

**Department of State  
Division of Publications**

312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Email: [publications.information@tn.gov](mailto:publications.information@tn.gov)

**For Department of State Use Only**

Sequence Number: \_\_\_\_\_  
Rule ID(s): \_\_\_\_\_  
File Date: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Public Utility Commission
<b>Division:</b>	Utilities / Legal
<b>Contact Person:</b>	Kelly Cashman-Grams
<b>Address:</b>	502 Deaderick Street, 4 <sup>th</sup> Floor, Nashville
<b>Zip:</b>	37243
<b>Phone:</b>	615-770-6856
<b>Email:</b>	Kelly.Grams@tn.gov

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

\_\_\_\_\_ Amendment  
☒ New  
 \_\_\_\_\_ Repeal

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 Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below.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

Chapter Number	Chapter Title
1220-04-14	Utility Acquisitions
Rule Number	Rule Title
1220-04-14-.01	Definitions
1220-04-14-.02	Powers and Standard of Review
1220-04-14-.03	Value of Acquired Assets
1220-04-14-.04	Acquisition Adjustment
1220-04-14-.05	Post-Acquisition Capital Investments
1220-04-14-.06	Regulatory, Transaction and Closing Costs
1220-04-14-.07	Post-Acquisition Rates and Charges
1220-04-14-.08	Application for Acquisition and Filing Requirements

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule 1220-04-14 *Utility Acquisitions* is created by the following language in its entirety:

**Rule 1220-04-14-.01 Definitions.**

- (1) "Acquired rate base" means the amount of the selling utility's assets and acquisition adjustment, if any, the Commission determines should be incorporated into the acquiring utility's rate base for ratemaking purposes pursuant to Rule 1220-04-14-.03 and Rule 1220-04-14-.04.
- (2) "Acquiring utility" means a public utility subject to the jurisdiction of the Commission that provides electric, natural gas, water or wastewater public utilities services.
- (3) "Acquisition adjustment" means the amount, whether positive or negative, the Commission determines should be incorporated into the acquired rate base under Rule 1220-04-14-.04.
- (4) "Acquired customers" means all customers of all classes served by the selling utility who will be served by the acquiring utility in the event the Commission approves the application for acquisition.
- (5) "Average embedded cost" means an acquiring utility's plant in service, less associated accumulated reserve as recorded in the Uniform System of Accounts for the type of utility plant being acquired from the selling utility, divided by the acquiring utility's existing customers.
- (6) "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.
- (7) "Negotiated sales price" means the purchase price of the utility assets that the acquiring utility and the selling utility agree upon through voluntary, arms-length negotiations.
- (8) "Rate base" means the amount of property, plant and equipment that is used and useful in providing public utilities services and upon which the acquiring utility is permitted to earn an authorized rate of return approved by the Commission.
- (9) "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 material, construction standards, design, layout, and quality without adjustment for deficiencies and obsolescence of those assets, less depreciation.
- (10) "Selling utility" means any provider of electric, natural gas, water or wastewater public utilities services in Tennessee that is being, or whose assets are being, purchased by an acquiring utility as a result of a voluntary arms-length transaction.

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

**Rule 1220-04-14-.02 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 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 and maintains just and reasonable rates for acquired and existing customers.

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

**Rule 1220-04-14-.03 Value of Acquired Assets.**

- (1) The acquiring utility shall incorporate the acquired assets of the selling utility into the acquired rate base at the value ordered by the Commission after public notice and hearing.
- (2) The applicant(s) shall present proof of the value of the acquired assets, including, but not confined to, evidence of the methodology used to value such assets and the sources of financial data, information and calculations used to derive the proposed value.
- (3) The Commission recognizes the following methodologies may be appropriate to derive the value of the acquired assets:
  - (a) average embedded cost of the acquiring utility;
  - (b) reproduction cost new less depreciation;
  - (c) any other reasonable valuation method proposed by a party to the acquisition proceeding and approved by the Commission; and
  - (d) any other valuation method found by the Commission to be reasonable.
- (4) Nothing herein is intended to limit the Commission from gathering and considering information it deems necessary to determine a just and reasonable value of the acquired assets.
- (5) Notwithstanding the foregoing, the value of the assets added to the acquired rate base shall be just and reasonable and in no event shall exceed the negotiated sales price.

