

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	)	
OPERATING 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	)	

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JOINT APPLICANTS', AQUA UTILITIES COMPANY, LLC AND LIMESTONE  
WATER UTILITY OPERATING COMPANY'S NOTICE OF OBJECTION TO PRE-  
FILED TESTIMONY AND MOTION IN LIMINE

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The Joint Applicants, Aqua Utilities Company LLC ("Aqua") and Limestone Water Utility Operating Company ("Limestone") by and through their undersigned counsel, do hereby give notice of objection of certain portions of the pre-filed testimony of the Consumer Advocate's witness, David Dittmore, and moves in limine to strike all portions of said testimony from the record pertaining to customer rate revision or issues appropriately considered in a rate case proceeding.

**I. General Objection**

The Joint Applicants object to the pre-filed testimony of the Consumer Advocate's witness, David Dittmore, in all respects concerning issues that relate to the setting of consumer rates. This testimony is irrelevant, incompetent, and not probative in that the issue of rates is not properly before the Commission. The testimony is not based on any competent evidence or calculation of costs and is merely speculative and mere conjecture.

This proceeding involves the Joint Applicants' request for approval of a system acquisition.

If the petition is approved, customer rates will remain the same and there will be no immediate difference for the utility's customers. The only issues properly before the Commission are the managerial, technical and financial capability of Limestone to own and operate the proposed water and wastewater services described in the petition. If there is any other reason the acquisition is not in the public interest, the Consumer Advocate should state those reasons with specificity. Consumer rates are not before the Commission for consideration in this Docket. Joint Applicants submit that the ownership and operation of the system is better served by an experienced utility rather than a developer that has essentially completed its project and desires to exit the business of providing services.

The Consumer Advocate's approach suggests that the Commission will not be equipped to deal with a request for any rate increases in the future when the rate-related issues described and discussed in Mr. Dittmore's testimony are ripe for determination. No party to this proceeding is in a posture to address rates at this time because no evidence currently exists regarding the future cost of service. Such evidence will only be available after Joint Applicant Limestone has had the opportunity experience of actually operating the systems at issue in this case. Joint Applicants submit that only then will the Commission will be in a posture to deal with any rate increase request when it might be formally submitted.

## **II. Specific Testimony Subject to Motion in Limine and Request to Strike**

1. Strike testimony at p. 4, lines 1-2. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. The testimony is irrelevant because rates are not at issue in this case and should be stricken from the record. Limestone proposes to adopt rates currently in effect, which the Commission already has determined are fair and reasonable. The possible effect of Limestone's acquisition on future rates is too speculative for the Commission to consider in this case. But neither the

Consumer Advocate nor the customers Limestone proposes to serve have cause for concern because any future rates the Commission approves must by law be fair and reasonable to both the utility and its customers and must comply with all other applicable legal standards.

2. Strike testimony at p. 4, lines 2-4. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. Although Mr. Dittemore discusses the theory underlying a "gain on sale" adjustment, he presents no evidence as to the appropriate amount of any such adjustment. Because the lack of such evidence makes it impossible for the Commission to impose a "gain on sale" adjustment, this testimony should be stricken from the record.

3. Strike testimony at p. 8, lines 1 through 19. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. Testimony regarding the effect of the current business environment might have on "many private equity firms" is nothing more than speculation, and Mr. Dittemore presents no evidence that the current business environment has adversely affected Sciens Capital Management or its ability or willingness to provide equity funding to Limestone. His testimony therefore is not probative and should be stricken from the record. .

4. Strike testimony at p. 9, line 3 through p. 11, line 17. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. The testimony is not relevant because there is no evidence the purchase price was based on an excessive valuation of land currently owned by Aqua. The testimony similarly is not relevant because Limestone is not seeking an "acquisition premium" in this case. Mr. Dittemore's testimony therefore is not probative and should be stricken from the record. All issues related to what future rate base value should be assigned to assets acquired from



Aqua must be deferred to the first post-acquisition rate case because no evidence has been presented that would allow the Commission to make such a determination in this proceeding. Should Limestone propose to include in rate base in a future rate case, the appraised value of acquired real estate would be required to support such a proposal. No final appraisal of that value currently exists.

