and proposed revisions. As required, one (1) hard copy will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

*The Pinnacle at Symphony Place
150 3rd Avenue South, Suite 1600
Nashville, TN 37201*

MELVIN J. MALONE
615.651.6705
melvin.malone@butlersnow.com

*T 615.651.6700
F 615.651.6701
www.butlersnow.com*

BUTLER SNOW LLP

Attachments

cc: Elaine Chambers, TAWC

*The Pinnacle at Symphony Place
150 3rd Avenue South, Suite 1600
Nashville, TN 37201*

MELVIN J. MALONE
615.651.6705
melvin.malone@butlersnow.com

*T 615.651.6700
F 615.651.6701
www.butlersnow.com*

BUTLER SNOW LLP

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**RULEMAKING PROCEEDING TO
PROMULGATE RULES FOR THE
EVALUATION OF UTILITY
ACQUISITIONS**

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DOCKET NO. 20-00025

COMMENTS OF TENNESSEE-AMERICAN WATER COMPANY

Pursuant to the Notice of Filing Comments issued by the Tennessee Public Utility Commission (the “Commission”) on February 27, 2020, Tennessee-American Water Company (“Tennessee-American” or the “Company”) respectfully submits these Comments on the proposed Rules for the Evaluation of Utility Acquisitions.

Policy Considerations

Tennessee-American commends the Commission for addressing the need to facilitate consolidation of small utility systems through acquisitions; however, the Company is concerned that some aspects of the Commission’s proposed rules would discourage such acquisitions and the benefits thereof, rather than encourage them. It is important to the physical and financial health of Tennessee’s water and wastewater customers to put processes in place to facilitate the acquisition and consolidation of smaller water and wastewater systems before water quality suffers or systems become financially distressed. In initiating this proceeding to promulgate rules for the evaluation of utility acquisitions, the Commission has taken an important first step. Such rules should encourage the consolidation of smaller water and wastewater systems by investor-owned utilities by promoting the negotiation of fair sales prices and affording the acquiring utility the opportunity to recover the costs of acquisition, while ensuring that rates paid by customers of both the selling

and acquiring utilities are just and reasonable. The rules should be calibrated to encourage the voluntary sale of water and wastewater systems by permitting the recovery of compensatory sales prices without generating a windfall simply because the system is being sold. The rules should provide some degree of certainty to negotiating parties, while at the same time preserving the Commission's power and discretion to protect the public interest. Tennessee-American respectfully submits that its suggested revisions to the proposed rules, attached hereto, will help the Commission achieve these ends.

While the United States Environmental Protection Agency (EPA), has opined that Tennessee will require more than \$10 billion in combined water and wastewater infrastructure investment over the next 20 years,¹ a Tennessee Department of Environment and Conservation report (the TN H2O Report) predicts an even greater need – \$15.6 billion – to accommodate Tennessee's projected growth.² Moreover, as water quality standards have changed and more aggressive enforcement of those standards has emerged, some water and wastewater systems have been unable to sustain adequate levels of investment to meet the new requirements. According to EPA records, in a recent 5-year period there were 5,808 public health-related Safe Drinking Water Act violations. Only 9 of these occurred at facilities owned by investor-owned utilities – about one-tenth of 1% of the national total. And in the future, water and wastewater systems will be

¹ See EPA, "Clean Watersheds Needs Survey 2012 Report to Congress," p. A-2, Table A-1 (Jan. 2016) (available at <https://www.epa.gov/cwns/clean-watersheds-needs-survey-cwns-report-congress-2012>) (\$1.55B for wastewater); EPA, "Drinking Water Needs Survey Sixth Report to Congress," p.36, Exhibit 2.1 (March 2018) (available at <https://www.epa.gov/dwsrf/epas-6th-drinking-water-infrastructure-needs-survey-and-assessment>) (\$8.76B for drinking water).

² Tenn. Dept. of Environment and Conservation, "TN H2O: Tennessee's Roadmap to Securing the Future of Our Water Resources," p.39 (Nov. 2018) (available at <https://www.tn.gov/environment/program-areas/wr-water-resources/tn-h2o/the-plan.html>) ("TN H2O Report") ("Meeting those [future infrastructure] needs and the need to repair or replace existing infrastructure will require an estimated investment of \$15.6 billion between now and 2040.").

facing increasingly complex and expensive regulations, at the same time that they are finding it more and more difficult to retain qualified, licensed water and wastewater system operators.

