

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)	

REBUTTAL TESTIMONY OF JOSIAH COX

July 27, 2020

**REBUTTAL TESTIMONY
OF JOSIAH COX
LIMESTONE WATER UTILITY OPERATING COMPANY, LLC**

WITNESS INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Josiah Cox. I am President of Limestone Utility Operating Company, Inc., (“Limestone”) one of the applicants in this case, and my business address is 1650 Des Peres Road, Suite 303, St. Louis, Missouri, 63131.

Q. ARE YOU THE SAME JOSIAH COX WHO FILED DIRECT TESTIMONY IN THIS CASE IN SUPPORT OF THE PENDING APPLICATION?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony serves two purposes. First, I want to address the recommendation of the Consumer Advocate Unit of the Tennessee Attorney General’s Office (“Consumer Advocate”) that the Tennessee Public Utility Commission (“Commission”) approve Limestone’s proposed acquisition of water and wastewater assets of Aqua Utilities Company, LLC, (“Aqua”) subject to certain conditions set out and discussed in the direct testimony of Consumer Advocate witness David N. Dittmore. Second, I want to update the Commission about significant developments within Limestone’s affiliated group of utilities to underscore and re-emphasize our qualifications to acquire, own, and operate systems currently held by Aqua in a manner which would benefit its customers and therefore serve the public interest. .

Q. PLEASE DESCRIBE THE CONSUMER ADVOCATE’S RECOMMENDATION IN THIS CASE AS YOU UNDERSTAND IT.

A. As expressed in Mr. Dittmore's direct testimony beginning on page 4, the Consumer Advocate recommends the Commission approve the proposed Limestone/Aqua transaction contingent on the adoption of certain specified conditions, which Mr. Dittmore identifies and describes in his testimony. Those conditions, as listed on pages 4 and 5 of Mr. Dittmore's testimony, are as follows:

1. Capital costs and operating expenses incurred associated with mapping the system should not be borne by ratepayers.
2. Aqua's balance sheet balances at the date of the acquisition, including its Contributions in Aid of Construction ("CIAC") balance, shall be transferred as the beginning balances on Limestone's books.
3. Limestone shall record any service connection fees it receives in the future as CIAC.
4. Aqua must transfer to Limestone the most recent two years of Aqua's accounting records.
5. Limestone will be regulated by the Commission on a rate base/rate of return methodology, and Limestone's cost of debt should be no higher than that of comparable firms. If the Commission finds Limestone's actual cost of debt is excessive, a hypothetical debt cost should be imputed for ratemaking purposes.
6. The "acquisition premium" in this case, which the Consumer Advocate estimates at approximately \$570,000 and contends is composed of the write-up of real estate to its appraised value, should not be recovered from ratepayers.
7. Regulatory/transaction costs should not be recovered from ratepayers.

8. Limestone would be required to comply with all the Commission's affiliate transaction rules.
9. Limestone should bear any future costs associated with any existing title issues and the cost to remediate any current but unknown environmental or easement issues.
10. The Commission should place a cap on prospective Limestone rate increases of \$10/month per customer per year, and Limestone shall not seek any increase in rates until it has operated the acquired systems for one year.

Q. ARE THE CONDITIONS PROPOSED BY THE CONSUMER ADVOCATE ACCEPTABLE TO LIMESTONE?

A. Some of the conditions proposed by the Consumer Advocate are acceptable to Limestone while others are not.

Half the Consumer Advocate's proposed conditions are appropriate to this case and are relevant to the issues the Commission must decide in determining whether to grant the pending application – i.e. whether Limestone has the technical, managerial, and financial capability, experience, and expertise to acquire, own, and operate Aqua's systems in a manner that benefits current customers and the public interest. Those conditions are acceptable to Limestone, and we expressed that position to the Consumer Advocate soon after Mr. Dittmore filed his testimony in March of this year.

The other conditions proposed by the Consumer Advocate have nothing to do with issues relevant to the pending application. Instead, those issues have to do with rates the Commission would consider and set in a future Limestone rate case. Because those issues are not germane to the current case, there is not an adequate evidentiary basis – in fact, no evidentiary basis – for the Commission to consider and decide those issues. Therefore, the Commission should reject those

conditions and defer them to a future rate case. They should not be included as part of a Commission order approving the proposed transaction.

