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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Tennessee Regulatory Authority
<b>Division:</b>	Legal Division
<b>Contact Person:</b>	Kelly Grams
<b>Address:</b>	502 Deaderick Street, 4 <sup>th</sup> Floor, Nashville, Tennessee 37243
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	502 Deaderick Street, 4 <sup>th</sup> Floor, Nashville, Tennessee 37243
<b>Phone:</b>	(615) 770-6850
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**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	500 Deaderick Street		
Address 2:	Ground Floor Hearing Room		
City:	Nashville		
Zip:	37243		
Hearing Date :	November 21, 2016		
Hearing Time:	10:00am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1220-04-13	Wastewater Regulations
Rule Number	Rule Title
1220-04-13-.02	Definitions
1220-04-13-.04	Documents to be Filed with the Authority
1220-04-13-.05	Maps and Records

<b>Chapter Number</b>	<b>Chapter Title</b>
1220-04-13	Wastewater Regulations
<b>Rule Number</b>	<b>Rule Title</b>
1220-04-13-.06	Adequacy of Facilities
1220-04-13-.07	Financial Security
1220-04-13-.08	Standard Forms For Filing Financial Security
1220-04-13-.09	Procedure For Suspension Or Revocation of CCN, Forfeiture of Wastewater Utility Funds, And Claims Against Financial Security; Expired And Terminated CCNs
1220-04-13-.10	Title Of Physical Assets And Sale, Transfer, Merger, Termination, Acquisition Or Abandonment
1220-04-13-.11	Receiverships Or Other Transfers Of Operation Or Ownership
1220-04-13-.12	Customer Relations
1220-04-13-.14	Denying Or Discontinuing Service
1220-04-13-.16	Transactions With Affiliates
1220-04-13-.17	Minimum Requirements For New And Amendments To Certificate Of Convenience And Necessity

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Rule 1220-04-13-.02 Definitions is amended by deleting subparagraph (5) in its entirety and substituting instead the following language, so that as amended, the new subparagraph shall read:

- (5) Public utility or public wastewater utility includes, but is not limited to, any person, partnership, corporation, company, association or two or more persons having a joint or common interest that owns, operates, and manages any public wastewater system for compensation within the state subject to the jurisdiction of the Authority.

Rule 1220-04-13-.04 Documents To Be Filed With The Authority is amended by deleting it in its entirety and replacing the and substituting instead the following language, so that as amended, the new rule shall read:

- (1) The public wastewater utility shall file with the Authority the following documents and information, and shall refile such documents to keep such information up-to-date.
  - (a) A copy of the public wastewater utility's tariff as specified in Rule 1220-4-1-.02 that includes the rates, rules, terms and conditions, and that describes the policies and practices in rendering service that conform to all applicable rules and regulations, shall be filed with the Authority. Such tariff may also include cost recovery associated with financial securities as described in these rules and recovery of the cost of bonding for operation of the utility imposed by local governments.
  - (b) Upon request and before initiation of service, the public wastewater utility shall file with the Authority the TDEC approval of the design and permit for the wastewater system.
  - (c) Each public wastewater utility shall file a completed "Annual Report" with the Authority on or before April 1 of each year. The report shall be in the form specified by the Authority and in compliance with these rules and all other requirements established by the Authority. The annual report shall include a report on the construction status of each service territory covered by the utilities' CCN. The report shall also include an affirmation and supporting documentation that the financial security required by Rule 1220-4-13-.07 remains in effect.
  - (d) The name, title, address, telephone number, and email address, of the person(s) who should be contacted in connection with:
    1. General management.
    2. Customer relations and consumer complaints.
    3. Engineering and operations.
    4. Emergencies during non-office hours.
    5. The certified operator for each wastewater system included in the CCN.
  - (e) Any correspondence related to a notice of violation from TDEC within seven (7) days of the utility's notice or receipt such correspondence.
  - (f) Any correspondence to and from TDEC related to the wastewater utility's State Operating Permit within seven (7) days of the utility's notice or receipt of such correspondence.
  - (g) The wastewater utility will notify the authority within thirty (30) days when any entity with which it has a contractual relationship in the development, construction or operation of a wastewater system upon which its CCN is based, in whole or in part, files for bankruptcy protection or otherwise is or becomes unable or unwilling to carry out its contractual obligations with respect to the wastewater system.

Rule 1220-04-13-.05 Maps And Records is amended by adding a new paragraph (3), the new rule shall read:

- (3) Records of inspections conducted as part of operating and maintenance procedures shall be maintained by the public wastewater utility for a minimum of three (3) years.

