

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

| | | |
|--------------------------------------|---|----------------------------|
| IN RE: |) | |
| |) | |
| JOINT APPLICATION OF AQUA |) | |
| UTILITIES COMPANY, INC., AND |) | |
| LIMESTONE WATER UTILITY |) | DOCKET NO. 19-00062 |
| 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 |) | |

DIRECT TESTIMONY

OF

DAVID N. DITTEMORE

March 31, 2020

1 **Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION**
2 **FOR THE RECORD.**

3 **A1.** My name is David N. Dittmore. My business address is Office of the Tennessee
4 Attorney General, War Memorial Building, 301 6th Ave. North, Nashville, TN 37243.
5 I am a Financial Analyst employed by the Consumer Advocate Unit of the Tennessee
6 Attorney General's Office (Consumer Advocate).

7 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**
8 **PROFESSIONAL EXPERIENCE.**

9 **A2.** I received a Bachelor of Science Degree in Business Administration from the University
10 of Central Missouri in 1982. I am a Certified Public Accountant licensed in the state of
11 Oklahoma (#7562). I was previously employed by the Kansas Corporation Commission
12 (KCC) in various capacities, including Managing Auditor, Chief Auditor, and Director
13 of the Utilities Division. For approximately four years, I was self-employed as a Utility
14 Regulatory Consultant representing primarily the KCC Staff in regulatory issues. I also
15 participated in proceedings in Georgia and Vermont, evaluating issues involving
16 electricity and telecommunications regulatory matters. Additionally, I performed a
17 consulting engagement for Kansas Gas Service (KGS), my subsequent employer during
18 this time frame. For eleven years I served as Manager and subsequently Director of
19 Regulatory Affairs for KGS, the largest natural gas utility in Kansas, serving
20 approximately 625,000 customers. KGS is a division of One Gas, a natural gas utility
21 serving approximately two million customers in Kansas, Oklahoma, and Texas. I joined
22 the Tennessee Attorney General's Office in September 2017 as a Financial Analyst.

1 Overall, I have thirty years' experience in the field of public utility regulation. I have
2 presented testimony as an expert witness on many occasions. Attached as Exhibit
3 DND-1 is a detailed overview of my background.

4 **Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**
5 **TENNESSEE PUBLIC UTILITY COMMISSION (TPUC)?**

6 **A3.** Yes. I have submitted testimony in a number of TPUC Dockets, since joining the Attorney
7 General's Office.

8 **Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 **A4.** The purpose of my testimony is to provide the Consumer Advocate recommendations in
10 the present Docket.

11 **Q5. PLEASE IDENTIFY THE SCOPE OF CUSTOMERS AFFECTED BY THIS**
12 **PROPOSED TRANSACTION.**

13 **A5.** Aqua provides service to 353 water customers, plus 66 irrigation customers along with 353
14 wastewater customers for a total customer count of 772.¹

15 **Q6. WHAT IS THE SCOPE OF OPERATIONS OF CENTRAL STATES WATER**
16 **RESOURCES (CSWR) THE PARENT OF LIMESTONE?**

¹ Limestone's Response to Consumer Advocate DR No. 1-23, Exhibit DR1-3, filed under seal. Although Exhibit DR1-23, the customers numbers were made public in Limestone's Responses to the Consumer Advocate's Second Discovery Request, specifically in question DR No. 2-2.

1 **A6.** **CSWR**, the parent of Limestone Water Utility Operating Company (Limestone), operates
2 water and wastewater utility in the states of Missouri, Arkansas, Kentucky, Texas, and
3 Louisiana.²

4 **Q7. WHAT CRITERIA DO YOU BELIEVE SHOULD BE CONSIDERED IN**
5 **DETERMINING WHETHER A TRANSACTION OF THIS NATURE SHOULD BE**
6 **DEEMED TO BE IN THE PUBLIC INTEREST?**

7 **A7.** The Commission in TPUC Docket No. 20-000025 has set forth proposed criteria by which
8 it may evaluate whether an Acquisition Premium may be recovered from ratepayers.
9 However, it does not specifically identify the criteria which should be used to determine
10 whether the proposed transaction is in the public interest.

11 I believe the following criteria should be used in the evaluation of this transaction and
12 similarly situation transactions:³

- 13 1. Does the prospective acquiring company have the capability to operate the utility?
- 14 2. Does the prospective acquiring entity have the financial stability to operate the
15 utility and have the willingness to invest to make any necessary improvements?
- 16 3. Is the purchase price reasonable given the condition of the acquired utility, the rates
17 charged to customers and the ability to absorb the disallowance of the Acquisition
18 Premium?

². *Amended and Restated 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*, Exhibit 5, TPUC Docket No. 19-00062 (December 13, 2019)

³ The listing is specific to this transaction and similarly situated transactions. It does not represent the comprehensive list that should be applicable to larger transactions involving invest owned utilities.

1 4. Will the transaction result in increased rates for ratepayers solely attributable to the
2 acquisition?

3 5. Given the unique circumstances of the transaction is it appropriate to allocate some
4 portion of any Gain on the Sale to ratepayers?

5 **Q8. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

6 **A8.** The proposed transaction should be approved contingent upon the adoption of provisions
7 I will address below. I believe there are ratepayer benefits as well as risks associated with
8 this transaction which I will identify in my testimony.