As we stated in our application and as I confirmed in my direct testimony, if the Commission approves the proposed acquisition, Limestone intends to adopt rates currently in effect for the Aqua systems. Therefore, rates or issues that might affect future rates are not at issue and do not need to be decided in this case.

Q. WHICH OF THE CONSUMER ADVOCATE'S PROPOSED CONDITIONS DOES LIMESTONE ACCEPT FOR INCLUSION AS PART OF A COMMISSION ORDER APPROVING THE PROPOSED TRANSACTION?

A. Limestone accepts the following conditions proposed by the Consumer Advocate:

Condition 2: Limestone agrees amounts reflected on Aqua's balance sheet as of the date the proposed transaction closes, including the CIAC balance, would be transferred to Limestone as the beginning balances for the acquired assets.

Condition 3: Subsequent to closing the proposed transaction, Limestone would record any service connection fees it collects in the future as CIAC.

Condition 4: At closing, Aqua would be required to transfer to Limestone complete copies of Aqua's accounting records for the two calendar years immediately preceding the closing date along with partial year records for the calendar year in which closing occurs.

Condition 5: For ratemaking purposes, Limestone would be regulated on a rate base/rate of return basis, and its cost of debt should be no higher than debt costs for firms whose risk profiles are comparable to Limestone's. If the Commission determines Limestone's actual debt costs are excessive, hypothetical debt costs would be imputed and used for ratemaking purposes.

Condition 8: Limestone would be bound by, and agrees to comply with, the Commission's affiliate transaction rules.

Q. WHICH OF THE CONSUMER ADVOCATE'S PROPOSED CONDITIONS DOES LIMESTONE NOT ACCEPT AND BELIVES SHOULD NOT BE INCLUDED AS PART OF A COMMISSION ORDER APPROVING THE PROPOSED TRANSACTION?

A. Limestone does not accept the following conditions proposed by the Consumer Advocate and further does not believe any of these conditions should be adopted by the Commission as part of its order approving the proposed transaction:

Condition 1: Limestone believes all issues related to whether ratepayers are responsible for capital and operating costs incurred to comply with Commission rules regarding system maps any other required maps should not be decided in the current case but should, instead, be deferred to future Limestone rate cases.

Condition 6: Limestone is not requesting an "acquisition premium" in this case, and all decisions on issues related to whether all or any portion of the current appraised value of acquired real estate should be deferred to Limestone's first rate case.

Condition 7: Limestone proposes to adopt Aqua's current rates, which the Commission already has determined are fair and reasonable. Therefore, issues related to the amount of regulatory/transaction costs associated with the proposed acquisition and whether any or all those costs should be recovered from ratepayers should be deferred to Limestone's first rate case.

Condition 9: Limestone proposes to adopt Aqua's current rates, which the Commission already has determined are fair and reasonable. Therefore, issues concerning existing title issues related to Aqua's assets, costs incurred to remediate those title issues, and whether any or all those costs should be recovered from ratepayers should be deferred to Limestone's first rate case.

Condition 10: Limestone has a constitutional right to fully compensatory rates (i.e. rates that allow recovery of all reasonable and prudent operating expenses, including taxes and depreciation, and provide a reasonable opportunity to earn a fair rate of return on the value of assets devoted to serving the public). The arbitrary rate cap proposed by the Consumer Advocate almost certainly violates that right. Consequently, no rate cap should be included in the Commission's order in this case and Limestone's future rates should be set at a level that is consistent with the Commission's legal obligation to prescribe rates that are fair and reasonable to both the utility and its customers. In addition, an artificial rate cap could delay necessary system upgrades or preventive maintenance.

Q. PLEASE EXPLAIN FURTHER WHY YOU BELIEVE CERTAIN OF THE CONDITIONS PROPOSED BY THE CONSUMER ADVOCATE SHOULD BE DEFERRED TO A FUTURE LIMESTONE RATE CASE.