Rule 1220-04-13-.06 Adequacy Of Facilities is amended by deleting it in its entirety and replacing the and substituting instead the following language, so that as amended, the new rule shall read:

- (1) All public wastewater utilities shall design, construct, maintain, and operate wastewater systems to comply with the rules, laws, ordinances, and codes of state, federal, and local government agencies to ensure safe, adequate and reliable service and, as far as reasonably possible, continuity of service and uniformity in the quality of service so as not to cause water pollution, wastewater spills, wastewater backup, or other undesirable conditions.
- (2) Each public wastewater utility shall adopt operating and maintenance procedures for its wastewater system to ensure safe, adequate and continuous service at all times by qualified staff, and shall make inspections on a regular basis and in accordance to TDEC rules.

Rule 1220-04-13-.07 Financial Security is amended by deleting it in its entirety and replacing and substituting instead the following language, so that as amended, the new rule shall read:

- (1) All wastewater utilities either holding or seeking to hold a CCN and owning wastewater systems shall furnish to the Authority an acceptable financial security. The public wastewater utility shall ensure that such financial security is maintained in continuous force in conformity with these rules.
- (2) Proof of financial security shall be furnished to the Authority as follows:
  - (a) On or before July 1 of each year, wastewater utilities holding a CCN and providing service shall file proof with the Authority of a security in the amount of seventy five percent (75%) of annual wastewater revenues in the most recent Annual report or \$20,000, whichever is greater. The minimum acceptable financial security amount is \$20,000.
    1. When calculating wastewater revenues for the purpose of this rule, no monies received from customers for the purposes of bonding under this rule or for meeting bonding requirements of local government shall be included in the calculation of wastewater revenues.
  - (b) Wastewater utilities submitting an initial application for a CCN shall be required to present to the Authority, prior to approval of the application, proof of financial security in the amount of \$20,000. Prior to providing service the public utility shall file proof of financial security in the amount required by 1220-4-12-.07(2)(a) based on the annual revenue forecasted in the CCN application submitted to the Authority.
  - (c) For the purpose of this rule, initial compliance revenue is defined as the amount of revenue upon which a wastewater utility submits proof of financial security for the first time after the effective date of this rule. Notwithstanding 2(a), a wastewater utility is not required to submit a new financial security until the initial compliance revenue increases by 10% as reported on its Annual report. Once the wastewater utility submits a new financial security, the revenues upon which the financial security is based shall become the new initial compliance revenue. The wastewater utility must provide proof that its financial security is still in effect by July 1 of each year.
- (3) Financial security shall be provided in one of the following manners:
  - (a) A bond issued by any duly licensed commercial bonding or insurance company authorized to do business in Tennessee; or
  - (b) An irrevocable letter of credit issued by a financial institution acceptable to the Authority.

- (4) The wastewater utility shall ensure that the Authority is notified within thirty (30) days prior to any termination action concerning an irrevocable letter of credit that will not be renewed or the expiration date for a bond of non-perpetual duration that is not to be renewed.
- (5) The recurring cost of the financial security may be funded from customer contributions by means of a pass through mechanism that shall adjust a customer's monthly rate by a specified amount. The amount of the rate adjustment shall be established by the Authority for a public wastewater utility on a case by case basis.
  - (a) For the initial security, each public wastewater utility shall submit for the Authority's consideration a proposed tariff specifying the amount of the security, the amount of the monthly rate adjustment to be billed to its customers for recovery of the cost of such security and the percentage rate increase this represents, based on currently approved rates. The tariff filing documentation shall contain at a minimum a calculation of the rate adjustment based on the annual cost of the security and the number of customers existing or projected at the time of the tariff filing. The resulting cost per customer (total security cost divided by number of customers) shall be recovered from customers on a monthly basis (total cost per customer divided by 12).
    1. For public wastewater utilities holding a CCN as of the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Authority within thirty (30) days of the effective date of the financial security.
    2. For public wastewater utilities seeking a CCN after the effective date of this rule, a proposed tariff to recover the cost of the required security shall be submitted to the Authority with the CCN application.
  - (b) Thereafter, on or before July 1 of each year, each public wastewater utility shall file with the Authority the following information to update its financial security and true-up the recovery of its security costs:
    1. Proof of financial security compliant with this rule
    2. A proposed revised tariff to become effective August 1, specifying the amount of security in place, the updated monthly rate adjustment to be billed to customers and the percentage rate increase this represents.
    3. Documentation supporting the calculation of the updated monthly rate adjustment. Documentation shall include but not be limited to:
      - (i) annual cost of the new security,
      - (ii) current number of customers,
      - (iii) total actual security costs paid in the previous reporting period or part thereof in the case of the public wastewater utility's first year of operations or the first year this rule is in effect,
      - (iv) security costs recovered from customers in the previous reporting period or part thereof.
    4. A true-up calculation of the new monthly rate adjustment, calculated as follows:

$$RA = \frac{(CP - CR + SC)}{12}$$

Where:

RA = New monthly rate adjustment to be effective August 1.

