

Office of the Attorney General



Electronically Filed in TPUC Docket
Room on August 17, 2021 at 10:07 a.m.

HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

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TELEPHONE (615)741-3491
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August 17, 2021

Charles B. Welch, Jr.
Tyler A. Cosby
Farris Bobango PLC
414 Union Street, Suite 1105
Nashville, TN 37219

Re: Tennessee Public Utility Commission, Docket No. 21-00055, *Petition of Limestone Water Utility Operating Company, LLC for Authority to Sell or Transfer Title to the Assets, Property, and Real Estate of a Public Utility and for a Certificate of Public Convenience and Necessity.*

Dear Mr. Welch and Mr. Cosby:

The Consumer Advocate reviewed Limestone Water Utility Operating Company, LLC's ("Limestone") Petition in the above-referenced Docket for compliance with the minimum filing requirements for an amendment to a Certificate of Convenience and Necessity (CCN), set out in TPUC Rule 1220-04-13-.17. The Consumer Advocate also reviewed the Petition's compliance with the minimum filing requirements for an acquisition, set out in TPUC Rule 1220-04-14-.08.¹

Relating to compliance with TPUC Rule 1220-04-13-.17, the Consumer Advocate could not locate or seeks clarification on the items set out in Attachment A.

Additionally, it appears that Limestone has not filed documents to comply with the rules regarding public utility acquisitions recently adopted in TPUC Docket No. 20-00025, i.e., Rule 1220-04-14-.08 "Application for Acquisitions and Filing Requirements." The Consumer Advocate respectfully requests Limestone's compliance with the recently adopted acquisition rules so that it may review and evaluate Limestone's corresponding documentation. A copy of these acquisition rules recently adopted by the TPUC, signed by Herbert Slatery III, Attorney General and Reporter, and filed with the Department of State are attached as Attachment B.²

¹ The Consumer Advocate acknowledges that the new acquisition rules will not become effective until November 8, 2021, but since the Commission is in the process of promulgating those rules, they provide an excellent framework for reviewing and evaluating the pending acquisition. *See Final Order Adopting Rules to Establish the Procedural and Substantive Standards for Evaluation of Public Utility Acquisitions*, TPUC Docket No. 20-00025 (July 16, 2021).

² *Rulemaking Hearing Rule(s) Filing Form (signed)*, TPUC Docket No. 20-00025 (Aug. 13, 2021).

Thank you in advance for Limestone's attention to the Consumer Advocate's request. If you have questions regarding this request, please contact me at (615) 741-2357.

Respectfully,



Rachel C. Bowen
Assistant Attorney General

cc: TPUC Docket Manager

ATTACHMENT A

Page 1

Rule 1220-04-13-.17(2)(a) General Information

1. *Rule 1220-04-13-.17(2)(a)7(i-v)*. The map provided is not legible.¹ Please provide a legible copy of this map. Additionally, Limestone states that “[m]aps depicting the area served by Shiloh Falls are on file with the Commission, and those maps are incorporated into the Application by reference.”² This response is insufficient because without such information the Consumer Advocate cannot make a request “with specificity” to TPUC for such information. Please provide either specific locations of maps in TPUC records or provide maps that meet the requirements set forth in Tenn. Comp. R. & Regs. 1220-04-13-.17(2)(a)7(i)-(v).

Rule 1220-04-13-.17(2)(b) Property Rights

1. *Rule 1220-04-13-.17(2)(b)3*. Based upon the language contained within Confidential Exhibit 11 to the Petition, it is the Consumer Advocate’s understanding that “[REDACTED]” If known, please specify when the said conveyance to Shiloh Falls will occur and indicate whether this transaction will be documented through a filing in the Docket.

Rule 1220-04-13-.17(2)(c) Sufficient Managerial Ability

1. *Rule 1220-04-13-.17(2)(c)3*. The Consumer Advocate could not locate “copies of all contracts related to any pending merger or acquisition of” Limestone or Limestone’s corporate parent or affiliate. Please provide the required information.