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

**Rule 1220-04-14-.04 Acquisition Adjustment.**

- (1) The Commission may order an acquisition adjustment to be incorporated into the acquired rate base if the Commission determines such adjustment is warranted under the circumstances and will not result in unjust or unreasonable rates and charges for the acquiring utility or for customers.
- (2) The Commission may consider the following factors when determining whether any acquisition adjustment should be incorporated into the acquired rate base:
  - (a) Cost savings or increases 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;
  - (e) Amount of any assets contributed or donated to the selling utility included in the proposed acquisition transaction; and
  - (f) Any other measurable benefits, costs, or service changes affecting acquired and/or existing customers resulting from the acquisition.
- (3) The Commission shall allow the acquiring utility to amortize any acquisition adjustment incorporated into the acquired rate base over a reasonable period of time not to exceed 20 years.

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

**Rule 1220-04-14-.05 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 if such investments are to be recovered from customers.
- (2) Post-acquisition capital investments shall be depreciated in accordance with the acquiring utility's most recently approved depreciation rates and methods unless otherwise ordered by the Commission.
- (3) 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.

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

**Rule 1220-04-14-.06 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 in order to be recoverable from customers.
- (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) For reasonable and prudent regulatory, transaction and closing costs recoverable from customers, the Commission may allow such costs to be deferred into a regulatory asset account and included as a regulatory asset in the acquiring utility's rate base for future recovery by the acquiring utility unless such costs are to be recovered through another method approved by the Commission.
- (4) The Commission shall allow the acquiring utility to amortize any deferred regulatory, transaction and closing costs included as a regulatory asset in the acquiring utility's rate base over a reasonable period of time not to exceed 20 years.

- (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 1220-04-14-.07 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) 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 1220-04-14-.08 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. For good cause shown, the Commission or Hearing Officer may extend this period up to an additional 60 days either on its own motion or by request of any party to the acquisition proceeding.
- (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 by the Commission or Hearing Officer upon request by the applicant(s):
  - (a) a fully executed acquisition agreement, including all attachments, reflecting the terms and provisions of the acquisition transaction;
  - (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 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 and the amount of such costs requested for recovery from the acquiring utility's customers;
- (i) a statement fully explaining the proposed methodology for valuing the acquired assets to be incorporated into the acquired rate base under Rule 1220-04-14-03;
- (j) a schedule and supporting workpapers detailing the computation of the value of the acquired assets requested for inclusion in the acquired rate base under Rule 1220-04-14-03;
- (k) a schedule and supporting workpapers detailing the computation of any proposed acquisition adjustment requested for inclusion in the acquired rate base under Rule 1220-04-14-.04;
- (l) a statement discussing the factor(s) supporting any proposed acquisition adjustment to be incorporated in the acquired rate base under Rule 1220-04-14-.04, including the particular benefits, costs, or service changes, if any, that affect acquired customers and/or existing customers;
- (m) a schedule identifying any assets that were contributed or donated to the selling utility that are included in the acquisition transaction;
- (n) a statement discussing the proposed methodology and rate design for recovery from customers of any requested (i) acquisition adjustment; (ii) costs of post-acquisition capital investments; or (iii) regulatory, transaction and closing costs;
- (o) a schedule detailing the pro-forma accounting entries for recording the proposed acquisition transaction in accordance with the Uniform System of Accounts;
- (p) a schedule detailing the computation of post-acquisition rates and charges proposed for acquired customers by customer class;
- (q) a schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for acquired customers by customer class;
- (r) a schedule detailing the computation of post-acquisition rates and charges proposed for existing customers by customer class;
- (s) a schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for existing customers by customer class;
- (t) a statement describing in detail how the proposed public utility acquisition furthers the public interest; and
- (u) written testimony supporting the application for acquisition.

- (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 provide public notice of the proposed acquisition in accordance with applicable statutory law and Commission rules and regulations, as well as any additional public notice requirements ordered by the Commission or the Hearing Officer.
- (6) The acquiring utility shall furnish any other pertinent information as determined and requested by the Commission or in accordance with the discovery phase of the acquisition proceeding.
- (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.*

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chairman Kenneth C. Hill					
Vice Chairman Herbert H. Hilliard					
Commissioner Robin L. Morrison					
Commissioner David F. Jones					
Commissioner John Hie					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Public Utility Commission (board/ commission/ other authority) on May 10, 2021 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/28/2020

Rulemaking Hearing(s) Conducted on: (add more dates). 07/22/2020; public stakeholder workshops conducted on 12/10/2020 and 4/12/2021

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel

---

Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): 1220-04-14-.01 to .08

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

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

\_\_\_\_\_  
Date

#### Department of State Use Only

Filed with the Department of State on: \_\_\_\_\_

Effective on: \_\_\_\_\_

\_\_\_\_\_  
Tre Hargett  
Secretary of State



**Public Hearing Comments**

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

See attached Memorandum.

## Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

The rule establishes the procedural and substantive standards for the evaluation of public utility acquisitions by water, wastewater, natural gas, and electric utilities regulated by the Commission. The rule is only applicable when a utility is proposes to purchase another utility. It is estimated that approximately 25 companies that are potentially subject to the rule are small businesses. It is not anticipated that the utilities that are small businesses will be impacted by this rule.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

The rule does not impose ongoing reporting, recordkeeping or other administrative requirements. The rule sets minimum filing requirements to streamline the process for Commission review of public utility acquisitions. The information in the minimum filing requirements is largely accounting information similar to information the utility routinely file with the Commission.

(3) A statement of the probable effect on impacted small businesses and consumers;

It is not anticipated that the utilities that are small businesses will be negatively impacted by this rule. Consumers and small businesses should benefit from the rule as it allows for new sources of capital for utility system upgrades to be deployed.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business;

The Commission is required by statute to set public utility rates that are just and reasonable. This rule establishes the procedural and substantive standards for the evaluation of public utility acquisitions so that the Commission can set just and reasonable rates. The rule has a provision that allows for waiver of filing requirements upon request of utility and approval by the Commission.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The Commission is not aware of a state or federal counterpart to this rule.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

The TPUC is required by statute to set public utility rates that are just and reasonable. This rule establishes the procedural and substantive standards for the evaluation of public utility acquisitions so that the Commission can set just and reasonable rates. The rule has a provision that allows for waiver of filing requirements upon request of utility and approval by the Commission.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly.)

The proposed rule is not anticipated to have a financial impact on local governments.

## Additional Information Required by Joint Government Operations Committee

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

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

Under Title 65, Chapter 4, regulated investor-owned public utilities must obtain the Commission's approval to purchase another public utility system. The number of public utility acquisition cases before the Commission have been infrequent historically; however, there appears to be more recent interest among the industry to consider growth through public utility acquisitions. Over the last year, the agency has worked extensively with interested industry stakeholders to develop a rule that is fair, reasonable, and in the public interest.

The rule sets forth a transparent process for evaluating public utility acquisitions that preserves and maintains meaningful oversight by the Commission to ensure that these transactions are in the public interest and that post-acquisition rates and charges are just and reasonable. It encourages acquisitions that benefit the parties to the sale and the ratepaying consumers of utility service. The rule maintains the Commission's regulatory authority and discretion under Title 65 and establishes standards and filing requirements for evaluation of a proposed transaction. The rule includes alternative methodologies for valuing acquired public utility assets for ratemaking purposes, factors for consideration in determining an appropriate acquisition adjustment, criteria for cost recovery from customers of post-acquisition capital investments, transaction, and other closing costs associated with the sale, and procedures for setting post-acquisition rates and charges. Finally, the rule lists the information and documents necessary to facilitate Commission review of an application for approval of a proposed utility acquisition.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

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

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The rule impacts the investor-owned water, wastewater, natural gas, and electric public utilities regulated by the Commission and the customers of those utilities. Certain regulated public utility stakeholders and the Consumer Advocate Unit within the Financial Division of the Tennessee Attorney General's Office provided written and verbal comments in support of the rule as well as recommendations for improvements. All comments were considered and incorporated into the final proposed rule, as appropriate. None have urged rejection of the rule and the industry stakeholders have expressed support for the final proposed rule.

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

None

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

No changes to state or local government revenues are anticipated.

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

Joe Shirley, Director, Utility Audit & Compliance  
David Foster, Director, Utilities Division

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Joe Shirley, Director, Utility Audit & Compliance  
David Foster, Director, Utilities Division  
Kelly Cashman-Grams, General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Joe Shirley, Director, Utility Audit & Compliance – 615.770.6888; [joe.shirley@tn.gov](mailto:joe.shirley@tn.gov)  
David Foster, Director, Utilities Division – 615.770.6884; [david.foster@tn.gov](mailto:david.foster@tn.gov)  
Kelly Cashman-Grams, General Counsel – 615.770.6856; [kelly.grams@tn.gov](mailto:kelly.grams@tn.gov)

Andrew Jackson State Office Building  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243

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

The Commission is pleased to share that the utility acquisitions rule proposed herein for promulgation is the culmination and final result of more than a year of extensive effort and collaboration between interested industry stakeholders, the Consumer Advocate Unit, and the Commission.

