

**RULES  
OF  
THE TENNESSEE PUBLIC UTILITY COMMISSION**

**CHAPTER 1220-04-14  
UTILITY ACQUISITIONS**

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**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.

(Rule 1220-04-14-.01, continued)

- (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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

#### 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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

#### 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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

**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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

**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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

**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.

(Rule 1220-04-14-.06, continued)

- (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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

#### **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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

#### **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;

(Rule 1220-04-14-.08, continued)

- (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;

(Rule 1220-04-14-.08, continued)

- (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. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.