A. The Consumer Advocate's proposed Condition 1 pertains to capital costs and operating expenses associated with mapping the system. However, based on Mr. Dittmore's explanation of the proposed condition it appears to be based solely on Limestone's estimates of potential GIS and surveying costs and the cost of smoke-testing the Aqua system (Dittmore direct testimony page 19, lines 1-3 and footnote 19). Both these estimates were provided by Limestone in response to Consumer Advocate data request 2-1. As explained in that response, Limestone would incur GIS, surveying, and smoke-testing costs to forensically map the Aqua systems, which would provide details about those systems not currently available and to enhance the reliability of information Limestone would receive from Aqua at closing. Knowing where distribution facilities are located and the condition of those facilities are essential if Limestone expects to provide safe and reliable service to customers, because such information would allow the company to identify necessary

system repairs or improvements. But neither the scope nor cost of required system mapping activities is or can be known at this time, and the Consumer Advocate has presented no evidence suggesting the mapping activities Limestone believes will be required won't provide significant benefits to customers the company proposes to serve. Such evidence would only be available in a future rate case, so the Commission should defer decisions related to the need for or cost of system mapping activities until that time.

Q. PLEASE ELABORATE LIMESTONE'S CONCERNS REGARDING THE CONSUMER ADVOCATE'S PROPOSED CONDITIONS 7 AND 9.

A. The Consumer Advocate's proposed Condition 7 asks the Commission to deny recovery through rates of all regulatory/transaction costs associated with Limestone's proposed acquisition of Aqua's assets and Condition makes a similar request with respect to costs Limestone incurs to remediate title issues identified during the acquisition process. Both these conditions are discussed by Mr. Dittmore at page 21 of his direct testimony. Limestone believes these issues should be deferred to a future rate case for several reasons. First, as I have stated before, Limestone proposes to adopt Aqua's current rates, so the impact of transaction-related costs on rates is not at issue that is relevant or needs to be decided in the current case. Second, the amount of costs associated with obtaining Commission approval of the proposed transaction or of remediating title defects are not and cannot be known at this time. Third, there is no evidence on the record in this case regarding the nature of any title defects Limestone has identified, how or why those defects arose, what actions Limestone believes are necessary to remediate those defects, and whether those remediation efforts provide benefit to the customers Limestone proposes to serve. Finally, the regulatory process Limestone is going through to secure Commission approval of the proposed transaction is mandated by Tennessee statutes, and there is no evidence on the record in this case

why ratepayers should not bear the cost of complying with those statutes just as ratepayers routinely bear the cost of compliance with other regulatory laws.

In Limestone's first rate case, both the company and the Consumer Advocate will have the opportunity to present evidence regarding amounts of transaction-related and regulatory costs incurred to complete the proposed transaction and arguments and evidence regarding whether those costs should be included in customer rates. Without such evidence, any Commission decision on Conditions 7 and 9 would not satisfy the legal requirement that Commission orders be supported by competent and substantial record evidence. Therefore, the Commission should defer any action on those two conditions until Limestone's first, post-closing rate case.

Q. PLEASE FURTHER EXPLAIN WHY LIMESTONE OPPOSES THE CONSUMER ADVOCATE'S CONDITION 6.

A. Condition 6 relates to what the Consumer Advocate characterizes as an "Acquisition Premium" of approximately \$570,000 that is "comprised of the write-up of Land to its appraised value." The Consumer Advocate asks the Commission to determine that "Acquisition Premium" should not be recovered from ratepayers. The problem with Condition 6 is Limestone is not requesting any acquisition premium, at least as that term is commonly understood in the regulated utility industry. Our purchase price for Aqua's water and wastewater assets is greater than the net book value of those assets, but that difference – which usually consists of intangible assets generally referred to as "goodwill" – is not an amount Limestone intends to ask the Commission to include in the rate base used to set rates in the future. However, as the Consumer Advocate indicates Limestone has obtained opinions from independent, third-party appraisers that suggests the current value of real property assets it would obtain from Aqua as part of the proposed acquisition transaction – which are fully used and useful in providing service to customers – greatly

exceed the value of those assets when Aqua first dedicated them to the public service. Therefore, in its first rate case Limestone intends to ask the Commission to consider those appraised values and include all or a portion of those values in the rate base used to set customer rates.

The amount we would seek to include in rate base and our rationale for doing so would be fully explained at that time. And if the Consumer Advocate disagrees, it would be able to present its evidence and arguments at that time as well. None of that evidence or arguments currently are available to the Commission because the rate base used to set future rates is not an issue germane to this proceeding. That is why Limestone asks the Commission to reject the Consumer Advocate's proposed Condition 6 and defer consideration of all issues related to that condition to a future rate case when evidence and arguments necessary to allow a reasoned decision will be fully available.