9 **Q9. BEGIN BY IDENTIFYING THE CONDITIONS YOU BELIEVE ARE**
10 **NECESSARY FOR THIS TRANSACTION TO MOVE FORWARD.**

11 **A9.** I recommend that the transaction be approved subject to the conditions identified below:

12 1. Capital Costs and Operating Expenses incurred associated with mapping the system
13 should not be borne by ratepayers.

14 2. Aqua's Balance Sheet balances at the date of the acquisition, including its
15 Contributions in Aid of Construction (CIAC) balance, shall be transferred as the
16 beginning balances on the books of Limestone. (see testimony of Alex Bradley)

17 3. Limestone shall record any Service Connection Fees it receives as CIAC. (see
18 testimony of Alex Bradley)

19 4. Copies of the most recent two years' accounting records of Aqua shall be transferred
20 to Limestone.

1 5. Limestone shall be regulated on a Rate Base Rate of Return methodology. It's cost of
2 debt should be no higher than debt costs for comparable firms. If actual debt costs are
3 excessive, a hypothetical debt cost should be imputed.

4 6. The Acquisition Premium in this case is approximately [REDACTED] and is comprised
5 of the write-up of Land to its appraised value. This Acquisition Premium should not
6 be recovered from ratepayers.

7 7. Regulatory/Transaction costs should not be recoverable from ratepayers.

8 8. Limestone shall comply with the Commissions' affiliate transaction rules.

9 9. Limestone should bear any future costs associated with any existing title issues and the
10 cost to remediate any currently existing (but unknown) environmental or easement
11 issues.

12 10. The Commission should place a cap on prospective Limestone rate increases of
13 \$10/month per customer per year. Limestone shall not seek an increase in rates until it
14 has operated the system for one year.

15
16 If Limestone is unwilling to abide by these conditions, the transaction is not in the
17 public interest and should not be approved by the Commission.

18 **Q10. DOES THE BUYER HAVE THE ABILITY TO TERMINATE THE**
19 **TRANSACTION IF IT BELIEVES THE REGULATORY AGENCY HAS**
20 **IMPOSED CONDITIONS UPON THE TRANSACTION IT DOES NOT WITH TO**
21 **ACCEPT?**

1 **A10.** Yes. Section 2.05 of the Purchase and Sale Agreement permits the Buyer wide discretion
2 to terminate the Agreement if regulatory approvals are received that are not entirely
3 satisfactory to the Buyer.

4 **Q11. DO YOU BELIEVE ADOPTION OF THE CONDITIONS IDENTIFIED ABOVE**
5 **REPRESENT ROADBLOCKS TO CLOSING THE TRANSACTION?**

6 **A11.** No.

7 **ACQUISITION CRITERIA**

8 **Q12. PLEASE ADDRESS THE FIRST CRITERIA RELATED TO THE CAPABILITY**
9 **OF THE ACQUIROR TO OPERATE THE UTILITY SYSTEM.**

10 **A12.** I generally believe the personnel identified in the testimony of Mr. Josiah Cox have the
11 capability to operate the Aqua system.⁴ There is one thing of note regarding the business
12 model of Limestone's affiliate, Central States Water Resources (CSWR). CSWR relies
13 upon contractors to perform Operating and Maintenance (O&M) functions, as well as
14 billing and customer service tasks.⁵ To our knowledge, no systemic quality of service
15 issues have been identified by regulators in other states in which CSWR operates. The
16 business model is somewhat unique, and I believe the Company should provide an update
17 of its performance at the time of its next rate proceeding.

⁴ *Direct Testimony of Josiah M. Cox, Amended and Restated 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*, Exhibit 9, TPUC Docket No. 19-00062 (December 13, 2019).

⁵ *Id.* at pp. 5-7.

1 **Q13. CONTINUE WITH A DISCUSSION OF WHETHER THE COMPANY HAS THE**
2 **FINANCIAL STABILITY TO OPERATE THE UTILITY.**

3 **A13.** Our office obtained the forecasted financial statements of Limestone as well as the
4 historical 2018 and 2019 financial statements of CSWR.⁶ A review of the Balance Sheets
5 would suggest Limestone and its parent CSWR has the financial capability to provide
6 service. However, there are three issues of concern, discussed below, which should be
7 addressed by the Applicant in rebuttal testimony.

8 First, CSWR incurred a 2019 [REDACTED].⁷ A loss of this size is certainly
9 material to an entity the size of CSWR. This [REDACTED]

10 [REDACTED]
11 [REDACTED]. I'm sure the major portion of the increased costs was due to
12 the Company being in the ramp-up stage of operations and with the acquisition of
13 additional systems, there should be economies of scale associated with these costs. It is
14 important to note that these A&G costs have not been reviewed for reasonableness. The
15 existence of affiliated transactions increases the need to carefully review such costs within
16 a rate case setting. CSWR has a healthy mix of equity to debt; however, [REDACTED]

17 [REDACTED]
18 [REDACTED].⁸ [REDACTED]
19 [REDACTED]

⁶ The 2019 financial statements of CSWR are for the twelve-month period ending December 31, 2019.

⁷ Limestone's Response to Consumer Advocate Request No. 2-16, Consolidated Statement of Operations, filed under seal.

⁸ [REDACTED]

1 Secondly, there is a Note to the 2018 Financial Statements⁹ which is of concern and should
2 be highlighted. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED].

9 [REDACTED]¹⁰ [REDACTED]

10 [REDACTED]¹¹ [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED].

