

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 RESPONSE TO THE JOINT APPLICANTS' MOTION TO
ADMIT THE AFFIDAVIT OF JAMES CLAUSEL

The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General hereby objects and respond to the Joint Applicants', Aqua Utilities Company, LLC, and Limestone Water Utility Operating Company, Motion to Admit the Affidavit of James Clausel (Motion) on August 6, 2020 on the grounds that the Affidavit is untimely, there is no injustice to the Joint Applicants by excluding the Affidavit, the Affidavit 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

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).

(CCN). After notice from the Consumer Advocate regarding the minimum filing requirements² 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 Upon the direction of the Hearing Officer, the Joint Applicants subsequently filed this Motion on August 6, 2020.

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

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) and *Aqua Utilities Company, LLC and Limestone Water Utility Operating Company's Motion and Memorandum in Support of a Request for an Extension of Time to Submit Rebuttal Testimony*, TPUC Docket No. 19-00062 (April 21, 2020).

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.

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 This Affidavit appears to be a thinly veiled attempt to introduce testimony from James Clausel and the time to file pre-filed testimony has passed. The Amended Procedural Schedule set the date for the Joint Applicant's Rebuttal Testimony for July 27, 2020. The Joint Applicants filed this Affidavit on August 3, 2020, 7 days after the deadline for rebuttal testimony and 7 days before the hearing scheduled for August 10, 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 Joint Applicants argue that the Hearing Officer should admit the late-filed Affidavit because it would prevent an injustice.¹¹ However, no "injustice" would result to the Joint Applicants by disallowing this Affidavit. As previously explained in the *Consumer Advocate's Objection to Affidavit of James Clausel*¹², the Affiant is James Clausel, who is the identified contact person for and the owner of Aqua Utilities. As representative of a Party, Mr. Clausel has had numerous opportunities to file pre-filed testimony by the deadlines set out in the procedural schedules for this Docket. 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 additional opportunities to consider filing testimony. The next opportunity occurred 130 days after the *Amended Petition* with the initial date of rebuttal testimony of April 21, 2020.¹³ However, the deadline for rebuttal testimony was later rescheduled for July

¹⁰ Tenn. Code Ann. § 4-5-213(2).

¹¹ Joint Applicant's Motion at p. 1 citing Tenn. Code Ann. § 4-5-213(3).

¹² *Consumer Advocate's Objection to Affidavit of James Clausel*, p. 3, TPUC Docket No. 19-00062 (August 4, 2020).


¹³ This initial date of rebuttal testimony was due 21 days after the Consumer Advocate's Direct Testimony was filed.

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. Given the technical, expert-driven nature of the subject matter at issue, 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

The Joint Applicants' Motion to Admit the Affidavit of James Clausel should be denied on the grounds that the Affidavit is untimely, there is no injustice to the Joint Applicants by excluding the Affidavit, the Affidavit includes information that conflicts with the existing record, and allowing the Affidavit deprives the Consumer Advocate and the consumers it represents the right to conduct discovery on newly introduced information. 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 6th day of August 2020.


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