CP = Total security costs actually paid in the prior reporting period or part thereof netted against any credits or refunds received by the public wastewater utility from the holder of the financial security.

CR = Total security costs actually recovered from customers in the prior reporting period.

SC = Annual security costs associated with the new security filed on July 1.  
C = Number of customers at July 1.

- (6) The requirement for a public wastewater utility to maintain a reserve/escrow account shall be determined by the Authority on a case by case basis. Upon the filing of an initial CCN application, a determination shall be made regarding the establishment of a reserve/escrow account. The Authority may review the financial condition of any public wastewater utility at any time to determine whether a reserve/escrow account balance is adequate or an account should be established.
- (7) Reserve/ escrow accounts established by a wastewater utility shall be limited to pay for or reimburse the utility for extraordinary expenses of the utility or for necessary capital projects, unless otherwise permitted by the Authority. Extraordinary expenses are those resulting from events which are infrequent and unusual in nature, and unrelated to the utility's routine service or business activities. The utility must first receive authorization from the Authority via petition or in emergency situations authorization in writing from the Chairman of the Authority upon the written request from a representative of the utility to use such funds. The Authority may require public wastewater utility employees having signature authority over such account to obtain a fidelity bond. The public wastewater utility's tariff shall set forth the specific amount charged to customers to fund the reserve/escrow account.
- (8) The requirements of this rule may be waived or modified for good cause shown, including but not limited to affordability of rates, minimization of rate shock or other operating characteristics of the utility.

Rule 1220-04-13-.08 Standard Forms For Filing Financial Security is amended by deleting it in its entirety and replacing and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Corporate surety bonds or letters of credit filed to comply with TRA Rule 1220-4-13-.07 shall include the following terms:
  - (a) The name and identification number assigned to the company by the TRA;
  - (b) The name and contact information for the providers of the corporate surety bond or letter of credit;
  - (c) A statement identifying the TRA as the beneficiary;
  - (d) A statement of the amount of the surety bond or letter of credit;
  - (e) A statement indicating that the financial security is required by Tennessee Code Annotated §65-4-201 and TRA Rule 1220-4-13-.07;
  - (f) A statement indicating that after action under TRA Rule 1220-4-13-.09 that the Authority may assess a sum sufficient of this bond, up to its maximum sum;
  - (g) A statement that the provider of the corporate surety bond or letter of credit will promptly pay the Tennessee Regulatory Authority via wire transfer upon notice that the TRA has taken action pursuant to TRA Rule 1220-4-13-.09 ; and
  - (h) A statement that the providers of the corporate surety bond or letter of credit shall provide the TRA at least a ninety (90) day notice in the event of a non-renewal or termination of the corporate surety bond or letter of credit.
- (2) The Authority may require additional terms in a letter of credit to ensure access to funds in the event of action per TRA Rule 1220-4-13-.09.
- (3) A providers of the corporate surety bond or letter of credit shall be authorized to do business in the state of Tennessee.

Rule 1220-04-13-.09 Procedure For Suspension Or Revocation of CCN, Forfeiture of Wastewater Utility Funds, And Claims Against Financial Security; Expired And Terminated CCNs is amended by deleting it in its entirety and replacing and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Where a public wastewater utility through the actions of its owner(s), operator(s), or representative(s) demonstrates an unwillingness, incapacity, inability, or refusal to effectively operate and/or manage the wastewater system(s) in compliance with these rules and Tennessee statutes, or the wastewater system(s) has been abandoned, the Authority shall take appropriate action based on good cause that may include suspension or revocation of all or a portion of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security.
- (2) Good cause shall include, but is not limited to, the following:
  - (a) A finding by the Authority of material non-compliance by the holder of a CCN with any provisions of Title 65 of the Tennessee Code dealing with obtaining a public wastewater utility CCN or providing wastewater services to customers, or any order or rule of the Authority relating to the same; or
  - (b) A finding by the Authority of:
    1. Fraud, dishonesty, misrepresentation, conviction of a crime by the utility or a principal of the utility, self-dealing, managerial dereliction, or gross mismanagement on the part of the public wastewater utility;
    2. Actual, threatened or impending insolvency of the public wastewater utility;
    3. Actual or threatened abandonment of the public wastewater utility by its owners or its operators;
    4. Persistent, serious, substantial violations of statutes or regulations governing the public wastewater utility; or
    5. Failure or inability on the part of the wastewater utility to comply with an order of any other state or federal regulatory body after the public wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance.
    6. Failure to provide service to any customer reasonably entitled thereto.
- (3) In addition to the above, the Authority may consider one or more of the following in determining whether a public wastewater utility's CCN should be suspended or revoked, whether its wastewater utility funds should be forfeited and/or whether a claim should be made against its financial security:
  - (a) Whether, to the extent practicable, service to customers will remain uninterrupted; and
  - (b) Whether there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or whether there are no practicable methods to mitigate the financial consequences to customers; and
  - (c) Whether the utility had an opportunity to correct the conditions that are alleged to constitute the grounds for action; and
  - (d) Such other factors as the Authority deems relevant to the determination.
- (4) Proceedings before the Authority for suspension or revocation of a public wastewater utility's CCN, forfeiture of wastewater utility funds, and/or making a claim against the public wastewater utility's financial security shall be conducted in accordance with the contested case provisions of the Tennessee Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101, *et seq.* which includes notice and an opportunity to be heard, which may, but is not required to include proceeding commenced under, Tenn. Code Ann. § 65-2-106, unless the circumstances or the conduct of a public wastewater utility poses an imminent threat to the health or safety of the public. In such exigent circumstances, the