⁹ The Notes referenced here are to the 2018 Financial Statements. Limestone's Response to Consumer Advocate Request No. 2-15, filed under seal. The Notes to the 2019 Financial Statements, a component of and incorporated within the definition of Financial Statements, were not provided as requested. Limestone's Response to Consumer Advocate Request No. 2-18, filed under seal.

¹⁰ Beginning several weeks prior to the preparation of this testimony, the financial and credit markets are feeling the impacts of the abrupt economic downturn brought on by COVID-19.

¹¹ Limestone's Response to Consumer Advocate Request No. 1-40, filed under seal.

1 These issues should be addressed by the Applicant in its Rebuttal testimony in this Docket.

2 **REASONABLENESS OF THE PURCHASE PRICE**

3 **Q14. NOW TURN TO THE REASONABLENESS OF THE PURCHASE PRICE. DO**
4 **YOU BELIEVE THE PURCHASE PRICE IS REASONABLE?**

5 **4.** No. I believe the portion of the purchase price related to land is excessive. I would also
6 note that it is reasonable to assume higher Operating and Maintenance costs will result
7 from this transaction. I will discuss this second point later in my testimony.

8 **Q15. WHAT IS THE BASIS FOR YOUR OPINION THAT THE PAYMENT RELATED**
9 **TO THE ACQUISITION OF LAND AND LAND RIGHTS IS EXCESSIVE?**

10 **A15.** To my knowledge, there is no other alternative use of the land other than in the operation
11 of the utility. Since there is no alternative use for the property other than in the provision
12 of utility service, there is no basis to acquire such property for an amount in excess of its
13 book value. The proposal to write-up the value of land to its appraisal results in an
14 Acquisition Premium, and a commensurate Gain on the Sale for the selling utility (Aqua)
15 which if not addressed by the Commission will result in increased rates associated with the
16 transaction merely by the transfer of legal ownership.

17 The Company claims there is no Acquisition Premium in this case however their view of
18 the definition of Acquisition Premium is not accurate. An Acquisition Premium is defined
19 as the excess purchase price over net book value of net assets acquired. The fact that the
20 land was reflected on the books at its cost, in this case zero, does not reflect some inherent
21 accounting error on Aqua's books.

Further, it is not clear what easements Limestone is acquiring in this transaction, as discussed below. Easements are legal rights of the utility to access land in order to provide utility service.

Q16. WHAT IS THE ESTIMATED AMOUNT OF THE ACQUISITION PREMIUM?

A16. Exhibit DND-2 contains the Balance Sheet of Aqua. Exhibit DND-3 provides a very rough estimate of the Acquisition Premium based upon Aqua's 2018 Balance Sheet balances. This amount translates to an approximate Acquisition Premium of [REDACTED]. The actual amount will vary based upon the actual balances of acquired assets and liabilities.

Q17. HOW WAS THE PURCHASE PRICE DETERMINED?

A17. The Limestone's Response to Consumer Advocate Request No. 1-26 indicates that: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Q18. HAVE YOU REVIEWED THE APPRAISAL PROVIDED WITHIN THIS DOCKET?

A18. Yes.¹²

Q19. DO YOU HAVE ANY COMMENTS REGARDING THE APPRAISAL?

¹² Limestone's Response Consumer Advocate Request No. 1-26 and Exhibit "DR1-26 Aqua Utilities Appraisal Report.".

1 **A19.** Yes. The value of land and utility easements [REDACTED]

2 [REDACTED]¹³ The appraisal also contains the following
3 language:

4 [REDACTED]
5 [REDACTED]
6 [REDACTED].

7 The report continues: [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED].

17 **IMPACT OF TRANSACTION ON RATES**

18 **Q20. HAVE YOU EVALUATED THE LIKELY IMPACT OF THIS TRANSACTION ON**
19 **THE OVERALL REVENUE REQUIREMENT OF THE UTILITY?**

¹³ *Id.*

1 **A20.** Yes. In my opinion, ratepayers will likely incur additional costs resulting from this
2 transaction as discussed below.

3 **Q21. ARE THERE UNIQUE ASPECT IN THIS CASE THAT SHOULD BE**
4 **CONSIDERED WHEN ESTIMATING THE IMPACT OF THIS TRANSACTION**
5 **ON CUSTOMER RATES?**

6 **A21.** Yes. First, based upon its 2018 financial results, Aqua is underearning and it is reasonable
7 to assume customer rates would increase in the absence of this proposed transaction.¹⁴
8 Exhibit DND-3 sets forth the calculation indicating Aqua's current revenue deficiency is
9 estimated at \$82,950. In arriving at this estimated revenue deficiency for the composite
10 water and wastewater operations of Aqua, I first identified the 2018 Aqua operating
11 expenses relying upon information provided in their annual report. I then calculated a
12 factor to project these expenses to 2021 levels assuming a 3% annual inflation rate and
13 applied the factor to 2018 expense levels. The next step is to apply an Operating Margin
14 to the estimated 2021 expenses to arrive at an overall Aqua 2021 revenue requirement.

15 Secondly, Limestone has identified the need for several capital projects that I believe are
16 in the public interest and are appropriate. While it is important to consider customer
17 impacts when setting rates, regardless of the nature of the cost increase, I do not believe
18 the costs associated with these needed capital improvements should be attributed to this
19 transaction. These are needed system improvements that customer should benefit from
20 regardless of ownership.

¹⁴ The Financial Statements were obtained from the Tennessee Public Utility Commission via a Request for Information.