Rule 1220-04-13-.17(2)(d) Sufficient Technical Ability

1. *Rule 1220-04-13-.17(2)(d)1*. Please provide a copy of the State Operating Permit (SOP) issued by the Tennessee Department of Environment and Conservation (TDEC) when the SOP is transferred to Limestone.
2. *Rule 1220-04-13-.17(2)(d)4*. Limestone states that “Shiloh Falls and Limestone currently have no complaints or notices of violation or administrative action issued by any federal, state, or local regulatory agency.”³ The Consumer Advocate located, however, a recent Notice of Violation (NOV) issued by the TDEC to Shiloh Falls on May 28, 2021, which listed several deficiencies and a permit violation.⁴ Please provide clarification if Limestone is now aware of Shiloh Falls’ current deficiencies and permit violation and also provide a

¹ Petition at Exhibit 1.

² *Id.* at Appendix A, p. 15.

³ *Id.* at Appendix A, p. 16.

⁴ A copy of TDEC’s NOV to Shiloh Falls is attached as CA Attachment A-1.

list of any other complaint(s), notices of violation or administrative action filed with or issued by TDEC or any other regulatory agency.

Rule 1220-04-13-.17(2)(e) Sufficient Financial Ability

1. *Rule 1220-04-13-.17(2)(e)2.* The rule requires the wastewater utility to provide “Pro forma income statements . . . for the first three (3) years of operations. . . In the calculations of utility revenues show the number of consumers and the rates used in the calculations. Show operation and maintenance expenses by account number and provide the basis and/or assumptions used to arrive at these amounts.” The Consumer Advocate located only two years of Pro form income statements.⁵ Please provide the outstanding information.
2. *Rule 1220-04-13-.17(2)(e)5.* Limestone states that it will be using depreciation rates last approved by the Commission for Shiloh Falls, but does not clarify what those depreciation rates are or what docket those depreciation rates were approved.⁶ Per the rules, please provide the required “depreciation rates [Limestone] intends to use for each plant account that will be on the wastewater utility's books. Include the estimated useful life of each account. If no depreciation study has been performed, explain the basis for these rates.”
3. *Rule 1220-04-13-.17(2)(e)8.* The Consumer Advocate could not locate Limestone’s proposed tariff to be used if the Commission approves the requested acquisition. Limestone stated that it “proposes to adopt the tariff, including approved rates, currently in effect and on file with the Commission for Shiloh Falls. The tariff is incorporated by reference.”⁷ It is the position of the Consumer Advocate that Limestone’s reference to a tariff located in an undisclosed TPUC file is insufficient to comply with this rule requirement. Please file the tariff in this Docket.
4. *Rule 1220-04-13-.17(2)(e)13.* This rule requires a demonstration of compliance with the financial security requirements set forth in Rule 1220-04-13-.07(2)(b), which states that:

On or before July 1 of each year, any public wastewater utility holding a CCN and providing service shall file proof with the Commission of a security in the amount of fifty percent (50%) of annual wastewater revenues in the most recent annual or \$20,000, whichever is greater. The minimum financial security amount is \$20,000.

Limestone’s filing shows a financial security of \$20,000.00.⁸ Please confirm whether this amount was filed due to a lack of a full year of revenue for Limestone.

⁵ Petition at Exhibit 11 (Confidential) and Appendix A, pp. 16-17.

⁶ *Id.* at Appendix A, p. 17.

⁷ *Id.*

⁸ *Id.* at Exhibit 14.



