

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:)	
)	
JOINT APPLICATION OF AQUA)	
UTILITIES COMPANY, LLC, AND)	DOCKET NO. 19-00062
LIMESTONE WATER UTILITY)	
OPERAITNG COMPANY FOR)	
AUTHORITY TO SELL OR TRANSFER)	
TITLE TO THE ASSETS, PROPERTY)	
AND REAL ESTATE OF A PUBLIC)	
UTILITY AND FOR A CERTIFICATE)	
OF CONVENIENCE AND NECESSITY)	

CONSUMER ADVOCATE'S IDENTIFICATION OF ISSUES

The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (Consumer Advocate) respectfully submits this list of issues to be considered by the Commission when determining whether the proposed transaction, is in the public interest. If the Commission determines that the transaction is not in the public interest as proposed by the Applicant, then the question becomes whether there are conditions which could be imposed which would allow the transaction to meet the public interest test.

1. Does the prospective purchaser have the managerial, financial, and technical ability to operate the system?¹
2. Whether the prospective purchaser "has demonstrated that it will adhere to all applicable [Commission] policies, rules and orders."²

¹ *Order Approving Purchase Agreement, Franchise, Water Agreement and Certificate of Public Convenience and Necessity*, p. 22. TPUC Docket No. 12-00157 (October 15, 2013). *See* Tenn. Code Ann. § 65-4-201(c)(1)(B) and Tenn. Comp. R. & Regs. 1220-04-13-.17(1) (December 2018). *See also*, Pre-filed Testimony of David Dittmore, p. 3, ll. 13-15, TPUC Docket No. 19-00062 (April 2, 2020). Mr. Dittmore stated that he generally believes that the persons identified by Josiah Cox have the "capability to operate the system," but that there are three issues of concern regarding the financial stability of Limestone to operate the utility. *Id.* at p. 6, ln. 10 – p. 9, ln 1.

3. Whether the prospective purchaser expressed its intent and willingness to invest to make any necessary improvements to the systems?³
4. Acquisition Premium and Gain on Sale.
 - a. Whether, with the current set of circumstances in which the system at issue is neither operationally or financially troubled, the Commission should address the ratemaking implications of an acquisition premium in this docket or wait until a future docket resulting in ratepayers “bear[ing] the risk of potentially paying higher rates in the future as a result of the acquisition premium on this transaction.”⁴
 - b. Does the current transaction contain an Acquisition Premium? If yes, whether the difference between the book value of the utility’s land and the appraised value of the utility’s land for this transaction should be identified as an acquisition premium for this proposed transaction?⁵
 - c. If an Acquisition Premium exists, whether the Acquisition Premium should be recoverable from ratepayers?⁶

² Tenn. Code Ann. § 65-4-201(c)(1). The Commission made clear that the requirement not only applied to telecommunications by state but also applied to water utility applications. *Order Denying Certificate of Public Convenience and Necessity and Requiring Divestiture of Water System*, p. 8, TPUC Docket No. 12-00030 (April 13, 2013). See Tenn. Comp. R. & Regs. 1220-04-13-.17(2)(f)(3) (December 2018). In his testimony, Josiah Cox stated that Limestone and Central States Water Resources are familiar with the Commission’s rules and regulations and “pledge” to comply with all Commission requirements when operating the systems. Corrected Direct Testimony of Josiah Cox, pp. 6-7, TPUC Docket No. 19-00062 (July 29, 2019).

³ Pre-filed Testimony of David Dittmore, p. 3, In. 15, TPUC Docket No. 19-00062 (April 2, 2020). In his testimony, Josiah Cox stated that Limestone and Central State Water Resources “are willing and able to invest capital necessary to bring the Aqua systems up to standard and into compliance.” Corrected Direct Testimony of Josiah Cox, p. 6, TPUC Docket No. 19-00062 (July 29, 2019).

⁴ *Order Approving Petition*, Docket No. G-9, Sub 466 & G-3, Sub 251, p. 16 (North Carolina Utilities Commission October 8, 2002) (a copy of this order can be accessed at <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=d6907502-e3b0-4722-8a32-74ac492acd24>).

⁵ *B&W Pipeline v. Tennessee Regulatory Authority*, M2016-02013-COA-R12-CV, slip op. at 12 (Tenn. Ct. App. November 6, 2017).

⁶ Pre-filed Testimony of David Dittmore, p. 5, In. 4-6, TPUC Docket No. 19-00062 (April 2, 2020).

- d. If a Gain on the Sale exists in this transaction and the Commission determines the Acquisition Premium should be recovered from ratepayers should Aqua be permitted to retain the Gain on the Sale proceeds?

5. Purchase Price.

- a. If the Acquisition Premium is eligible to be recovered from ratepayers, is the purchase price reasonable given the condition of the acquired utility, the number of utility customers⁷, and the rates charged to customers.
- b. If the Acquisition Premium is disallowed for recovery from ratepayers, is the purchase price reasonable given the condition of the acquired utility, the number⁸ of utility customers, the rates charged to customers?⁹

6. Evaluation of Potential Rate Impacts.

- a. In determining whether a proposed acquisition is in the public interest, should the Commission evaluate the potential rate impacts on the utility's customers?
- b. If the Commission determines that potential rate impacts is a part of the evaluation of public interest, what are the anticipated rate implications from this transaction?¹⁰
- c. If, after evaluating the potential rate impacts, the Commission determines that the acquisition is in the public interest, whether the Commission should take action to

⁷ Aqua Utilities has 353 residential water and wastewater customers and 66 irrigation customers. Limestone's Response to Consumer Advocate's DR No. 1-23, Exhibit DR1-23 (February 14, 2020).