1 **Q22. BASED UPON INFORMATION PROVIDED BY THE COMPANY,¹⁵ WHAT IS**
2 **YOUR ESTIMATE OF THE RATE INCREASES FORECASTED BY**
3 **LIMESTONE THAT ARE DIRECTLY ATTRIBUTED TO THIS ACQUISITION?**

4 **A22.** The estimated impact to customers exclusively as a result of this transaction is [REDACTED]
5 as shown in Exhibit DND-6. Exhibit DND-4 estimates the existing Aqua revenue
6 deficiency discussed above at \$82,950, while Exhibit DND-5 estimates the cost of new
7 capital investment of [REDACTED].

8 **Q23. WHAT IS THE TOTAL ESTIMATED RATE INCREASE INCORPORATING**
9 **THE IMPACT OF THIS ACQUISITION, IMPACT OF THE EXISTING AQUA**
10 **DEFICIENCY AND THE RETURN ON PROSPECTIVE CAPITAL**
11 **INVESTMENTS?**

12 **A23.** The Company indicates the total increase in customer bills under Limestone ownership of
13 nearly [REDACTED].¹⁶

14 **Q24. ARE YOU CONCERNED WITH THIS POSSIBLE LEVEL OF INCREASE IN**
15 **CUSTOMER RATES?**

16 **A24.** Yes.

17 **GAIN ON THE SALE**

18 **Q25. WHAT IS A GAIN ON THE SALE?**

¹⁵ Limestone's Response to Consumer Advocate Request DR No. 1-28, filed under seal.

¹⁶ The average current tariff charge per month is [REDACTED]

[REDACTED] Limestone's Response to Consumer Advocate Request No.1-28, filed under seal.

1 **A25.** Gain on the Sale represents the portion of the acquisition payment in excess of net book
2 value that accrues to the selling utility. The Gain on the Sale in this case is estimated to
3 equal the Acquisition Premium of approximately [REDACTED].¹⁷

4 **Q26. DOES THE COMMISSION HAVE AUTHORITY OVER THE DISPOSITION OF**
5 **THE AMOUNT OF THE GAIN ON THE SALE OF UTILITY ASSETS?**

6 **A26.** Yes.

7 **Q27. SHOULDN'T THE GAIN ON THE SALE AUTOMATICALLY ACCRUE TO THE**
8 **BENEFIT OF THE OWNER OF THE ASSET?**

9 **A27.** No.

10 **Q28. WHAT IS THE RATIONALE FOR ATTRIBUTING A PORTION OF ALL OF THE**
11 **GAIN ON THE SALE TO UTILITY RATEPAYERS?**

12 **A28.** Utility owners/shareholders are entitled to an opportunity to earn its authorized return
13 through the ratemaking process. Utilities are granted the right to the provision of a
14 monopoly service within a given service territory. This governmental permit to exclusively
15 provide utility service is of great value to holder of the right. The utility owner is protected
16 from competition for the services they offer. Utility shareholders do assume the level of
17 risk that accrue to shareholders of competitive companies. Utility owners/shareholders are
18 not entitled to additional enrichment once they transfer their Certificate of Convenience
19 and Necessity (CCN) to a third party. Captive utility ratepayers provide a financial safety
20 net for utility owners/shareholders and therefore should benefit from any Gain on the Sale

¹⁷ See Exhibit DND-3.

1 resulting from the transfer of the government provided monopoly franchise, in that the Gain
2 on Sale represents excess profits beyond those required to provide the utility owner a
3 reasonable opportunity to earn its authorized return.

4 **Q29. WHAT CRITERIA SHOULD BE EVALUATED IN DETERMINING WHETHER**
5 **SOME PORTION OF THE GAIN ON THE SALE SHOULD BE ASSIGNED AS A**
6 **BENEFIT TO UTILITY CUSTOMERS FOR A GIVEN TRANSACTION?**

7 **A29.** I believe the following factors should be considered when determining the portion of the
8 Gain on the Sale should be assigned to ratepayers.

- 9 1. Will the related Acquisition Premium be recoverable from ratepayers?
- 10 2. Has the selling utility provided quality service to ratepayers?
- 11 3. Has the selling utility invested necessary capital into the system?
- 12 4. Will rates increase as a result of the proposed transaction?

13 **Q30. CAN YOU DISCUSS THE RATIONALE FOR RELYING UPON THESE**
14 **CRITERIA IN ASSESSING WHETHER ATTRIBUTION OF GAIN ON THE SALE**
15 **TO RATEPAYERS IS APPROPRIATE?**

16 **A30.** Yes. The recoverability of the Acquisition Premium should be considered in context with
17 the appropriate regulatory treatment of the Gain on the Sale issue. Ratepayers deserve rates
18 that are based upon original cost, not upon the purchase price of the acquiring utility.
19 Setting rates on the purchase price encourages acquisition transactions which don't
20 necessarily produce ratepayer benefits. Establishing rates based upon the purchase price

1 may result in excessive rates to ratepayers and excessive returns to utility
2 owners/shareholders.

3 The Commission may be confronted with a transaction where an Acquisition Premium is
4 paid by the prospective buyer to a seller with a poor operating performance (such as one
5 with environmental violations). In this situation the Commission must balance ratepayer
6 impacts of the recovery of the Acquisition Premium with the desire to have service
7 provided by a (new) prudent operator willing to invest capital into a failing system.
8 Without the opportunity to assign the Gain on the Sale to ratepayers, the imprudent operator
9 could reap the benefits of the Gain on the Sale. If the Commission is compelled to approve
10 a transaction with recovery of an Acquisition Premium due to the poor operating
11 performance of the selling utility, the corresponding Gain on the Sale should be assigned
12 to captive ratepayers.