Authority may order the summary suspension of the CCN and follow the procedures as set forth in Tenn. Code. Ann. § 4-5-320.

- (5) In the event the Authority revokes or suspends all or a portion of a public wastewater utility's CCN, orders the forfeiture of wastewater utility funds, and/or makes a claim against the public wastewater utility's financial security, the Authority may order all necessary actions to ensure continuous utility service, and operation of the wastewater plant consistent with statutory requirements and TRA rules and orders. Inasmuch, the Authority may take, but is not limited to, the following actions:
  - (a) Ordering the divestiture of wastewater utility assets.
  - (b) Ordering the hiring of a replacement operator.
  - (c) Ordering specific repairs or upgrades to wastewater plant to comply with applicable regulations.
  - (d) Petitioning the court for the appointment of a receiver.
  - (e) Other actions necessary to provide for continuous wastewater utility operations.
- (6) An order under paragraph (5) may provide cost recovery mechanisms for costs associated with improvements to the wastewater system(s) that are immediate and necessary to remedy deficiencies, including any of the following:
  - (a) A mechanism for expediting any adjustments to the rates of the subject public wastewater utility.
  - (b) A plan for deferring or accelerating certain improvement costs and recovering costs in phases.
  - (c) Incentives to facilitate acquisition or long-term operation of the subject public wastewater utility.
- (7) A wastewater CCN holder shall file a written notice of completion that the waste water system is fully constructed, operational, and providing service not less than three (3) years from the date of the written order granting a CCN. If the written notice of completion is not filed within three (3) years then the CCN shall automatically expire and be terminated without the institution of proceedings under Rule 1220-4-13-.09(4).
  - (a) Not less than thirty (30) days before the expiration of the three (3) year period, a CCN holder may file a written request for an extension of time, not to exceed one-year from the original deadline, to file the required notice of completion of the wastewater system. The filing of an extension request does not entitle the CCN holder to a contested case proceeding nor constitute grounds for a proceeding under 1220-04-13-.09(4), although the Authority may initiate such a proceeding upon request or its own motion. An extension request shall not be the basis for a proceeding under Rule 1220-4-13-.09(4).
  - (b) A request for an extension of time under this section shall include the following:
    - (1) Documentation of all phases of the project that have been constructed or completed;
    - (2) Documentation reflecting the timeline for completion of any unconstructed or incomplete portions of the system;
    - (3) Such other documentation as the Authority may request.
  - (c) In the event that a CCN expires, then the applicant is required to file a new application pursuant to Rule 1220-4-13-.17 to obtain authority to serve the service area previously covered by the expired or terminated CCN.
- (8) Upon a Complaint or the TRA's own motion, wherein it is alleged that a wastewater system has not been completed, or is not operational and providing service to the designated service area after three (3) years from the date of the CCN Order, as noted in (7) above, any such allegation shall be a rebuttable presumption against the validity of the CCN granted to the public wastewater utility.



Rule 1220-04-13-.10 Title Of Physical Assets And Sale, Transfer, Merger, Termination, Acquisition Or Abandonment is amended by deleting it in its entirety and replacing and substituting instead the following language, so that as amended, the new rule shall read:

- (1) Title to all physical assets of the wastewater system managed or operated by a public wastewater utility shall not be subject to any liens, judgments, or encumbrances, except as approved by the Authority pursuant to Tenn. Code Ann. § 65-4-109.
- (2) Any person owning, operating, managing, or controlling a public wastewater utility that intends to sell, transfer or merge with another public wastewater utility, or intends to terminate, acquire another public wastewater utility or its assets, or abandon the wastewater system shall file ninety (90) days prior to the closing date of such transaction both a Petition with the Authority to obtain Authority approval of the transaction and a proposed written notice to the customers.
- (3) Any petition filed with the Authority under this part shall include a description of the proposed transaction, and the following:
  - (a) The name, address, and telephone number of the public wastewater utility and other parties to the transaction.
  - (b) The identity and contact information of the person(s) to contact regarding the petition.
  - (c) The proposed effective date of the transaction.
  - (d) A list of outstanding citations and violations issued by TDEC. As discussion concerning how the acquiring party will correct any outstanding citations or violations is required.
  - (e) A statement detailing the effect of the transaction upon customers.
  - (f) A copy of the customer notification letter, to be approved by the Authority, which will be mailed by the current provider of wastewater services to its customers no fewer than thirty (30) days prior to the customer transfer. Once approved by the Authority, the notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope. For good cause shown, any portion of this Rule 1220-4-13-.10(3)(f) may be waived or notice may be given using alternative means.