⁸ *Id.*

⁹ Pre-filed Testimony of David Dittmore, p. 3, ll. 16-18, TPUC Docket No. 19-00062 (April 2, 2020).

¹⁰ *Id.* at p. 4, ll. 1-2.

prevent or lessen the potential rate shock to consumers due to the proposed transaction?¹¹

7. Should transaction/regulatory costs (or due diligence costs), which are not associated with the delivery of water services, be funded solely by the ratepayer¹² without a showing (a) of a benefit to the ratepayer¹³; (b) that the costs are necessary operation costs¹⁴; and (c) that the costs are not addressing deficiencies of the seller's action/inaction (i.e. title or easement issues, existing environmental contamination)?¹⁵

8. Rate Base Rate of Return.

a. Whether Limestone shall be regulated on a Rate Base Rate of Return methodology?¹⁶

b. Whether Limestone's debt costs are excessive? If yes, whether a hypothetical debt cost should be imputed?

9. Contribution in Aid of Construction (CIAC).

a. If the proposed acquisition is approved and the purchasing utility shifts to the Rate Base Method from the existing Operating Margin Method, should Service Connection Fees be recorded as CIAC rather than revenue?¹⁷

¹¹ *Id.* at p. 5, ll. 12-14.

¹² *Order Approving Purchase Agreement, Franchise, Water Agreement and Certificate of Public Convenience and Necessity*, pp. 20-22, TPUC Docket No. 12-00157 (October 15, 2013).

¹³ *Id.* at p. 22.

¹⁴ *Id.* at p. 22.

¹⁵ Pre-filed Testimony of David Dittmore, p. 5, ll. 7, 9-11, TPUC Docket No. 19-00062 (April 2, 2020).

¹⁶ *Id.* at p. 5, ll. 1-3. Limestone states that it plans to use the Rate Base Rate of Return methodology. Limestone's Response to Consumer Advocates DR No. 1-45 (February 14, 2020).

¹⁷ Pre-filed Testimony of David Dittmore, p. 3, ll. 17-18. *See* Pre-filed Testimony of Alex Bradley, p. 3, ll. 2-11 & p. 5, ll. 8-9, TPUC Docket No. 19-00062 (April 2, 2020).

- b. Whether the seller utility's Balance Sheet balances at the date of the acquisition, including its CIAC balance, should be transferred as the beginning balances on the books of purchasing utility?¹⁸
10. Whether ratepayers should pay for the prospective purchaser's Capital Costs and Operating Expenses incurred associated with mapping the system when such maps should already exist and be available from the existing utility?¹⁹
11. Whether the most recent two years accounting records of Aqua will be transferred to Limestone?

WHEREFORE, the Consumer Advocate respectfully requests the Commission accept its Identification of Issues List.

Respectfully submitted this 20th day of May, 2020.

RESPECTFULLY SUBMITTED,



KAREN H. STACHOWSKI (BPR #019607)
Assistant Attorney General
VANCE L. BROEMEL (BPR # 011421)
Senior Assistant Attorney General
Office of the Tennessee Attorney General
Financial Division, Consumer Advocate Unit
P.O. Box 20207
Nashville, Tennessee 37202-0207
Phone: (615) 741-2370
Fax: (615) 741-1026

¹⁸ Pre-filed Testimony of David Dittmore, p. 3, ll. 14-16, TPUC Docket No. 19-00062 (April 2, 2020). See Pre-filed Testimony of Alex Bradley, p. 5, ll. 1-5 & ll. 11-12, TPUC Docket No. 19-00062 (April 2, 2020). Limestone stated that it was an error in its initial filing that it had not carried over the CIAC currently on the books of Aqua. Limestone updated its financial statements to reflect the correction. Limestone's Response to Consumer Advocates DR No. 1-59 and Exhibit DR 1-59 Updated Pro Forma BS & IS (February 14, 2020).

¹⁹ Pre-filed Testimony of David Dittmore, p. 4, ll. 12-13, TPUC Docket No. 19-00062 (April 2, 2020).

Email: karen.stachowski@ag.tn.gov
Email: vance.broemel@ag.tn.gov

CERTIFICATE OF SERVICE

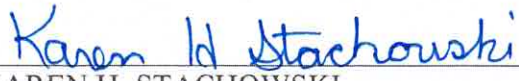
I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Charles B. Welch, Jr., Esq.
Tyler A. Cosby, Esq.
Farris Bobango PLC
414 Union Street, Suite 1105
Nashville, TN 37219
Telephone: (614) 726-1200
Email: cwelch@farris-law.com
Email: tcosby@farris-law.com

Aqua Utilities Company, Inc.
c/o Montana Land Company, LLC
Attn: James E. Clausel
408 Main Street
Savannah, TN 38372
Telephone: (731) 925-4834
Email: jamesclausel@yahoo.com

Limestone Water Utility Operating
Company, LLC
c/o Josiah Cox
Central States Water Resources, Inc.
500 Northwest Plaza Drive, Suite 500
St. Ann, MO 63074-2220
Telephone: (314) 736-4672
Email: jcox@cswrgroup.com

This the 20th day of May, 2020.



KAREN H. STACHOWSKI