13 The extent to which the utility/shareholders have invested capital into the system should
14 be considered in evaluating the extent to which the Gain on the Sale should be assigned to
15 ratepayers. Utilities that do not finance capital improvements, but instead rely on pre-
16 funded ratepayer contributions should not then retain Gain on the Sale proceeds.

17 If the Commission determines that an Acquisition Premium recovery is appropriate, that
18 the transaction will result in cost increases for ratepayers, then ratepayers should receive
19 the benefit of the Gain on the Sale to offset the increased costs resulting from the
20 transaction.

21 **Q32. DOES THE COMMISSION HAVE A PRECEDENT FOR ASSIGNING THE GAIN**
22 **ON THE SALE OF ASSETS TO RATEPAYERS?**

1 **A32.** Yes. On at least two occasions the Commission has assigned the Gain on the Sale of utility
2 assets to ratepayers.¹⁸ Thus, there is Commission precedent for such treatment within the
3 ratemaking process.

4 **Q33. WHAT IS YOUR RECOMMENDATION REGARDING THE REGULATORY**
5 **TREATMENT OF THE GAIN ON THE SALE FOR THIS TRANSACTION?**

6 **A33.** I recommend that the Commission not assign the Gain on the Sale in this case to ratepayers,
7 contingent upon a finding that ratepayers will not incur costs associated with the
8 Acquisition Premium. I believe that Aqua has provided an acceptable level of service to
9 its customers; it has invested funds into the system; and it has no environmental Notice of
10 Violations of which I am aware. As I discuss later in my testimony, I do not believe
11 recovery of the Acquisition Premium is appropriate in this case. One factor weighing in
12 favor of assignment of the Gain on the Sale to customers is the likelihood that rates will
13 increase as a result of this transaction, as discussed earlier in my testimony.

14 **Q34. DO YOU HAVE A CONTINGENT RECOMMENDATION IN THE EVENT THE**
15 **COMMISSION EITHER APPROVES RECOVERY OF THE ACQUISITION**
16 **PREMIUM IN THIS CASE, OR DEFERS SUCH A DECISION UNTIL A**
17 **SUBSEQUENT PROCEEDING?**

18 **A34.** Yes. If the Commission determines recovery of an Acquisition Premium is appropriate, or
19 if it defers a decision on this issue until a future proceeding, then I recommend Aqua issue
20 a pro-rata credit to ratepayers of the final Gain on the Sale, once the actual number is

¹⁸ *Order on Remand, In re A+ Communications, Inc.*, TPUC Docket No. 92-1398 (May 18, 1994) and *Order, In re Kingsport Power Company*, TPUC Docket No. U-84-7308 (November 15, 1984).

1 finalized. In this event, the Commission should require the parties to submit information
2 showing the calculation of the Gain on the Sale on the part of Aqua, and the underlying
3 calculation of the distribution of the Gain, on a per customer basis. This credit should come
4 in the form of a bill credit and be issued at such time as the transaction closes.

5 **Q35. IF THE COMMISSION DEFERS A DECISION ON THE APPROPRIATE**
6 **TREATMENT OF THE ACQUISITION PREMIUM FOR A FUTURE DOCKET,**
7 **WHY WOULD IT BE APPROPRIATE TO DISTRIBUTE THE GAIN ON THE**
8 **SALE TO RATEPAYERS AT THIS TIME?**

9 **A35.** Once the transaction closes and the Certificate of Convenience and Necessity passes to
10 Limestone, the Commission will no longer have oversight over Aqua and will not have the
11 ability to require Aqua's distribution of the Gain on the Sale to ratepayers. The
12 Commission could leave open the option of requiring Limestone to flow back the Gain on
13 the Sale to ratepayers; however, that would likely require a reconfiguration of the Purchase
14 Price of the existing transaction and cause financial uncertainty for Limestone.

15 **CONDITIONS ON TRANSACTION APPROVAL**

16 **Q36. NOW RETURN TO THE ACQUISITION CONDITIONS IDENTIFIED EARLIER**
17 **IN YOUR TESTIMONY. PROVIDE THE RATIONALE FOR EXCLUSION OF**
18 **COSTS ASSOCIATED WITH MAPPING FROM FUTURE RATE CASE**
19 **DETERMINATIONS.**

1 **A36.** The lack of maps and documentation of the system is a deficiency of the seller and should
2 not result in incremental future costs for ratepayers.¹⁹ Under the Limestone proposal, they
3 are indifferent to this deficiency since they plan on recovering those costs from ratepayers.

4 **Q37. DISCUSS THE NEXT TWO ACQUISITION CONDITIONS REQUIRED TO**
5 **APPROVE THE TRANSACTION.**

6 **A37.** The next two requirements relate to the transfer of Contributions in Aid of Construction
7 (CIAC) and the appropriate recording of developer contributions on the books of
8 Limestone and are supported by Mr. Bradley.

9 **Q38. PLEASE DISCUSS THE FOURTH ACQUISITION CONDITION RELATED TO**
10 **THE TRANSFER OF ACCOUNTING RECORDS TO LIMESTONE.**

11 **A38.** The Commission should require that two-years of Aqua's Accounting records, including
12 plant records, billing data, general ledger information be copied and supplied to Limestone.
13 This legacy accounting information of Aqua is needed to ensure the appropriate asset and
14 liability balances of Limestone, to provide some continuity of accounting results and to
15 provide some context for future ratemaking reviews.