Rule 1220-04-13-.11 Receiverships Or Other Transfers Of Operation Or Ownership is deleted it in its entirety.

Rule 1220-04-13-.12 Customer Relations is amended by deleting subparagraph (1)(a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph shall read:

- (a) Each public wastewater utility shall maintain a customer service telephone number at which it may be contacted directly by customers, applicants, or the Authority during its regular business hours.

Rule 1220-04-13-.14 Denying Or Discontinuing Service is amended by deleting it in its entirety and replacing and substituting instead the following language, so that as amended, the new rule shall read:

- (1) No public wastewater utility shall discontinue service to any customer without first providing adequate notice to the customer; provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the public wastewater utility may cut off water service without such notice by use of the cutoff valve or by agreement with the water provider.
- (2) The public wastewater utility shall refuse new wastewater service after the effective date of these Rules unless a customer agrees in writing to a "Subscription Service Contract" that would for the reasons listed in this part allow either:

- (a) The public wastewater utility to install and have exclusive right to use a cutoff valve in the water line between the water meter and the premises (or in customer's water line where no meter exists) in accordance with both the rules and regulations of the public wastewater utility, as found in the tariff approved by the Authority, and this rule, or
  - (b) The public wastewater utility to execute an agreement with a water provider to terminate water services. If the water service shall be discontinued based on an agreement between a water service provider and the public wastewater utility, this agreement shall be submitted and on file with the Authority prior to any termination of water service in accordance with its provisions so that each customer is treated in a just and reasonable manner.
- (3) The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:
- (a) Non-payment for service by a previous occupant of the premises to be served.
  - (b) Failure to pay for merchandise or special services purchased from the public wastewater utility.
  - (c) Failure to pay the bill of another customer as guarantor thereof.
  - (d) Failure to pay for a different type or class of public wastewater utility service.
- (4) The public wastewater utility's tariff on file with the Authority shall define all terms and conditions as they relate to denying or discontinuing wastewater service.
- (5) When a prospective customer is refused service, or an existing customer has service discontinued under the specific provisions included in the public wastewater utility's tariff approved by the Authority, the public wastewater utility shall notify the customer promptly of the reason. The customer notification shall include an explanation of the Authority's dispute resolution process found in Rule 1220-1-3. A copy of such notification or other documentation shall be sent within five (5) business days to the local county health department and the Authority.

Rule 1220-04-13-.16 Transactions With Affiliates is created, the new rule shall read:

- (1) This rule shall apply to all affiliate transactions between a public wastewater utility and any affiliate thereof. The primary purpose of this rule is to protect the ratepayers of a public wastewater utility from unauthorized or unwarranted cross-subsidies.
- (2) For purposes of this rule, the following definitions shall apply:
  - (a) Affiliate – any person who, directly or indirectly, is in control of, is controlled by, or is under common control with a public wastewater utility.
  - (b) Affiliate Transaction – any sale, lease, trade, purchase, or transfer of assets, goods, or services between a public wastewater utility and any affiliate thereof. The term also means any sale, lease, trade, purchase, or transfer of assets, goods, or services between the accounts for the regulated and nonregulated activities of a single public wastewater utility.
  - (c) Asset – any tangible or intangible property, or other right, entitlement, item, or thing of value that is recorded or should be recorded in the public wastewater utility's Balance Sheet Accounts prescribed by the Uniform System of Accounts under 1220-4-1-.11(1)(h).
  - (d) Control – the ownership of twenty percent (20%) or more of the shares of stock entitled to vote for the election of directors in the case of a corporation, or twenty percent (20%) or more of the equity interests in the case of any other type of entity, or status as a director or officer of a corporation or limited liability company, or status as a partner of a partnership, or status as an owner of a sole proprietorship, or any other arrangement whereby a person has the power to choose, direct, or manage the board of directors or equivalent governing body, officers, managers, employees, proxies, or agents of a another person.