As the TN H2O Report observes, “[b]alancing the demands of system maintenance and growth with the community’s ability to pay is often the most difficult charge for a governing body,”³ and utilities and communities therefore “need to be open to a variety of creative solutions for funding and using both public and private tools to address the gap.”⁴ Public utility regulators across the nation like the Commission have recognized that the private sector can play a role in solving these public infrastructure problems by providing incentives to expand service into some of these areas. Consolidation of systems allows infrastructure investments and operating costs to be spread over a larger customer base, thus dampening the effects of rate increases associated with these costs and investments on any single cluster of customers and providing long-term rate stability for all customers. For example, the cost of complying with the Safe Drinking Water Act was estimated at \$4 per customer with systems servicing more than 500,000 people but balloons to \$300 per person in systems serving up to 100 people.⁵ The Arsenic Rule provides a case study. The cost to comply was noted to depend on the size of the system, ranging from an increase of \$38 to \$327 per household annually for small systems (less than 10,000) to an increase of \$0.86 to \$32 per household for larger systems.⁶ While it may be obvious why this is the case, the EPA noted that the disparity is “due to economies of scale. Larger systems able to spread the costs they would

³ TN H2O Report, p.39.

⁴ Tn H2O Report, p.10.

⁵ Congressional Budget Office, “Future Investment in Drinking Water and Wastewater Infrastructure”, pp. 5-6 (November 2002) (available at <https://www.cbo.gov/publication/14205>) (citing EPA data).

⁶ EPA, “State Implementation Guidance for the Arsenic Rule,” Appendix N, p. N-10 (August 2002) (available at <https://www.epa.gov/dwreginfo/state-implementation-guidance-arsenic-rule>).

incur over a larger customer base.”⁷ Many smaller water systems simply cannot attain the economies of scale needed to support the necessary investment to meet increasing water quality standards and, as a result, the quality of water suffers.

The proposed rules, as drafted, require the acquiring utility to 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, which is defined to be the original cost of the selling utility’s assets less accumulated depreciation and less unamortized contributions in aid of construction (“CIAC”). Although the rules also provide the acquiring utility the opportunity to seek recovery of the difference between net book value and a higher purchase prices (the “acquisition premium”), the rules in effect would create a presumption that the addition to the acquiring utility’s rate base will be limited to the net book value of the acquired utility assets. From the perspective of the parties contemplating the purchase and sale of a utility system, this means that it would be more likely than not that the portion of any purchase price above net book value, including value paid for unamortized CIAC, would have to be written off, in whole or in part, by the acquiring utility. Selling utilities are often unwilling or unable to agree to sell their systems at prices that reflect net book value rather than some measure of current value. At the same time, acquiring utilities are unwilling or unable to agree to pay a price substantially above net book value without reasonable assurance that they will be able to recover the difference in rates.

A number of jurisdictions that have adopted a policy of encouraging the consolidation of water and wastewater systems have recognized that the traditional presumption that an acquiring utility will be able to recover no more than net book value of the acquired utility’s assets frustrates

⁷ *Id.*

that policy. Such jurisdictions have adopted alternative valuation measures that recognize the need for acquiring utilities to be able to offer, and then recover in rates, prices for utility assets that are closer to their current, rather than historic, value.⁸ This rulemaking provides the Commission with the opportunity to facilitate the massive investment required for Tennessee’s water and wastewater infrastructure in a similar manner.