**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
JACKSON ENVIRONMENTAL FIELD OFFICE
1625 HOLLYWOOD DRIVE
JACKSON, TENNESSEE 38305-4316
PHONE (731) 512-1300 STATEWIDE 1-888-891-8332 FAX (431) 661-6283**

Certified Mail Receipt # 7018 0040 0000 6354 9481

May 28, 2021

Ms. Lisa S. Thomas
Owner Shiloh Falls Utilities, Inc.
e-copy: lisa.thomas@sfdcares.com
450 Church Street
Savannah, TN 38372

RE: Notice of Violation/Compliance Review Meeting Request
State Operating Permit No. SOP-94011
Shiloh Falls Utilities, Inc.
Pickwick Dam/Counce, Hardin County, Tennessee

Dear Ms. Thomas:

On May 12th, 2021, Bradley Smith, a representative of the Tennessee Department of Environment and Conservation, Division of Water Resources (The Division), performed a routine compliance evaluation inspection (CEI) at the above referenced facility in order to evaluate compliance with your State Operating Permit (SOP). The Division thanks contract operator Virgil Morris for his time and assistance. Please see the sections below for details regarding the inspection.

I. Permit

This permit covers the collection system, lagoons, UV disinfection and fenced spray irrigation system located at latitude 35.030556 and longitude -88.229167 in Hardin County, Tennessee to serve approximately 259 homes in the Shiloh Falls Utilities, Inc, in the Pickwick Dam/Counce area. The design capacity of the system is .055 MGD.

II. Records/Reports

A review of the facility's self-monitoring was performed. Monitoring records were available upon request, complete and current. Laboratory data from 2020 were traced through the process from generation to final reporting and found to be complete and without error.

III. Facility Site Review, Self-Compliance Program, Operations & Maintenance, and Sanitary Sewer Overflows

The wastewater treatment process is described as a 2-celled lagoon, pressure filtration, UV disinfection and a holding pond. Disposal of treated wastewater is by spray irrigation to a fenced area located adjacent

Notice of Violation/Compliance Review Meeting Request
Shiloh Falls Utilities, Inc.
05/28/21
Page 2

to the wastewater treatment plant (WWTP) at latitude 35.030556 and longitude -88.229167 in Hardin County, Tennessee. No wastewater discharge is allowed.

Four deficiencies were documented during the inspection:

1. The UV/Filter Building at the WWTP is dilapidated. Its condition is such that the structure appears to be very unsafe and is likely inadequate for providing protection from the elements for valuable treatment infrastructure.
2. There were no signs posted for the wastewater disposal field as required by Part III, Section B of your permit.
3. Although the collection system itself was not evaluated as part of this inspection, the Division was notified via a complaint of an overflow at the Roberts Lane pump station during the time of site visit. Please be advised that sewer system overflows are prohibited. Details are available in Part II, Section C. 3 of your permit.
4. There was a broken lateral line in the spray field area. (This item was promptly corrected by Mr. Lynn Baker of D and K Construction upon notification.)

One violation was documented during the inspection:

1. There is clear evidence to indicate that the existing spray field is not sufficiently sized to allow for the disposal of the volume of water being applied. In addition to the site observations showing evidence of ponding, runoff and dead or dying vegetation there are historical records showing that the spray field, which is currently being used as the sole disposal area, was originally proposed for secondary use only. The engineering report from F & M Consulting Inc. (February 2003) proposed this site for a maximum of 25,000 gallons per day (gpd). Flow values reported over the past 12 months and the estimate given on your application for permit renewal, dated April 14th, 2021, greatly exceed the disposal area's capacity for hydrologic absorption and very likely exceed its nutrient uptake ability as well.

Ponding resulting in the discharge of treated wastewater into Waters of the State or to locations where it is likely to move to Waters of the State are considered a violation of your SOP.

IV. Flow Measurement

The flow to the disposal field is measured by a "water-type" meter.

V. Laboratory

All monitoring parameters required by the SOP are being subcontracted to Waypoint Analytical in Jackson, TN. The subcontract laboratory was not evaluated as part of this inspection.

VI. Sludge Handling/Disposal (or Biosolids Handling/Disposal)

No sludge removal has been necessary to date.