16 **Q39. IDENTIFY AND DISCUSS THE FIFTH ACQUISITION CONDITION.**

17 **A39.** It appears Limestone's would like to be regulated under a Rate Base rate of return
18 approach.²⁰ I welcome this approach for Limestone and its apparent willingness to invest
19 in infrastructure. I believe that other similarly situated Tennessee entities are reluctant or

¹⁹ Limestone's Response to Consumer Advocate No. Request 2-1(a)-(b). Limestone provided estimates for GIS and Surveying costs of \$16,000 and \$15,000 for Smoke Testing costs. For the sake of discussion, I lump both of these items together and refer to them as mapping costs.

²⁰ Limestone's Response to Consumer Advocate Request No. 1-45, filed under seal.

1 completely unwilling to invest in infrastructure to the detriment of their customers. I
2 recommend the Commission clarify that Limestone shall make future rate request filings
3 based upon the Rate Base rate of return model.

4 **Q40. PLEASE TURN TO THE SIXTH CONDITION AND PROVIDE THE RATIONALE**
5 **FOR THE REQUIREMENT THAT LIMESTONE SHALL NOT RECOVER THE**
6 **ACQUISITION PREMIUM FROM RATEPAYERS.**

7 **A40.** The proposed transaction is anticipated to result in significant cost increases for ratepayers
8 as discussed above.²¹ Therefore, it is not justified to also incorporate an Acquisition
9 Premium cost within the ratemaking calculation. There are no cost savings associated with
10 the transaction to offset the incremental cost of the Acquisition Premium. While there may
11 be operational enhancements planned by Limestone that will enhance its quality of service,
12 I do not believe the ‘minor deficiencies’ rise to the level significant operating deficiencies
13 of Aqua.²² Accordingly, the Commission should not feel compelled to ignore the customer
14 impact of additional costs, including recovery of an Acquisition Premium, as a result of
15 significant operating deficiencies. The record does not indicate that Aqua is providing a
16 sub-standard level of service.

17 Further, there are several deficiencies identified in the Appraisal report, referenced earlier
18 in my testimony.

19 **Q41. DO YOU AGREE WITH THE COMPANY’S ASSERTION THAT THERE IS NO**
20 **ACQUISITION PREMIUM ASSOCIATED WITH THIS TRANSACTION²³?**

²¹ Exhibit DND-6.

²² Limestone’s Response to Consumer Advocate Request No. 1-48, filed under seal.

²³ Limestone’s Response to Consumer Advocate Request No. 1-29, filed under seal.

1 **A41.** No. As discussed earlier, there is an Acquisition Premium associated with this transaction.

2 **Q42. PLEASE TURN TO THE SEVENTH ACQUISITION CONDITION.**

3 **A42.** The Commission should assign the costs associated with this transaction, including
4 attendant regulatory costs, to Aqua/Limestone. The absorption of these costs between the
5 two parties to the transaction is consistent with the recommendation that the Gain on the
6 Sale be retained by Aqua.²⁴ Further, the likelihood of significant cost increases as a result
7 of this transaction dictate as a matter of fairness that ratepayers not be further burdened
8 with recovery of costs associated with the transaction.

9 **Q43. NOW ADDRESS THE EIGHTH CONDITION RELATED TO THE PRICING OF**
10 **AFFILIATE TRANSACTIONS.**

11 **A43.** A review of CSWR Notes to the Financial Statement indicates that [REDACTED]
12 [REDACTED]. The Commission should specify to Limestone that it needs to
13 comply with the Commissions' affiliate rules, specifically TPUC Rule 1220-04-13-.16.

14 **Q44. EXPLAIN THE NINTH ACQUISITION CONDITION YOU ARE SUPPORTING.**

15 **A44.** Limestone's Response to Consumer Advocate Request No. 2-12 indicates that it has not
16 obtained a survey, title report, soils report nor Environmental Opinion. Limestone should
17 bear any future costs associated with any existing title issues and any currently existing
18 (but unknown) environmental or easement issues. Further, these items are part of the
19 Acquisition costs and for reasons explained earlier in my testimony should not be recovered
20 from ratepayers.

²⁴ Subject to the qualification that ratepayers do not incur the costs associated with the Acquisition Premium.

1 **Q45. NOW TURN TO THE TENTH ACQUISITION CONDITION AND PROVIDE**
2 **YOUR SUPPORT FOR LIMITATIONS OR PHASE INS OF RATE INCREASES.**

3 **A45.** The forecasted rate increases under Limestone's ownership approximate [REDACTED]
4 [REDACTED]²⁵ This is a significant increase and in my view is not reasonable to impose
5 on customers without an extended phase-in approach. I believe rates should increase no
6 more than \$10/month per year. This level of increase to ratepayers is very significant and
7 should be considered the maximum increase incurred by ratepayers associated with this
8 transaction.

9 **Q46. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A46.** Yes, but I reserve the right to amend my testimony if new information becomes available.

²⁵ See the response to Consumer Advocate request 1-28, specifically the estimated overall increase in tariff rate per customer.

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

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

AFFIDAVIT

I, David N. Dittemore behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.

David N. Dittemore
DAVID N. DITTEMORE?

Sworn to and subscribed before me
this 31st day of MARCH, 2020.