- (e) Cross-subsidy – the unauthorized over-allocation of cost to a public wastewater utility resulting in an under-allocation of cost to an affiliate.
  - (f) Direct Cost – with regard to a particular good or service, is the cost solely attributable, on a cost-causative basis, to the production or provision of such individual good or service, where the attribution does not require the use of allocations to separate the common costs incurred in the production or provision of other goods or services.
  - (g) Fair Market Value – is the sales price that could be obtained by selling an asset in an arm's length transaction to a nonaffiliated entity in an open market.
  - (h) Fully Allocated Cost – with regard to a particular good or service, is the sum of the direct cost and indirect cost of such individual good or service.
  - (i) Good – any tangible or intangible property, item, or other thing of value that is recorded or should be recorded in the public wastewater utility's Income Accounts prescribed by the Uniform System of Accounts under 1220-4-1-.11(1)(h).
  - (j) Indirect Cost – with regard to a particular good or service, is the cost, other than direct cost, properly attributable to the production or provision of such individual good or service, including the allocation of all common and overhead costs.
  - (k) Market Rate – is the lowest price that is available for comparable goods or services from nonaffiliated entities in an open market.
  - (l) Net Book Value – is the original cost of an asset less accumulated depreciation.
  - (m) Person – is a corporation, limited liability company, partnership, sole proprietor, enterprise, association, trust, cooperative, concern, individual, or any other entity.
  - (n) Service – any labor-related activity including, but not confined to, auditing, accounting, consulting, engineering, managing, operating, financing, and legal, that is recorded or should be recorded in the public wastewater utility's Balance Sheet and Income Accounts prescribed by the Uniform System of Accounts under 1220-4-1-.11(1)(h).
- (3) A public wastewater utility shall record all affiliate transactions in its accounts as prescribed by the Uniform System of Accounts required under Rule 1220-4-1-.11(1)(h).
- (4) When a public wastewater utility is a party to an affiliate transaction, as defined in this rule, the following methods must be used to record the transaction in the public wastewater utility's accounts:
- (a) When an affiliate sells, leases, trades, or transfers an asset to a public wastewater utility, such transaction shall be recorded in the public wastewater utility's accounts at the lower of the affiliate's net book value or the fair market value of the asset.
  - (b) When a public wastewater utility sells, leases, trades, or transfers an asset to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Authority. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the higher of the public wastewater utility's net book value or the fair market value of the asset.
  - (c) When an affiliate sells, leases, trades, or transfers goods or services to a public wastewater utility, such transaction shall be recorded in the public wastewater utility's accounts at the affiliate's fully allocated cost or the market rate, whichever is lower.
  - (d) When a public wastewater utility sells, leases, trades, or transfers goods or services to an affiliate, such transaction shall be recorded in the public wastewater utility's accounts at the tariff rate if an applicable tariff is on file with the Authority. If no tariff is applicable, such transaction shall be recorded in the public wastewater utility's accounts at the public wastewater utility's fully allocated cost or the market rate, whichever is higher.

- (5) A public wastewater utility shall record the following minimum information regarding each affiliate transaction:
- (a) The name of the affiliate involved in the transaction.
  - (b) A description of the transaction, including:
    - 1. The date of execution;
    - 2. The business purpose underlying the transaction;
    - 3. The starting date and termination date if the transaction is to be performed over a period of time; and
    - 4. Identification of the asset(s), good(s), or service(s) related to the transaction.
  - (c) If the transaction involves an asset, the net book value and the fair market value of the asset. Fair market value may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.
  - (d) If the transaction involves a good or service, the fully allocated cost incurred to produce or provision the good or service and the market rate of the good or service. The market rate may be substantiated by auction, appraisal, competitive bids, supplier catalogs, vendor price lists, advertisements, or clearly comparable transactions.

A public wastewater utility shall preserve and maintain all records and information related to affiliate transactions required under subsection (4) of this rule for a minimum period of three (3) years as specified in Rule 1220-4-13-.03.

- (6) In the Annual Report required to be filed with the Authority pursuant to Rule 1220-4-13-.04(1)(c), the public wastewater utility shall state for the reporting period whether or not it was a party to any affiliate transactions, as defined in this rule. If the public wastewater utility engaged in such affiliate transactions during the reporting period, it shall in its Annual Report:
- (a) Identify each affiliate by name and business address;
  - (b) Describe the affiliate relationship between each affiliate and the public wastewater utility; and
  - (c) For each affiliate, report the total dollar amount of affiliate transactions recorded in the public wastewater utility's accounts as follows:
    - 1. The total dollar amount of assets, goods, and services sold, leased, traded, or transferred to each affiliate by the public wastewater utility during the reporting period; and
    - 2. The total dollar amount of assets, goods, and services, sold, leased, traded, or transferred to the public wastewater utility by each affiliate during the reporting period.
- (7) A public wastewater utility and each affiliate thereof shall provide the Authority, its staff, and its agents with full access to all relevant books and records of such entities in connection with the Authority's regulatory responsibilities to examine any costs sought to be recovered by the public wastewater utility in rate proceedings or to determine a public wastewater utility's compliance with this rule.
- (8) For good cause the Authority may waive any of the requirements or provisions of this rule on the written application of any interested party or on its own motion. The Authority shall, after hearing, state the basis of any such waiver and may impose conditions or limitations on any such waiver consistent with the purpose of this rule.