Notice of Violation/Compliance Review Meeting Request
Shiloh Falls Utilities, Inc.
05/28/21
Page 3

VII. Required Actions

Please implement measures to correct the deficiencies listed in Section III as soon as practicable. **As a result of the overloaded spray field a Compliance Review Meeting (CRM) has been scheduled for June 22, 2021 at 9:00am in the Jackson Environmental Field located at 1625 Hollywood Drive, Jackson TN to discuss the violation and corrective actions.** Please bring any documents, records or representatives with you that would be beneficial to this meeting. Until such time as corrective actions are discussed and approved by the Division and successfully implemented any and all practical means should be used to eliminate the unpermitted discharge of treated wastewater to Waters of the State.

VIII. Conclusion

Compliance with your SOP requirements helps ensure the protection of downstream fish and aquatic life and water quality. Your efforts will help ensure permit compliance and protect state water quality. If I may be of assistance in matters concerning this report, please contact me via telephone at (731) 571-7790 or via email at Conner.Franklin@tn.gov or Brad Smith at (731)-234-1408 or at Bradley.E.Smith@tn.gov.

Sincerely,



Conner Franklin
Environmental Field Office Manager
Division of Water Resources
Jackson Environmental Field Office

cc: Bradley Smith, Environmental Consultant I, JEFO (via email)



TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION
JACKSON ENVIRONMENTAL FIELD OFFICE
1625 HOLLYWOOD DRIVE JACKSON, TENNESSEE 38305-4316
PHONE (731) 512-1300 STATEWIDE 1-888-891-8332 FAX (731) 661-6283

Image Log

DATE: 05/13/21

Site: Shiloh Falls Utilities – SOP-94011

Personnel Present: Bradley Smith

Subject: Compliance Evaluation Inspection



Image 1 – Property Aerial



Image 2 - WebSoil Aerial (See Figure 1 below for High Intensity Soils Map)



Image 3 - Primary Lagoon



Image 4 - Secondary Lagoon



Image 5 - Filter Backwash Basin



Image 6 - Holding Lagoon



Image 7 - Sand Filter and UV System Building



Image 8 - UV System (Lower Left)



Image 9 - Channel indicating runoff on SE side of spray field.



Image 10 - Same channel as above with different aspect.



Image 11 - Broken spray field lateral. (Promptly repaired upon notification.)



Image 12 - Evidence of wastewater migration pathway at head of exclusion zone on South side of fenced area.



Image 13 - Area where wastewater has clearly been ponding.



Image 14 - Braided migration pathway on SW side of spray field at perimeter fence.



Image 15 - More evidence of offsite migration at perimeter fence.

