

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:

JOINT APPLICATION OF AQUA
UTILITIES COMPANY, LLC, AND
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

DOCKET NO. 19-00062

CONSUMER ADVOCATE'S OBJECTION TO THE AFFIDAVIT OF JAMES CLAUSEL

The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General hereby objects to the Joint Applicants, Aqua Utilities Company, LLC, and Limestone Water Utility Operating Company, filing of the Affidavit of James Clausel on August 3, 2020 at 3:16pm on the grounds that the Affidavit is untimely, includes information that conflicts with the existing record, and deprives the Consumer Advocate the right to conduct discovery on newly introduced information.

BACKGROUND

On July 26, 2019, the Joint Applicants filed their *Initial Petition*¹ seeking authorization for the transfer of the assets of Aqua Utilities Company, LLC ("Aqua Utilities") to Limestone Water Utility Operating ("Limestone") and for issuance of a Certificate of Convenience and Necessity (CCN). After notice from the Consumer Advocate regarding the minimum filing requirements²

¹ *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*, TPUC Docket No. 19-00062 (July 25, 2019).

² *Consumer Advocate Minimum Filing Requirement Review Letter*, TPUC Docket No. 19-00062 (August 28, 2019).

for a petition for a CCN, the Joint Applicants filed an Amended Petition on December 13, 2020.³ The Hearing Officer issued an *Order Establishing Procedural Schedule*, which set out the dates for testimony as follows: (1) the Consumer Advocate Testimony due on March 31, 2020 and (2) Joint Applicants' Rebuttal Testimony due on April 21, 2020.⁴ The Consumer Advocate timely filed the unredacted, confidential testimony with the Commission on March 31, 2020. After discussions with the Joint Applicants regarding appropriate redactions, the Consumer Advocate filed its public, redacted testimony with the Commission on April 2, 2020.⁵ On April 20, 2020, the Joint Applicants requested an extension of time to file rebuttal testimony.⁶ The Hearing Officer issued an *Order Establishing an Amended Procedural Schedule* on July 6, 2020 setting a new date for the Joint Applicants' Rebuttal Testimony for July 27, 2020, and the hearing for August 10, 2020.⁷ The Joint Applicants timely filed their rebuttal testimony.⁸ On August 3, 2020, the Joint Applicants filed the Affidavit that is currently at issue. The Affidavit is that of James Clausel, the owner of Aqua Utilities, who is a Joint Applicant to this Docket.⁹

ARGUMENT

The Joint Applicants' Affidavit is untimely. The Uniform Administrative Procedures Act provides for the filing of affidavits "at any time not less than ten (10) days prior to a hearing. . . of any affidavit such party proposes to introduce in evidence."¹⁰ The Joint Applicants filed this

³ *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*, TPUC Docket No. 19-00062 (December 12, 2020).

⁴ *Order Establishing Procedural Schedule*, TPUC Docket No. 19-00062 (February 25, 2020).

⁵ *Direct Testimony of Alex Bradley (Redacted) and Direct Testimony of David N. Dittmore (Redacted)*, TPUC Docket No. 19-00062 (April 2, 2020).

⁶ E-mail from Charles B. Welch, Jr., Farris Bobango PLC, to Monica Smith Ashford, TPUC Hearing Officer, TPUC Docket No. 19-00062 (April 20, 2020, 3:33pm).

⁷ *Order Establishing Amended Procedural Schedule*, TPUC Docket No. 19-00062 (July 6, 2020).

⁸ *Rebuttal Testimony of Josiah Cox*, TPUC Docket No. 19-00062 (July 27, 2020).

⁹ Mr. Clausel is identified as the contact person for Aqua Utilities in both the *Initial Petition* and *Amended Petition*. *Initial Petition* at p. 2 and *Amended Petition* at p. 2.

¹⁰ Tenn. Code Ann. § 4-5-213

Affidavit 7 days prior to the hearing scheduled for August 3, 2020; thus, the Affidavit should be disallowed or alternatively disregarded and provided no weight as the Commission weighs the evidence and deliberates in this Docket.

The Affidavit appears to be a thinly veiled attempt to introduce testimony 7 days after the deadlines for submitting testimony. As the identified contact person for and owner of Aqua Utilities, Mr. Clausel has had multiple opportunities to file testimony. The first opportunity was when the Joint Applicants filed their *Initial Petition* on July 26, 2019 and then again 140 days later filed an *Amended Petition* on December 13, 2020. Mr. Clausel also had two more opportunities to consider filing testimony. The first opportunity occurred 130 days after the *Amended Petition* with the initial date of rebuttal testimony of April 21, 2020.¹¹ However, the deadline for rebuttal testimony was later rescheduled for July 27, 2020, which was 227 days after the *Amended Petition* and 118 days after the Consumer Advocate filed its testimony.

Additionally, Mr. Clausel's affidavit now raises conflict with previously filed information provided by Mr. Clause in the record. Specifically, in the Affidavit, Mr. Clausel states that he has "completed the development in the subdivisions."¹² However in response to the Consumer Advocate's Discovery Request Nos. 1-9 and 1-10, Mr. Clausel states that [REDACTED]

[REDACTED].¹³ Also, Mr. Clausel's Affidavit conflicts with [REDACTED]

[REDACTED]
[REDACTED]¹⁴

¹¹ This initial date of rebuttal testimony was due 21 days after the Consumer Advocate's Direct Testimony was filed.

¹² Affidavit at p. 2.

¹³ Aqua Utilities Company, LLC's Response to the Consumer Advocate's First Set of Data Request, TPUC Docket No. 19-00062 (February 14, 2020) (CONFIDENTIAL).

¹⁴ *Limestone Water Utility Operating Company's Response to the Consumer Advocate's First Discovery Request*, Exhibit DR1-23, TPUC Docket No. 19-00062 (February 14, 2020) (CONFIDENTIAL).


The authors of [REDACTED] are not witnesses who filed pre-filed testimony in this Docket, nor are they available for cross-examination regarding the apparent conflict caused by Mr. Clausel's late-filed testimony.

The attempt to introduce new, conflicting information by Mr. Clausel's late-filed testimony deprives the Consumer Advocate of its right to conduct discovery on the new information, analyze the new information, and formulate its testimony accordingly. The opportunity to cross-examine Mr. Clausel at the upcoming hearing in six days is an insufficient substitute for discovery. The Consumer Advocate will not be able to analyze any information provided during the hearing, and the Consumer Advocate's expert witnesses would be unable to address any necessary revisions to their testimony.

CONCLUSION

It is the Consumer Advocate's position that the Affidavit filed by the Joint Applicants should be denied on the grounds that it is untimely and includes information that conflicts with the existing record. This last-minute attempt to introduce testimony in the form of an affidavit should be excluded from the record and not considered as evidence by the Commission.

RESPECTFULLY SUBMITTED,


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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:

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This the 4th day of August 2020.


KAREN H. STACHOWSKI