Alex Bradley
NOTARY PUBLIC



My commission expires: 3-07-23

David Dittimore

Experience

Areas of Specialization

Approximately thirty-years experience in evaluating and preparing regulatory analysis, including revenue requirements, mergers and acquisitions, utility accounting and finance issues and public policy aspects of utility regulation. Presented testimony on behalf of my employers and clients in natural gas, electric, telecommunication and transportation matters covering a variety of issues.

Tennessee Attorney General's Office; Financial Analyst September, 2017 – Current

Responsible for evaluation of utility proposals on behalf of the Attorney General's office including water, wastewater and natural gas utility filings. Prepare analysis and expert witness testimony documenting findings and recommendations.

Kansas Gas Service; Director Regulatory Affairs 2014 – 2017; Manager Regulatory Affairs, 2007 - 2014

Responsible for directing the regulatory activity of Kansas Gas Service (KGS), a division of ONE Gas, serving approximately 625,000 customers throughout central and eastern Kansas. In this capacity I have formulated strategic regulatory objectives for KGS, formulated strategic legislative options for KGS and led a Kansas inter-utility task force to discuss those options, participated in ONE Gas financial planning meetings, hired and trained new employees and provided recommendations on operational procedures designed to reduce regulatory risk. Responsible for the overall management and processing of base rate cases (2012 and 2016). I also played an active role, including leading negotiations on behalf of ONE Gas in its Separation application from its former parent, ONEOK, before the Kansas Corporation Commission. I have monitored regulatory earnings, and continually determine potential ratemaking outcomes in the event of a rate case filing. I ensure that all required regulatory filings, including surcharges are submitted on a timely and accurate basis. I also am responsible for monitoring all electric utility rate filings to evaluate competitive impacts from rate design proposals.

Strategic Regulatory Solutions; 2003 -2007

Principal; Serving clients regarding revenue requirement and regulatory policy issues in the natural gas, electric and telecommunication sectors

Williams Energy Marketing and Trading; 2000-2003

Manager Regulatory Affairs; Monitored and researched a variety of state and federal electric regulatory issues. Participated in due diligence efforts in targeting investor owned electric utilities for full requirement power contracts. Researched key state and federal rules to identify potential advantages/disadvantages of entering a given market.

MCI WorldCom; 1999 - 2000

Manager, Wholesale Billing Resolution; Manage a group of professionals responsible for resolving Wholesale Billing Disputes greater than \$50K. During my tenure, completed disputes increased by over 100%, rising to \$150M per year.

Kansas Corporation Commission; 1984- 1999

Utilities Division Director - 1997 - 1999; Responsible for managing employees with the goal of providing timely, quality recommendations to the Commission covering all aspects of natural gas, telecommunications and electric utility regulation; respond to legislative inquiries as requested; sponsor expert witness testimony before the Commission on selected key regulatory issues; provide testimony before the Kansas legislature on behalf of the KCC regarding proposed utility legislation; manage a budget in excess of \$2 Million; recruit professional staff; monitor trends, current issues and new legislation in all three major industries; address personnel issues as necessary to ensure that the goals of the agency are being met; negotiate and reach agreement where possible with utility personnel on major issues pending before the Commission including mergers and acquisitions; consult with attorneys on a daily basis to ensure that Utilities Division objectives are being met.

Asst. Division Director - 1996 - 1997; Perform duties as assigned by Division Director.

Chief of Accounting 1990 - 1995; Responsible for the direct supervision of 9 employees within the accounting section; areas of responsibility included providing expert witness testimony on a variety of revenue requirement topics; hired and provided hands-on training for new employees; coordinated and managed consulting contracts on major staff projects such as merger requests and rate increase proposals;

Managing Regulatory Auditor, Senior Auditor, Regulatory Auditor 1984 - 1990; Performed audits and analysis as directed; provided expert witness testimony on numerous occasions before the KCC; trained and directed less experienced auditors on-site during regulatory reviews.

Amoco Production Company 1982 - 1984

Accountant Responsible for revenue reporting and royalty payments for natural gas liquids at several large processing plants.

Education

- B.S.B.A. (Accounting) Central Missouri State University
- Passed CPA exam; (Oklahoma certificate # 7562) – Not a license to practice

**Limestone/Aqua Acquisition
Docket 19-00062**

Aqua 2018 Balance Sheet

Exhibit DND-2

Balance Sheet

ASSETS

| | |
|--|---------------------|
| Utility Plant in Service (101-105) | \$ 2,917,599 |
| Accum. Depreciation and Amortization (108) | \$ 1,193,564 |
| Net Plant In Service | \$ 1,724,035 |

| | |
|------------------------------------|---------------------|
| Cash | \$ 32,285 |
| Customer Accounts Receivable (141) | \$ 33,020 |
| Prepaid F&E Tax | \$ 3,449 |
| CWIP | \$ 2,224 |
| Current Assets | \$ 1,795,013 |