Rule 1220-04-13-.17 Minimum Requirements For New And Amendments To Certificate Of Convenience And Necessity is created, the new rule shall read

- (1) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") authorizing such public utility to establish, construct, and/or operate, a wastewater system or to expand the area in which such a system is operated, shall file an application in compliance with Rule 1220-1-1-.03 and this rule. All applicants shall demonstrate to the Authority that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall justify that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.
- (2) Applications for a new or expanded CCN, shall include the following information:
  - (a) Provide the following general information about the applicant and the proposed system:
    1. The legal corporate name, physical address and mailing address of the applicant.
    2. An organizational chart showing each officer and any other key personnel by name and title.
    3. A list of owners, members and officers of the wastewater utility. Provide the address, telephone number, and percentage ownership of each individual. If different, list the names of owners, members and officers located in Tennessee.
    4. If the applicant has affiliated companies, provide a corporate organization chart showing all affiliate relationships. Describe in detail any transactions, direct or indirect, that occur or that are expected to occur between affiliated entities.
    5. A copy of the applicant's articles of incorporation, partnership agreement, and/or by-laws.
    6. A copy of the applicant's license to engage in business within the State of Tennessee registered with the Secretary of State, inclusive of any assumed names of the company.
    7. A complete description of the geographic territory to be served by the applicant, including the name and location of development (subdivision) and the number of acres. Include the name of the subdivision or development and the name of the wastewater system as stated in the TDEC permit. In addition, provide a legible map of the area with the proposed service territory clearly and accurately plotted. The map should include:
      - (i) The location of the wastewater system , i.e. treatment plant, pre-application treatment facilities, collection infrastructure, building(s) for equipment, drip fields, disposal fields and/or wetland cells. Include the physical address of the wastewater system and the associated latitude and longitude coordinates.
      - (ii) Names of surrounding streets and roads.
      - (iii) Map to show access roads and names of access roads (if available) and other utilities necessary to provide wastewater service.
      - (iv) All residences and habitable structures served by the wastewater system.
      - (v) Show any portion of the area that will not be served when the wastewater system becomes operational. If the wastewater system will be operation in phases, show the phases on the map.
    8. A description of the type of proposed wastewater system to be constructed including the design capacity and the maximum potential number of customers the Utility will service in the proposed service area. Indicate the technology used for the wastewater system (e.g. membrane, sand filter wetland cell and/or lagoon). The type of system and design capacity should match the type and design capacity of the associated TDEC permit and permit application.
    9. The estimated dates for the commencement and completion of the construction of the system and the estimated date the wastewater system will be placed into service. If the wastewater system will be constructed or placed into service in phases, provide the anticipated dates for each phase.

10. If portions of the wastewater system will be built in phases, provide how many phases and the number of houses or units to be connected in each phase.
  11. Identify the builder or developer that has requested the utility to provide wastewater service.
  12. Respond completely to all information requests by Staff.
- (b) To demonstrate the requisite property rights and that a public need exists for wastewater services in the proposed service area, the applicant shall provide the following:
1. A letter(s) from local government(s) and public wastewater utilities in or near the proposed service area stating that they do not provide wastewater service to the proposed service area and that they are unable or unwilling to provide wastewater service to the proposed service area within the ensuing twelve (12) months.
  2. As applicable, a copy of any application for a franchise and the franchise agreement issued by a city or county.
  3. All contracts or agreements between the builder(s) of the treatment and/or collection system, the utility, and the property and/or subdivision developer that show entitlement or ownership to the land, system specifications, costs for the wastewater system and timeline for the system to be built, and rights to the system once it is completed. Documents presented by the applicant should be signed by all parties and bear marks or stamps, such as those provided by notaries or public officials, as necessary.
  4. Proof that the utility owns the land and/or has easements for the proposed wastewater system.
- (c) To demonstrate that the applicant possesses sufficient managerial ability, the applicant shall provide the following:
1. Biographies of officers and/or key wastewater utility staff that demonstrate managerial ability. Include a list of certifications or professional licenses earned by officers or wastewater utility staff with documentation.
  2. Identify all states where the applicant is certified as a wastewater provider and/or the status of certification in states where an application is pending.
  3. Copies of all contracts related to any pending merger or acquisition of the applicant, corporate parent or affiliate.
  4. Proof that the party contracted to install the proposed system has a valid and current contractor's license by the applicable licensing board of the State of Tennessee.
- (d) To demonstrate that the applicant possesses sufficient technical ability, the applicant shall provide the following:
1. A copy of the application for State Operating Permit ("SOP") filed with TDEC. Include the letter from TDEC indicating the receipt of a complete application. Include any engineering and/or design reports submitted to TDEC, such as the Design Development Report and the Detailed Soils Investigation Report. If an operating permit has been issued, provide a copy of the permit. The utility shall file a copy of the TDEC permit in the docket file prior to providing service.
  2. A copy of the State Operator Certificate for the wastewater system operator of record. If the operator is a contract employee of the utility, provide a copy of the employment contract.
  3. The name, address, and telephone number of the technical contact person responsible for and knowledgeable about the applicant's proposed operations in Tennessee.
  4. A list of any complaints(s), notices of violation or administrative action filed with or issued by a regulatory agency. Identify the nature of the complaint notices of violation or administrative action, which agency is involved, and how the issue was or is being resolved.

