

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

March 10, 2020

IN RE:

**JOINT APPLICATION OF AQUA UTILITIES
COMPANY, INC. AND 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**

DOCKET NO.
19-00062

ORDER GRANTING CONSUMER ADVOCATE’S MOTION FOR LEAVE TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS

This matter is before the Hearing Officer upon the *Motion for Leave to Issue More Than Forty Discovery Requests* (“*Motion*”) filed by the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (“Consumer Advocate”) on January 29, 2020, requesting leave to serve Aqua Utilities Company, LLC (“Aqua Utilities”, the “Company,” or the “Utility”), Central States Water, Inc. (“Central States”) and Limestone Water Utility Operating Company (“Limestone”) (together “Joint Applicants”) more than forty discovery requests pursuant to TPUC Rule 1220-1-2-.11. The Consumer Advocate also filed a *Memorandum in Support of the Consumer Advocate’s Motion for Leave to Issue more than Forty Discovery Requests* (“*Memo*”) on January 29, 2020.

CONSUMER ADVOCATE'S *MOTION* AND *MEMO*

In its *Memo*, the Consumer Advocate argues that it has good cause to seek additional discovery. The Consumer Advocate states that the “limitation of discovery to forty questions in

this Docket would severely limit the Consumer Advocate's ability to analyze and present a complete case, and would severely limit the Consumer Advocate's ability to provide that analysis and additional information that is vital to the Commission for the protection of Tennessee consumers."¹ In addition, the Consumer Advocate maintains that the discovery sought is not abusive or oppressive in violation of Tenn. R. Civ. Pro. 26.02.² Nor is the additional discovery request unreasonably cumulative or duplicative, and to the extent possible, the Consumer Advocate avers it has attempted to obtain the information from other sources.³

JOINT APPLICANTS' RESPONSE

On February 5, 2020, the Joint Applicants filed *Limestone Water Utility Operating Company, LLC Response to the Consumer Advocate's Motion for Leave to Issue More than Forty Discovery Requests* ("Joint Applicants' Response"). The Joint Applicants state the Consumer Advocate filed a letter on August 28, 2019, notifying the Joint Applicants of the need to comply with the Minimum Filing Requirements ("MFRs"). The Joint Applicants maintain they "spent many hours over several months preparing the information required for the extensive list," and filed an Amended and Restated Petition in excess of one hundred pages on December 13, 2019, including an Appendix individually addressing the MFRs set forth in Commission Rule 1220-04-13-.17.⁴ The Joint Applicants argue that the Consumer Advocate "has not made a serious review of the Amended and Restated Petition. Further Aqua Utilities has been providing water and wastewater services under the regulation of this Agency for approximately 25 years."⁵ The Joint Applicants state that Commission Rule 1220-01-02-.11(5)(a) limits discovery requests to forty questions, and the Consumer Advocate has propounded a total of one hundred thirty-

¹ *Memo*, p. 7 (January 29, 2020).

² *Id.* at 7-8.

³ *Id.* at 5-6.

⁴ *Joint Applicants' Response*, pp. 1-2 (February 5, 2020).

⁵ *Id.* at 2.

three questions. According to the Joint Applicants, the Consumer Advocate's Data Requests are "objectionable, unreasonably cumulative, oppressive, overly burdensome, and broad."⁶

FINDINGS AND CONCLUSIONS

On February 24, 2020, the Hearing Officer conducted a Status Conference with the parties regarding the *Motion* and the *Joint Applicants' Response*. The parties argued their respective positions. The Consumer Advocate reiterated that there was good cause for the additional discovery and that all the MFRs had not been answered. The Joint Applicants maintained they had responded to all the MFRs, and the Consumer Advocate's additional discovery was unnecessary and overburdensome. The Joint Applicants also requested that the Hearing Officer limit the Consumer Advocate from any further discovery, or at a minimum, limit any further discovery to a certain number of requests.

TPUC Rule 1220-1-2-.11 states as follows:

No party shall serve on any other party more than forty (40) discovery requests including sub-parts without first having obtained leave of the Commission or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

TPUC Rules allow a minimum of forty discovery requests to be served upon a party. Nevertheless, upon compliance with TPUC Rule 1220-1-2-.11 and a showing of good cause, the Commission has been flexible in permitting supplemental discovery to occur. This docket is complex and contains a number transactions, that must be evaluated, including an analysis of the technical, managerial, and financial ability of a new company, Limestone, to obtain a Certificate of Convenience and Necessity ("CCN"), in order for the Consumer Advocate to present a

⁶ *Id.*

“complete case” to the Commission. In light of the foregoing, the Hearing Officer finds that the Consumer Advocate met the requirements of the Rule by showing good cause to issue additional discovery requests to the Joint Applicants. Therefore, based on these findings, the Hearing Officer grants the *Motion*. The Hearing Officer finds that limiting future additional discovery is premature and refrains from making a determination on any potential requests for additional discovery by the Consumer Advocate at this time.

IT IS THEREFORE ORDERED THAT:

The *Motion for Leave to Issue More Than Forty Discovery Requests* filed by the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General is granted.



Monica Smith-Ashford, Hearing Officer