

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

November 14, 2025

Opinion No. 25-018

Regulation of Energy Authorities Formed Pursuant to the Municipal Energy Authority Act

Question

Does a utility or energy authority formed pursuant to the Municipal Energy Authority Act have the same requirements or regulatory oversight regarding rates and fees as a government-owned utility or electric cooperative?

Opinion

Generally, no. State laws and regulations differ depending on utility type, and utilities created under the Municipal Energy Authority Act (i.e., “Energy Authorities”) typically set their own rates “without the necessity of review or approval by any other municipality, the state, or any commission or authority thereof.” Tenn. Code Ann. § 7-36-107(a)(7). Contracts between utilities and the Tennessee Valley Authority (“TVA”)—by far the largest energy provider in Tennessee—could impose other rate- and fee-setting requirements across all types of electric utilities, but those requirements would be contract specific.

ANALYSIS

The nature of regulatory oversight connected to utility providers is by no means uniform within Tennessee. Among other things, the scope of regulation can depend on the type of service at issue. It can also depend on the form of the entity providing the service. Your question concerns the requirements of an Energy Authority formed under the Municipal Energy Authority Act (the “Act”). Although this Office has observed that such an Energy Authority may be created only by a municipality that already operates an electric system, Tenn. Att’y Gen. Op. 21-06 (May 10, 2021), the Act’s scope is not limited to the electric-utility context. Rather, the Act authorizes an Energy Authority to provide electric, water, wastewater, and various telecommunications services. Tenn. Code Ann. § 7-36-107(a)(3)-(6). This opinion discusses both the general regulatory landscape applicable to Energy Authorities and the specific requirements applicable to Energy Authorities providing electric service.

Different types of utilities in Tennessee are generally subject to their own state regulatory regimes when it comes to setting rates and charging fees. An Energy Authority’s rate-setting power is set forth in Tenn. Code Ann. §§ 7-36-107(a)(7) and -119. Under section 119(a), an Energy Authority “shall revise . . . rates, fees, or charges from time to time whenever necessary so that each system, or any combined systems as authorized . . . , shall be and always remain self-supporting.” Tenn. Code Ann. § 7-36-119(a). And under section 107(a)(7), an Energy Authority

is authorized “[t]o fix, levy, charge, and collect fees, rents, tolls, or other charges . . . based on cost, sound economy, public good, and prudent business operations.” Tenn. Code Ann. § 7-36-107(a)(7). Importantly, “fees, rents, tolls, or charges shall be established by the board without the necessity of review or approval by any other municipality, the state, or any commission or authority thereof or any federal agency” *Id.* Thus, the general rule is that an Energy Authority’s board of directors has the exclusive power to set rates and fees. But section 107(a)(7) creates two exceptions to that power: “other than as provided in federal statutes or contracts and other than as provided in subdivision (a)(6).” *Id.* These exceptions create the possibility of overlapping requirements for Energy Authorities and other types of utility entities.¹

For instance, section 107(a)(6), which is referenced in section 107(a)(7), in part subjects an Energy Authority to regulation by the Tennessee Public Utility Commission (“TPUC”) if the Energy Authority provides certain telecommunications services. Tenn. Code Ann. § 7-36-107(a)(6). Under those circumstances, TPUC’s authority extends only to the Energy Authority’s provision of those telecommunications services. *Id.* The other exception in section 107(a)(7)—“as provided in federal statutes or contracts”—also establishes a chance for the overlap of rate-setting requirements, particularly for electric-utility entities. The vast majority of electric utilities in Tennessee receive their power from TVA. As TVA is a federal agency, contracts between TVA and an Energy Authority can affect an Energy Authority’s requirements for setting rates and fees. *See* Tenn. Code Ann. § 7-36-102(9) (listing TVA as an example of a “federal agency”); Tenn. Code Ann. § 7-36-107(a)(29) (providing that an Energy Authority is authorized to carry out other authorized powers by contracts with, among others, a “federal agency”).

This overlay of TVA contracts to Tennessee’s electric-utility regulation applies beyond Energy Authorities. Concerning government-owned utilities, the Municipal Electric Plant Law also acknowledges that electric service rates may be subject to contracts. Tenn. Code Ann. § 7-52-115(a). And in a separate statutory provision, the Code specifically authorizes local governments contracting with TVA to agree to terms and conditions that “the governing body of the municipality may deem appropriate,” including terms and conditions regarding resale rates. Tenn. Code Ann. § 7-52-201. The statutory scheme governing electric cooperatives is of the same general accord. In pertinent part, it provides that a cooperative has the power to make contracts with any “federal agency” for the purchase or sale of electric power and energy. Tenn. Code Ann. § 65-25-105(a)(6). And it also provides that a cooperative has the power to “stipulate and agree to such covenants, terms, and conditions as the board may deem appropriate” in connection with such contracts, including with respect to resale rates. *Id.*

This common link among electric utilities is significant. Indeed, this Office has noted before that Tennessee “is unique in that almost all electric power consumed in this state is

¹ It is also worth noting that in the specific contexts of water and wastewater services, Energy Authorities and government-owned utilities are both subject to the oversight of the Tennessee Board of Utility Regulation (“TBOUR”), a body whose remedial actions can include changes in user rates. *See* Tenn. Code Ann. § 7-82-701(b) (noting that the term “utility system” includes, among other things, the water and wastewater systems of a “county, metropolitan government, or incorporated town or city” and the water and wastewater systems of an Energy Authority); Tenn. Code Ann. § 7-82-706 (outlining remedial actions TBOUR may require of utility systems).

generated by . . . TVA.” Tenn. Att’y Gen. Op. 14-20 (Feb. 19, 2014).² And under the TVA Act, TVA’s Board of Directors “is authorized to include in any contract for the sale of power such terms and conditions, including resale rate schedules,” that it judges are “necessary or desirable.” 16 U.S.C. § 831i; *see also Holbrook v. TVA*, 48 F.4th 282, 286 (4th Cir. 2022) (noting that “TVA sets its rates largely through entering power contracts with local power companies, who then resell the power to different classes of customers at different rates as required by the power contracts with TVA”). Thus, although the laws and regulations applicable to Energy Authorities differ from those applicable to other types of utility entities, all electric-utility entities that contract with TVA for their power will be subject to TVA’s contractual terms. There *could* be practical overlap pertaining to the requirements TVA imposes on these entities when they purchase power, but whether any common requirements exist in this context would be contract dependent.

JONATHAN SKRMETTI
Attorney General and Reporter

JAMES P. URBAN
Senior Deputy Attorney General

MATTHEW KERNODLE
Assistant Attorney General

Requested by:

The Honorable J. Adam Lowe
State Senator
Suite 732 Cordell Hull Building
425 Rep. John Lewis Way North
Nashville, Tennessee 37243

² *See also* Rachel Neuburger, *Power and Politics in the Tennessee Valley*, 45 Energy L.J. 251, 253 (2024) (stating that TVA owns the “bulk power infrastructure” that over 150 locally-owned distribution utilities rely on and noting that these utilities cover a territory that includes, among other regions, “virtually all of Tennessee”).