5. Strike testimony at p. 11, line 18 through p. 13, line 16. This testimony is irrelevant because rates are not at issue in this case. Limestone proposes to adopt rates currently in effect, which the Commission already has determined are fair and reasonable. The possible effect on future rates of the proposed acquisition is too speculative for the Commission to consider in this proceeding. Any future rates the Commission approves must by law be fair and reasonable to both the utility and its customers and must comply with all other applicable legal standards.

6. Strike testimony at p. 13, line 17 through p. 18, line 14. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. Although as noted previously Mr. Dittmore discusses the theory underlying a "gain on sale" adjustment, he presents no evidence as to the appropriate amount of any such adjustment. Moreover, the testimony is not relevant because Mr. Dittmore presents no evidence the factors that led the Commission to conclude "gain on sale" adjustments were appropriate in cases cited at footnote 18 are present in or apply to the Aqua/Limestone transaction. The "contingent recommendation" made in the answer beginning on p. 17, line 18, also ignores the fact that after closing of the proposed transaction Aqua no longer will have customers to which a credit can be issued if the Commission defers the "gain on sale" determination to a future case. Because Mr. Dittmore provides no basis for the Commission to make a "gain on sale" adjustment in this case, his testimony should be stricken from the record.

7. Strike testimony at p. 18, line 16 through p. 19, line 3. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. Mr. Dittmore presents no evidence that maps submitted as part of the application do not fully comply with the Commission's rules. Moreover, Limestone has not proposed to recover any mapping costs in this case. Because this testimony provides no evidentiary basis for any action by the Commission, it should be stricken from the record. Rates are not at issue in this case because Limestone proposes to adopt rates currently in effect, which the Commission already has determined are fair and reasonable.

8. Strike testimony at p. 20, line 4, through p. 21, line 8. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. The testimony is not relevant because Limestone is not seeking an "acquisition premium." Therefore this testimony should be stricken from the record. All issues related to what future rate base value should be assigned to assets acquired from Aqua must be deferred to the first post-acquisition rate case because no evidence has been presented that would allow the Commission to make such a determination in this proceeding.

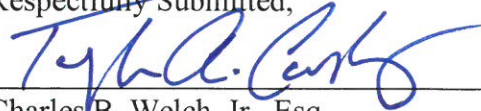
9. Strike testimony at p. 21, line 15, through p. 22, line 10. This testimony is not relevant to Limestone's technical, managerial, and financial ability to acquire and operate the systems it proposes to purchase from Aqua. The testimony is irrelevant because rates are not at issue in this case. Limestone proposes to adopt rates currently in effect, which the Commission already has determined are fair and reasonable. The testimony is irrelevant because all costs associated with Limestone's acquisition of Aqua's assets are not currently known, and the possible effect of such costs on future rates is too speculative for the Commission to consider in this case. Because this testimony provides no evidentiary basis for any action by the Commission, it should be stricken

from the record. Any future rates the Commission approves must by law be fair and reasonable to both the utility and its customers and must comply with all other applicable legal standards.

Wherefore, the Joint Applicants respectfully request that this Motion to exclude from the record the above-mentioned matters be granted, and for such other and further relief as may be deemed just and proper.

Dated: June 29<sup>th</sup>, 2020

Respectfully Submitted,



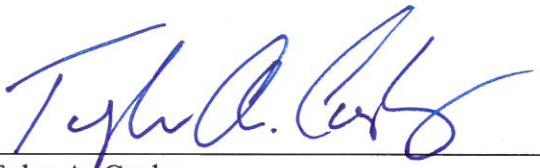
Charles B. Welch, Jr., Esq.  
Tyler A. Cosby, Esq.  
Farris Bobango PLC  
414 Union Street, Suite 1105  
Nashville, TN 37219  
(615) 726-1200 (telephone)  
cwelch@farris-law.com  
tcosby@farris-law.com

*Attorneys for Joint Applicants Aqua Utilities  
Company, Inc., and Limestone Water Utility  
Operating Company, LLC*

### CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing has been served via either U.S. Mail, postage prepaid, or electronically to the following this 29<sup>th</sup> day of June, 2020.

Vance Bromel  
Karen H. Stachowski  
Consumer Protection and Advocate Division  
Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202



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Tyler A. Cosby