LIABILITIES AND CAPITALIZATION

Deferred Debits:

| | |
|---|---------------------|
| Common Stock Issued (201) | \$ 1,000 |
| Preferred Stock Issued (204) | \$ - |
| Other Paid-In Capital (211) | \$ - |
| Retained Earnings (215) | \$ (705,957) |
| Capital (Proprietary & Partnership-218) | \$ 2,188,423 |
| Total Capital | \$ 1,483,466 |

| | |
|--|-------------------|
| Long-term Debt (224) | \$ 9,000 |
| Short-term Debt (231) | \$ - |
| Notes Payable (232) | \$ - |
| Customer Deposits (235) | \$ - |
| Accrued Taxes (236) | \$ - |
| Accum. Depreciation and Amortization (108) | \$ - |
| Sales tax payable | \$ 581 |
| Accrued Management Fees | \$ 33,050 |
| Current Earnings | \$ (26,574) |
| Other Liabilities (Please Specify) | \$ - |
| Advances for Construction | \$ - |
| Contributions in Aid of Const.-Net (271-2) | \$ 295,490 |
| Total Liabilities | \$ 311,547 |

| | |
|---|---------------------|
| Total Capitalization and Liabilities | \$ 1,795,013 |
|---|---------------------|

Source: Aqua 2018 Annual Report

Limestone/Aqau Acquisition
Docket 19-00062

Calculation of Estimated Acquisition Premium

Exhibit DND-3

| <u>Item</u> | <u>Amount</u> | |
|-------------------------------|---------------|--------------------|
| Purchase Price | \$ 2,000,000 | Cox Testimony |
| Less: Assets Acquired: | | Aqua Balance Sheet |
| Net Plant in Service | \$ 1,724,035 | |
| Plus Liabilities Acquired: | | |
| CIAC | \$ 295,490 | |
| Estimated Acquisition Premium | \$ 571,455 | |

**Limestone/Aqua Acquisition
Docket 19-00062**

Estimated Aqua Revenue Requirement Deficiency

Exhibit DND-4

Income Statement

| | Water | Sewer | Total |
|--|----------------|-----------------|-----------------|
| Residential Revenue | 126,042 | 93,126 | 219,168 |
| Commercial Revenue | - | - | - |
| Tap Fees | 7,125 | 7,125 | 14,250 |
| Other Revenue | 1,589 | 1,688 | 3,277 |
| Total Operating Revenues | 134,756 | 101,939 | 236,695 |
| Salaries & Wages - Employees | - | - | - |
| Salaries & Wages - Officers, Directors, & Stockholders | 18,000 | 18,000 | 36,000 |
| Employee Pensions & Benefits | - | - | - |
| Purchased Water | 36,365 | - | 36,365 |
| Purchased Power | - | 18,871 | 18,871 |
| Contractual Services | 39,373 | 34,464 | 73,837 |
| Miscellaneous Expenses | 3,485 | 2,946 | 6,431 |
| Total Operations and Maintenance Expense | 97,223 | 74,281 | 171,504 |
| Depreciation Expense | 31,311 | 48,510 | 79,821 |
| Taxes other than Income | 11,943 | - | 11,943 |
| Total Operating Expense | 140,477 | 122,791 | 263,268 |
| Net Operating Income | (5,721) | (20,852) | (26,573) |

Source: Aqua 2018 Annual Report

| Estimated Current Aqua Revenue Deficiency | | |
|--|--------------|----------------|
| Operating Expenses | 263,268 | |
| Escalation Factor to 2021 @ 3% per Year | <u>1.093</u> | |
| Estimated Escalated 2021 Operating Expenses | 287,680 | |
| Divided By: Reciprocal Operating Ratio (1- 6.5%) | <u>90.0%</u> | |
| Required Revenue | | 319,645 |
| Total Operating Revenue | | <u>236,695</u> |
| Revenue Requirement Deficiency - Aqua 2021 | | 82,950 |

| Composite Revenue Per Customer | Current | With Increase |
|---|----------------|----------------------|
| Revenue | 236,695 | 319,645 |
| Customers (Per Response to Consumer Advocate Request 1-9) | <u>772</u> | <u>772</u> |
| Revenue Per Customer | \$ 306.60 | \$ 414.05 |
| Monthly Revenue Per Customer | \$ 25.55 | \$ 34.50 |

**Limestone/Aqua Acquisition
Docket 19-00062**

Revenue Requirement Associated with Limestone Capital Expenditures

Exhibit DND-5

| Item | Amount | |
|----------------------------------|------------|--|
| Anticipated Capital Expenditures | \$ 150,000 | Response to Consumer Advocate Request 1-39 |
| Revenue Requirement Factor | | |
| Depreciation | 2.87% | Staff Schedules - |
| Assumed Rate of Return | 10.00% | 2.02 Docket 15- |
| | | |
| Total Carrying Rate | 12.87% | |
| Revenue Requirement | \$ 19,305 | |

**Limestone/Aqua Acquisition
Docket 19-00062**

**Estimated Increase in Costs
Associated with Limestone Acquisition**

Exhibit DND-6

| | | |
|---|-------------|-----------|
| Assumed Yr 3 Tariff Rate (Monthly) | \$ 73,241 * | |
| Assumed Customers | | 772 |
| Months | | <u>12</u> |
| Total Customer Months | 9,264 | |
| Assumed Revenue from Existing Aqua Customers | \$ 678,495 | |
| 2018 Aqua Revenue | \$ 236,695 | |
| Increase in Rates | \$ 441,800 | |
| Less: | | |
| Existing Aqua Revenue Deficiency | \$ (82,950) | |
| Return/Depreciation on New Assets | \$ (19,305) | |
| Estimated Rate Increase Attributed to Limestone Acquisition | \$ 339,546 | |

Exhibit DND-4

* Per Response to Consumer Advocate Exhibit 1-28b
Includes assumed acquisition of Cartwright Creek, Shiloh Falls and DSH
Utilities.