Discussion of Revisions to Proposed Rules

As shown in the attached suggested revisions to the proposed rules, Tennessee-American proposes to replace the “net book value” default ceiling for the valuation of the selling utility’s ratemaking rate base with the selling utility’s assets’ “reproduction cost new less depreciation.” Tennessee-American suggests that the rules provide that the addition of the acquiring utility’s rate base shall be established at the lesser of the negotiated sale price or the reproduction cost new less depreciation of the acquired assets.⁹ Reproduction cost new less depreciation or RCNLD is an estimate, using the Handy-Whitman Index of Public Utility Construction Costs, of the cost to construct, at current prices, an exact duplicate or replica of the utility assets, without regard to the

⁸ See, e.g., Cal. Pub. Util. Code § 2720(a) (2020) (commission shall use fair market value established by purchase price when establishing rate base for distribution system of public water system acquired by water utility); 220 Ill. Cons. Stat. 5/9-210.5(d) (2020) (lesser of purchase price or fair market value established by appraisals shall constitute rate base of acquired water utility incorporated into acquiring utility’s rate base); Ind. Code 8-1-30.3-5 (2020) (purchase price of small, distressed or municipal water or wastewater utility presumed reasonable and included in rate base if does not exceed appraised value); Md. Pub. Util. Code § 6-306 (2020) (rate making rate base of selling water or sewage disposal utility lesser of purchase price and fair market value of selling utility); N.J. Stat. Ann. § 58:30-7 (2020) (for purposes of ratemaking and recovery, board shall accept negotiated sale price of small or distressed water or wastewater utility’s assets as long as it is within range of appraisals); 66 Pa. Cons. Stat. 1329 (2020) (ratemaking rate base of municipal water or wastewater utility is lesser of purchase price or fair market value of selling utility as established by appraisals); Va. Code Ann. § 56-90.2 (2020) (acquired water or sewer utility rate base to be determined taking into consideration use of lesser of negotiated purchase price and fair market value as established by appraisals); W. Va. Code Ann. § 24-2-4g(b)(1)-(2) (2020) (rate base of water or wastewater assets to be established at negotiated sale price that is in accordance with industry standard utility valuation methods such as reproduction cost new less depreciation but excluding use of fair market appraisal valuation).

⁹ See suggested revisions to proposed Rule 1220-04-01-.16 (Ratemaking Rate Base); cf. W. Va. Code Ann. § 24-2-4g(b)(1)-(2) (rate base of water or wastewater assets to be established at negotiated sale price that is in accordance with industry standard utility valuation methods such as reproduction cost new less depreciation but excluding use of fair market appraisal valuation).

original sources of funding for those assets, using the same materials, construction standards, design, layout, and quality without adjustment for deficiencies, and obsolescence of those assets, net of depreciation.¹⁰ By using the current cost to reproduce the utility assets, less depreciation, rather than the depreciated original cost, RCNLD valuation produces a more accurate value than the traditional net book value standard.

While Tennessee-American's suggested revisions to the proposed Rules would provide the parties with some assurance that a reasonable purchase price would be recoverable in rates, they would not compel such a result. The Commission would retain its regulatory authority, jurisdiction and discretion to withhold approval of any transaction if it finds it is not in the public interest.¹¹

Tennessee-American also suggests that the proposed rules be revised to provide for the availability of acquisition "adjustments" rather than acquisition "premiums" in cases where the negotiated sales price differs from the reproduction cost new less depreciation of the acquired assets.¹² The suggested revisions provide that in such cases, upon the request of the acquiring and selling utilities, the Commission may approve an adjustment in either direction in the form of an addition to or reduction of the ratemaking rate base of the acquiring utility.¹³

Tennessee-American's suggested revisions also include a provision that unless the applicants propose otherwise, the rates and charges for the acquired customers shall be fixed at the

¹⁰ See suggested revisions to proposed Rule 1220-04-01-. 14 (Definitions) at new subsection (7); *cf.* W. Va. Code Ann. § 24-2-4g(d)(6) (definition of RCNLD). RCNLD applies the appropriate Handy-Whitman Index numbers to the depreciated original cost of the acquired system's utility assets to derive the current reproduction cost of the system.

¹¹ See proposed Rule 1220-04-01-.15 (Powers and Standard of Review); *see also* proposed Rule 1220-04-01-.21(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") (emphasis added).

¹² See suggested revisions to proposed Rule 1220-04-01-.16, new subsection (2).