Q. DO YOU HAVE ANY FURTHER COMMENTS OF THE CONSUMER ADVOCATE'S PROPOSED CONDITION 10, WHICH ASKS THE COMMISSION TO IMPOSE A CAP ON FUTURE RATE INCREASES?

A. My research reveals that all utilities have a constitutional right to fully compensatory rates (i.e. rates that allow recovery of all reasonable operating costs, including taxes and depreciation, plus the opportunity to earn a fair rate of return on the value of the utility's assets that are devoted to serving the public). In addition, Tennessee law requires the Commission to set rates, based on evidence regarding all factors relevant to rates, that are fair and reasonable to both a utility and its customers. An arbitrary rate cap like the one proposed by the Consumer Advocate's Condition 10 is inconsistent with both the legal principles I just mentioned. Therefore, Limestone asks the Commission to reject the Consumer Advocate's proposal. If Limestone is authorized to complete the acquisition contemplated by its pending application, in each future rate case the Commission should determine what rates are fair and reasonable and authorize rates accordingly. That is the

Commission's duty under federal and state law and Limestone is confident the Commission can and will exercise that duty faithfully and competently when called upon to do so in future rate cases. No arbitrary rate cap is lawful or appropriate and none should be adopted in this case.

Limestone has confidence that the Commission will be fair, and assign just and reasonable rates at the appropriate time. Actions otherwise, would have a ripple effect and with the potential to suppress rural economic development in critical water resources infrastructure. Lack of investment in drinking water and sewerage infrastructure has, in CSWR experience, stalled or even stopped rural economic development in communities. Conversely CSWR has multiple data points where CSWR's investment in water and sewer infrastructure has actually caused new development in communities we serve.

We do not feel customer rates should be an issue in the current proceeding. We expect the Commission, the Utility and the Consumer Advocate to spend a great deal of time and effort to calculate fair and just rates in a rate case-not in this acquisition case. Limestone is not prepared to do so until it becomes more familiar with the system, its needs, and upgrades required to operate the system most efficiently. We would be grateful for the opportunity to do business in Tennessee and working with all of the interested parties to provide excellent service at reasonable rates. We look forward to becoming a reliable corporate citizen to the consumers we serve.

Q. IN HIS TESTIMONY, MR. DITTIMORE DISCUSSES THE POTENTIAL IMPACT ON RATES OF THE PROPOSED TRANSACTION. IS THAT SOMETHING THAT SHOULD BE OF CONCERN TO THE COMMISSION?

A. No, I do not believe it is. First and foremost, any discussion at this point of what rates will be in the future is purely speculative because no one knows or can know what rates the Commission might approve in the future. All that can be known for certain is that if the acquisition

as proposed in our application is approved, the rates currently in effect for Aqua, which already have been determined to be fair and reasonable, will continue until they are changed by Commission order in the future. But having said that, it is a virtual certainty Limestone will file a case asking the Commission to increase customer rates following its acquisition of Aqua's assets. As Mr. Dittimore points out in his testimony, based on 2018 financial results filed with the Commission Aqua currently is underearning – indeed, the company's 2018 annual report reflects a net loss – so a rate case in the near future is all but inevitable regardless of whether the Commission approves the proposed acquisition. Mr. Dittimore also notes that Limestone has identified several capital projects, which the Consumer Advocate has concluded are in the public interest and appropriate, and that investment will add to the need to increase rates. All parties agree Aqua needs reinvestment in order to ensure the provision of safe and reliable service. But whatever rate increase Limestone might request in the future must be fully reviewed by the Commission and whatever rates ultimately are approved must be fair and reasonable. So concerns about future rates for the customers at issue in this case are no greater than are concerns about future rates for customers served by every other utility over which the Commission has jurisdiction. Further, Limestone and its affiliates are financially capable to abide by any Commission decision in a future rate case.

Q. MR. DITTIMORE DEVOTES A SUBSTANTIAL PORTION OF HIS DIRECT TESTIMONY TO A DISCUSSION OF “GAIN ON SALE.” IS THAT AN ISSUE THAT REQUIRES COMMISSION ACTION?