5. A certification from a design engineer that the wastewater system was constructed in accordance with the TDEC approved construction plans and specifications. The certification shall be filed in the docket file prior to providing service.
- (e) To demonstrate the applicant possesses sufficient financial capability, the applicant shall provide the following:
1. Financial statements for the applicant covering the most recent year ended. Include a balance sheet, income statement and statement of cash flows.
  2. Pro forma income statements for the wastewater utility for the first three (3) years of operations or for an expanded amended CCN, the first three years after the latest year-end financials. 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.
  3. A chart of accounts for the wastewater utility, following the NARUC Uniform System of Accounts (USOA) for wastewater utilities.
  4. A list of all plant-in-service account numbers with account names and estimated account balances as of the start of operations.
  5. The depreciation rates the applicant intend 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.
  6. The total estimated detailed cost of construction of the wastewater system to be constructed for the proposed service area. If the wastewater system will be constructed in phases, provide detailed construction cost estimates for each phase. Indicate whether the developer or the applicant will pay for the construction of the system.
  7. Indicate the identity of the owner of the wastewater system once construction is complete. If a party other than the utility pays the cost of construction and transfers ownership of the wastewater system to the applicant, provide a detailed breakdown of the estimated amount of contributed capital that will be recorded on the applicant's financial books.
  8. A tariff showing products, services, terms, conditions and proposed rates to be charged for wastewater service. The tariff should include all pass-through fees, including but not limited to, customer deposits, disconnect or reconnect fees, late fees, tap fees, escrow fees, bond fees, franchise fees and taxes.
  9. Provide estimated of costs and customers added by month for the first five (5) years based upon the construction build-out schedule for developments the in the service area of the proposed wastewater system. For each year, by month, provide an estimated number of customers by customer class anticipated to be served by the wastewater system. Include the utility's basis and assumptions used for this projection. Provide this information in a spreadsheet in Microsoft Excel format with all assumptions clearly documented.
  10. Documentation describing bonding requirements imposed by municipal governments for the proposed wastewater system.
  11. Demonstrate that the applicant has acquired a performance bond from the developer or builder of the wastewater system made payable to the Utility to ensure constructions of the wastewater system. The performance bond should be for an amount equal to or greater than the cost of the system as provided in contracts between the builder, developer and or utility.
  12. List all funding sources available to the applicant for the wastewater system proposed by the applicant.

13. Provide information demonstrating compliance with the financial security requirement of Rule 1220-4-13-.07.
- (f) Provide sworn pre-filed written testimony by the applicant's owner, member, officer or other principal having knowledge of the applicant's operations and the proposed wastewater system. The testimony should include, at a minimum, the following information:
1. Demonstrate that a public need exists for wastewater services in the proposed service area.
  2. A description of the wastewater system and the services to be provided.
  3. Indicates that the applicant is aware of and will abide by all applicable Tennessee statutes and TRA Rules;
  4. A discussion and demonstration of technical, managerial, and financial capability of the applicant to provide the proposed wastewater service.
  5. Indicate that the applicant is aware of the requirement of Rule 1220-4-13-.09(7) concerning the completion of the construction of the wastewater system within two years of written TRA's written approval of the CCN.
  6. Include a signed affidavit indicating that all information submitted concerning the wastewater CCN application is true and correct to the best of the witness' knowledge and belief.



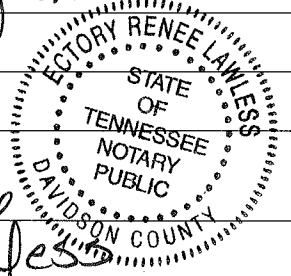
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 9/23/16

Signature: Kelly Cashman Grams

Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel



Subscribed and sworn to before me on: 9/23/2016

Notary Public Signature: Factory Renee Lawless

My commission expires on: 11/9/2018

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Filed with the Department of State on: 9/23/16

Tre Hargett  
Tre Hargett  
Secretary of State

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