# TENNESSEE PUBLIC UTILITY COMMISSION

Kelly Cashman-Grams  
General Counsel  
(615) 770-6856



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

April 30, 2021

TO: Tennessee Secretary of State, Div. of Publications  
Tennessee General Assembly, Joint Government Operations Committee

FROM: Kelly Cashman-Grams, General Counsel

RE: Public Comments on the Rule  
Rulemaking 1220-04-14 Utility Acquisitions  
TPUC Docket No. 20-00025

---

The Tennessee Public Utility Commission filed its Notice of Rulemaking Hearing with the Secretary of State on May 28, 2020 and, after postponing the originally scheduled rulemaking hearing due to the outbreak of the COVID-19 pandemic and resulting state of emergency declared by Governor Lee, held a rulemaking hearing on July 22, 2020. In order to further collaborate with the regulated industry and other interested stakeholders, the Commission also held two (2) public stakeholder workshops on December 10, 2020 and April 12, 2021. In addition to verbal comments during the public meetings, opportunity for written comments was available leading up to each of the three (3) public hearings/workshops. In fact, three rounds of written comments were filed with the agency by industry and consumer-interest stakeholders. A summary of these comments and the agency's responses are as follows:

- 1) Recommended that, instead of the traditional valuation of assets based on net book value, the acquiring utility's rate base should be established at the lesser of the negotiated sale price or the reproduction cost new less depreciation (RCNLD) of the acquired assets. 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 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.

**Commission Response:** Accepted the recommendation and incorporated the RCNLD valuation methodology into the final rule.

- 2) Recommended that, instead of an acquisition premium, in cases where the negotiated sales price differs from the reproduction cost new less depreciation of the acquired assets, there should be an acquisition adjustment in either direction in the form of an addition to or reduction of the ratemaking rate base of the acquiring utility.

**Commission Response:** Accepted the recommendation and revised the acquisition premium section of the proposed rule to reflect that acquisition adjustments in either direction as an addition or reduction in rate base may be ordered based on enumerated factors.

- 3) Recommended that, unless applicants propose otherwise or a transition mechanism is needed to avoid rate shock, the rates and charges for the acquired customers should be fixed at the rates and charges for the acquiring utility's existing customers. Such a policy would ensure that similarly-situated customers are treated similarly, the entire customer base shares investment costs and benefits from economies of scale, and the long-term stabilization of rates.

**Commission Response:** Rejected the recommendation and maintained the Commission's discretion to treat the acquired utility system separately for ratemaking purposes should circumstances warrant different rates and charges for the acquired system in order to maintain just and reasonable rates for the utility's acquired and existing customers.

- 4) Recommended that the definition of "selling utility" should be narrowed so as to limit application of the rule to natural gas, water, or wastewater public utility owned by a political subdivision in Tennessee.

**Commission Response:** Accepted the recommendation and revised the definition of selling utility accordingly.

- 5) Recommended that, instead of the traditional valuation of assets based on net book value, the concept of "average embedded cost" should be considered in determining ratemaking rate base when the negotiated sales price exceeds a selling utility's net book value. Average embedded cost means an acquiring utility's utility plant in service, less associated accumulated reserve as recorded in the Uniform System of Accounting for the utility plant being acquired from the selling utility divided by the acquiring utility's existing customers. Thus, an acquiring utility would be allowed for accounting and ratemaking purposes to record the purchase of the selling utility's assets at the acquiring utility's current distribution system average per customer embedded cost for meters, services, and mains.

**Commission Response:** Accepted the recommendation and incorporated the average embedded cost valuation methodology into the final rule.

- 6) Recommended that, subject to the Commission's discretion, the rule should include a presumption that the assets of a selling utility would be rolled into an acquiring utility's existing rate structure and ratemaking methodologies, including those that an acquiring utility may already have approved under Tenn. Code Ann. § 65-5-103(d) (alternative ratemaking mechanisms).

**Commission Response:** Rejected the recommendation and maintained the Commission's discretion to treat the acquired utility system as a separate entity for ratemaking purposes should circumstances warrant different rates and charges for the acquired system in order to maintain just and reasonable rates for the utility's acquired and existing customers.

- 7) Recommended that, absent the addition of a minimum threshold amount, the subsection on post-acquisition rates and charges should be amended to be made inapplicable to utility acquisitions incorporated and streamlined into an acquiring utility's existing ratemaking and established rates.

**Commission Response:** Rejected the recommendation and maintained the Commission's discretion to treat the acquired utility system separately for ratemaking purposes should circumstances warrant different rates and charges for the acquired system in order to maintain just and reasonable rates for the utility's acquired and existing customers.

- 8) Recommended that the definition of "acquisition premium" be clarified to ensure that the Commission retains its authority to determine whether all, part, or none of the acquisition premium should be included in an acquiring utility's rate base.