A. No, I do not believe any action is required with regard to Mr. Dittimore's “gain on sale” testimony. As I understand that testimony, Mr. Dittimore suggests the Commission should consider a gain on sale adjustment because Aqua has benefitted from an exclusive service area that

protected the company from competition. Because of that fact, Mr. Dittmore argues Aqua's owners "are not entitled to additional enrichment once they transfer their Certificate of Convenience and Necessity (CCN) to a third party." Although Mr. Dittmore is correct that Aqua has enjoyed a competition-free service area, his argument ignores the fact that in return Aqua surrendered its right to charge whatever rates it chose to charge or earn whatever rate of return it could. Mr. Dittmore also ignores his own statement that Aqua is currently under earning with existing rates. Instead, Aqua, like any other public utility, could only charge rates reviewed and approved by the Commission and could only earn a return on its investment the Commission considered reasonable. In addition, I am not aware of any court decisions supporting the notion that by paying regulated rates utility customers acquire an ownership interest in the serving utility that entitles those customers to part of the proceeds if the utility is sold. But the biggest problem with Mr. Dittmore's gain on sale testimony is that he makes no recommendation regarding the amount of such an adjustment. Consequently, any adjustment the Commission made would not be supported by evidence, as required by law.

Q. SINCE YOU FILED YOUR DIRECT TESTIMONY IN THIS CASE, HAVE THERE BEEN ANY DEVELOPMENTS WITHIN THE AFFILIATE GROUP OF WHICH LIMESTONE IS A MEMBER THAT REFLECT ON THAT COMPANY'S TECHNICAL, MANEGERIAL, AND FINANCIAL QUALIFICATIONS TO OWN AND OPERATE THE WATER AND WASTEWATER FACILITIES AT ISSUE IN THIS CASE?

A. Yes, there have been several developments that may be of interest to the Commission. In my direct testimony I noted that Magnolia Utility Operating Company, one of Limestone's affiliates, was authorized by the Louisiana Public Service Commission to acquire systems serving approximately 30,000 connections in that state. We now have closed all those transactions and

Magnolia currently is providing service to approximately 52,000 customers in Louisiana. We also have been authorized to acquire additional wastewater systems in Kentucky and additional water and wastewater systems in Missouri. In approving our acquisitions in each of those states, regulators concluded our affiliate group has the technical, managerial, and financial ability to acquire, own, and operate water and wastewater systems in a manner that complies with all applicable laws and provides safe and reliable service to customers. And our day-to-day operations in those states demonstrate our ability to turn those aspirations into reality. We also have twelve acquisition applications pending in Texas and three additional applications pending in Missouri. To date, CSWR has invested more than \$85 million in equity to acquire, improve, and operate systems in the states where we currently provide service. Our affiliate group is prepared to similarly support and improve the Aqua systems in Tennessee if the Commission approves the pending application.

Q. DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY IN THIS CASE?

A. Yes, it does.

Affidavit

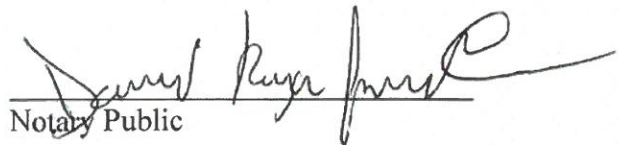
STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

I, Josiah M. Cox, state that I am President of Limestone Utility Operating Company LLC,
and that the answers to the questions posted in the attached Rebuttal Testimony are true and
correct to the best of my knowledge, information, and belief.



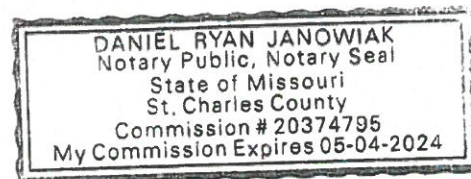
Josiah M. Cox

Subscribed and sworn to before me on this 24th day of July 2020.



Notary Public

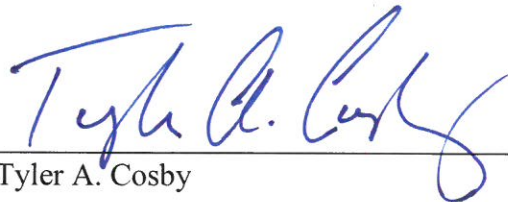
My Commission Expires on: 5/4/2020



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 27th day of July, 2020.

Vance Bromel
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Tyler A. Cosby