¹³ See suggested revisions to proposed Rule 1220-04-01-.17 (Acquisition Adjustment).

rates and charges for the acquiring utility's existing customers.¹⁴ This proposed revision ensures that all similarly situated customers (residential, commercial, industrial, public authorities, sale for resale) are entitled to the same high quality service at equivalent pricing, regardless of geographic location. In the long run, all customers are made better off by the consolidation of water and wastewater systems because of the economies of scale (enhanced purchasing power, more efficient deployment of resources (capital and O&M), lower administrative costs) that exist when being served by a larger utility where investments can be spread out over larger groups of customers. The customers served by formerly separate systems – both acquired customers and existing customers – will no longer be as significantly affected by the introduction of a large investment such as a water treatment plant or other major investment program where the entire system, as a whole, is responsible for each incremental large investment and the costs can be shared among the entire customer base. Setting rates for large groups of customers stabilizes rates over the long run and smooths out rate increases over time to the extent that rate increases are necessary to maintain proper investment in the system and prudently manage the system. Nevertheless, where the selling utility has failed to keep rates in line with revenue requirements, it may be necessary to provide a transition mechanism to avoid rate shock. This contingency is addressed by the proposed rules' provision that the Commission may require the phase-in of post-acquisition rates over a reasonable period of time when such rates are either substantially higher than pre-acquisition rates or present

¹⁴ See suggested revisions to proposed Rule 1220-04-01-.20(1). In the event the acquiring utility has different rates and charges for customers in different service areas, the suggested revision provides that the rates and charges for acquired customers shall be fixed at the rates and charges for the acquiring utility's existing customers in the service area designated by the acquiring utility. *See id.*; *cf.* 220 Ill. Cons. Stat. 5/9-210.5(f) ("The large public utility may recommend the district or tariff group of which the water or sewer utility shall, for ratemaking purposes, become a part after the acquisition The Commission's approved district or tariff group or rates shall be consistent with the large public utility's recommendation, unless such recommendation can be shown to be contrary to the public interest.").

affordability concerns.¹⁵ by Tennessee-American's suggested revisions therefore retain the proposed rules' provision in the short term after an acquisition it may be necessary to provide a transition to the new rates

Tennessee-American believes that its suggested revisions to the Commission's proposed rules will encourage the consolidation of small water and wastewater systems through acquisitions by providing appropriate incentives to the owners of selling utilities while controlling the costs to be passed through to the customers of both the selling and the acquiring utilities. The revisions, if adopted, will provide negotiating parties with a degree of certainty with respect to the likely addition to the acquiring utility's ratemaking rate base, while preserving the Commission's ability to disallow transactions that would impose unreasonable burdens on customers. The proposed revisions also would provide utilities and the Commission with an adjustment mechanism to address the effects of negotiated purchase prices that are above or below net value.

As noted at the outset, the Commission has taken an important first step. An essential further step is for the Commission to ensure that any rule for the evaluation of utility acquisitions recognizes the industry constraints, market realities, Tennessee's ever-increasing need for significant infrastructure improvements, and customer interests. Respectfully, the published rules, while an important step, would not appropriately address each of the foregoing if adopted as published. Tennessee-American does not believe that the published rules, without material changes, would serve the public interest. We hope the opportunity provided by the Commission for comments and the upcoming hearing will assist the Commission in ensuring the proper and fair consideration of each of these very necessary elements

¹⁵ See proposed Rule 1220-04-01-.20(5), renumbered to (2) in suggested revisions.

Tennessee-American appreciates this opportunity to comment on the Commission's proposed Rules for the Evaluation of Utility Acquisition and respectfully requests that the Commission incorporate the attached revisions into its proposed rules.

This the 8th day of July, 2020.