**Commission Response:** Accepted the recommendation in part and made appropriate clarifying revisions to the definition of acquisition premium to reflect acquisition adjustments in either direction as an addition or reduction in rate base may be ordered based on enumerated factors.

- 9) Recommended that the rules should either include a definition of "public interest" or include a detailed listing of factors that will be considered by the Commission in determining whether a utility acquisition is in the public interest.

**Commission Response:** Rejected the recommendation and maintained a general public interest standard that permits the Commission to rely on precedents and attendant circumstances of individual acquisition cases when conducting its public interest analysis.



10) Recommended that the phrase “normal rules of depreciation shall apply. . . “ in subsection (3) of the section on ratemaking rate base should be revised and clarified to provide the parties with notice that depreciation rates of a seller’s assets will be maintained and that depreciation proposals will be required within pre-filed testimony that accompanies an acquisition application.

**Commission Response:** Accepted the recommendation in part and revised the proposed rule to provide that the most recent depreciation rates approved for the acquiring utility will be utilized to depreciate the acquired assets unless otherwise ordered by the Commission.

11) Recommended that, to clarify that the burden of proof rests on the utility petitioner, the standard for recovery of an acquisition premium should be amended to include a requirement that an acquiring utility demonstrate that the acquisition is in the public interest and that the inclusion of a premium is not unreasonable, as well as ensuring that recovery does not result in unjust or unreasonable rates.

**Commission Response:** Accepted the recommendation in part and revised the acquisition premium section of the proposed rule to reflect that acquisition adjustments in either direction as an addition or reduction in rate base may be ordered based on enumerated factors. The revised rule provides that acquisition adjustments shall not result in unjust or unreasonable rate as recommended.

12) Recommended that the section on acquisition premiums should be amended to include a specific acknowledgment that the Commission may allow a portion of the premium to be recovered rather than only the entire premium, and that a determination on recovery is in the public interest based on a totality of the evidence.

**Commission Response:** Accepted the recommendation in part and revised the acquisition premium section of the proposed rule to reflect that acquisition adjustments in either direction as an addition or reduction in rate base may be ordered based on enumerated factors.

13) Recommended that, notwithstanding situations involving a selling system with low or deteriorating quality of service, a prerequisite to recovery of an acquisition premium should be demonstrable and verifiable cost savings.

**Commission Response:** Accepted the recommendation in part and revised the acquisition premium section of the proposed rule to reflect that acquisition adjustments in either direction as an addition or reduction in rate base may be ordered based on enumerated factors. The revised rule provides that cost savings may be considered as a factor when determining whether an acquisition adjustment should be ordered.

14) Recommended that the acquisition of a troubled utility system should not be considered a candidate for an acquisition premium, and therefore, the acquisition premium subsection that considers the acquisition of such systems as a factor in the determination of recovery of a premium, should be deleted.

**Commission Response:** Rejected the recommendation and maintained this factor as consideration to incentivize the acquisition and improvement of troubled utility systems, provided however that any such acquisition adjustment may not result in unjust or unreasonable rates.

15) Recommended that, in considering a proposal for an acquisition premium, the Commission should consider adding a provision that in determining treatment of the gain-on-sale proceeds all or a portion of the resulting gain-on-sale may be attributed to ratepayers.

**Commission Response:** Rejected this recommendation in favor of maintaining the Commission's general supervisory authority to address disposition of potential gains on sale in the specific circumstance when one regulated utility is being acquired by another regulated utility.

16) Recommended that, in considering a proposal for an acquisition premium, the Commission should consider adding a provision that explicitly retains the option to permit recovery to be amortized over a period of time.

**Commission Response:** Accepted this recommendation in part and revised the rule to provide that any ordered acquisition adjustment shall be amortized over a reasonable period of time not to exceed 20 years.

17) Recommended that, in considering recovery of regulatory, transaction, and closing costs associated with an acquisition, the Commission should include language that a proposal for recovery of such costs will be evaluated for reasonableness and prudence.


**Commission Response:** Accepted the recommendation and revised the proposed rule to provide that regulatory, transaction and closing costs shall be reasonable and prudent in order to be recoverable from customers.

18) Recommended that, in establishing a time deadline for consideration of utility acquisitions, the Commission should incorporate flexibility into the 120-day timeline by adding a provision for a discretionary extension of time for good cause.

**Commission Response:** Accepted the recommendation and revised the proposed rule that permits the Commission or Hearing Officer to extend the 120-day timeline by an additional 60 days for good cause shown.

Respectfully Submitted,

**FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:**

  
\_\_\_\_\_  
Kelly Cashman Grams, General Counsel