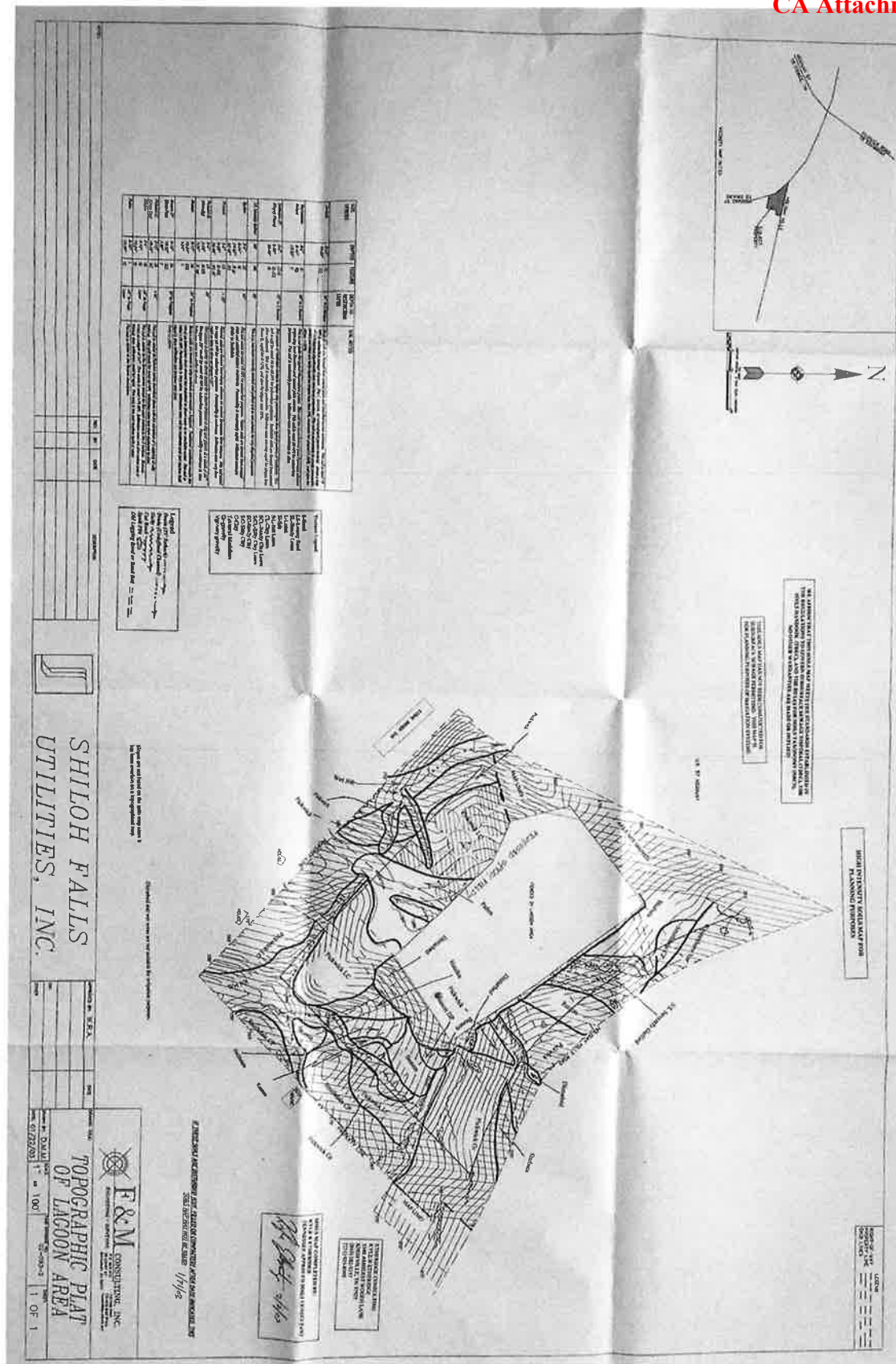


Figure 1 - High Intensity Soils Map from February 2003 Engineering Report "Proposed Secondary Spray Irrigation Field"

20-00025

Department of State
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 Nashville, TN 37243
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 Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 08-10-21

Rule ID(s): 9589

File Date: 8/10/2021

Effective Date: 11/8/2021

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).

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

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

Rule 1220-04-14-.01 Definitions.

- (1) "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.
- (2) "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.
- (3) "Acquiring utility" means a public utility subject to the jurisdiction of the Commission that provides electric, natural gas, water or wastewater public utilities services that is purchasing or acquiring a selling utility or a selling utility's assets as a result of a voluntary arms-length transaction.
- (4) "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.
- (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.

Attachment B

- (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.*

Attachment B

* 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	X				
Vice Chairman Herbert H. Hilliard	X				
Commissioner Robin L. Morrison	X				
Commissioner David F. Jones	X				
Commissioner John Hie	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Public Utility Commission on May 10, 2021 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: 6/28/2021

Signature: Kelly Cashman-Grams

Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel

Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): 1220-04-14

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
Herbert H. Slatery III
Attorney General and Reporter
8/5/2021
Date

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Secretary of State
Division of Publications

Tre Hargett
Tre Hargett
Secretary of State

Attachment B

Public Hearing Comments

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

See Memorandum (inserted – see following pages).

TENNESSEE PUBLIC UTILITY COMMISSION

Kelly Cashman-Grams
General Counsel
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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 ^{KCG}

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 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

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(a)(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(a)(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
David Foster, Director, Utilities Division – 615.770.6884; david.foster@tn.gov
Kelly Cashman-Grams, General Counsel – 615.770.6856; kelly.grams@tn.gov

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- (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 of the Tennessee Attorney General's Office, and the Commission.