RESPECTFULLY SUBMITTED,

/s/ Melvin J. Malone

MELVIN J. MALONE (BPR #013874)

Butler Snow LLP

150 3rd Avenue South, Suite 1600

Nashville, TN 37201

melvin.malone@butlersnow.com

(615) 651-6705

Attorneys for Tennessee-American Water
Company

*Tennessee-American Water Company's Suggested Revisions to
the Tennessee Public Utility Commission's
Proposed Rules for the Evaluation of Utility Acquisitions*

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~~adjustment" means all or a portion of the difference, if any, between the negotiated sale price and the reproduction cost new less depreciation ~~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.
- ~~(4)~~(5) "Negotiated sale price" means the purchase price of utility assets that the acquiring utility and the selling utility agree upon through voluntary, arm's-length negotiations.
- ~~(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.
- ~~(6)~~(7) "Reproduction cost new less depreciation" means an estimate of the cost to construct, at current prices, an exact duplicate or replica of the utility assets, without regard to the original sources of funding for those assets, using the same materials, construction standards, design, layout, and quality without adjustment for deficiencies, and obsolescence of those assets, net of depreciation.
- ~~(7)~~(8) "Selling utility" means any provider of public utilities services— in Tennessee that is being purchased, or whose utility assets are being purchased, by an acquiring utility as a result of a voluntary arm's-length transaction; provided that, Selling utility does not include any public utility regulated by the Commission that is authorized to provide public utility service throughout any county having a population between 330,000 and 340,000 according to the 2010 federal census.—

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~~ negotiated sale price or the reproduction cost new less depreciation ~~net book value~~ of the acquired assets.
- ~~(1)(2)~~ Upon request by the acquiring utility, ~~the~~ Commission shall consider the addition or subtraction of an acquisition ~~premium~~ adjustment to or from the acquiring utility's rate base in accordance with Rule 1220-04-01-.17, below.
- ~~(2)(3)~~ The normal rules of depreciation for ratemaking purposes 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~~ Adjustment.

- ~~(1)~~ Upon request by the acquiring utility, the Commission may approve the addition or subtraction of allow the acquiring utility to recover an acquisition ~~premium~~ adjustment ~~from acquired and/or existing customers- to or from the acquiring utility's rate base~~ if the Commission determines that such ~~recovery~~ adjustment will not result in unjust or unreasonable rates and charges.
- ~~(2)~~
- ~~(3)(1)~~ The Commission may consider the following factors when determining whether an acquisition ~~premium~~ adjustment 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.

~~(4)~~(2) The acquiring utility shall have the burden of showing:

- (a) The existence of one or more factors supporting the proposed acquisition ~~premium~~adjustment;
- (b) The reasonable value of each factor supporting the proposed acquisition ~~premium~~adjustment; and
- (c) that the proposed acquisition ~~premium~~adjustment will not result in unjust or unreasonable rates and charges.

~~(5) 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 for ratemaking purposes 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~~
- ~~(4)~~(3) ~~may allow the acquiring utility to defer all or a portion of such costs into a regulatory asset account for probable future recovery.~~ 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)~~(4) 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)~~(2) 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)~~(3) 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)~~(4) 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) Unless the applicants propose otherwise and subject to subsection (2) below, the rates and charges for acquired customers shall be fixed at the rates and charges for the acquiring utility's existing customers or, in the event the acquiring utility has different rates and charges for customers in different service areas, at the rates and charges for the acquiring utility's existing customers in the service area designated by the acquiring utility. ~~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.~~

(52) 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 a provision is waived~~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) Anticipated ~~C~~capital budgets based on due diligence 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~~adjustment;
- (j) A statement discussing the factor(s) supporting any proposed acquisition ~~premium~~adjustment, including the particular benefits or cost savings, if any, that inure to the benefit of

(i) Acquired customers and/or

~~2(ii)~~ Existing customers;

;

~~(k) A statement discussing the methodology and rate design used to recover any proposed~~

~~Acquisition premium and/or~~

~~Costs of post-acquisition capital investments and/or~~

~~Regulatory, transaction, and closing costs from Acquired customers and/or~~

~~Existing customers;~~

(k) A schedule detailing the computation of the Reproduction Cost New Less Depreciation of the selling utility's assets;

~~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;~~

~~(k)(l)~~ A schedule detailing the computation of the acquiring utility's post-acquisition ratemaking rate base;

~~(k)(m)~~ A schedule detailing the computation of post-acquisition rates and charges ~~proposed~~ for acquired customers by customer class;

~~(m)(n)~~ A schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for acquired customers by customer class;

~~(n)(o)~~ A schedule detailing the computation of post-acquisition rates and charges proposed for existing customers by customer class; and

~~(o)(p)~~ 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.*