

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 7, 2020

IN RE: )  
)  
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 )

DOCKET NO.  
19-00062

---

ORDER ON MOTION IN LIMINE

---

This matter is before the Hearing Officer on the *Joint Applicants', Aqua Utilities Company, LLC and Limestone Water Utility Operating Company's[,]* Notice of Objection to Pre-Filed Testimony and Motion in Limine ("Motion in Limine") filed on June 29, 2020. On July 14, 2020, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") filed the *Consumer Advocate's Response to Joint Applicants', Aqua Utilities Company, LLC and Limestone Utility Operating Company's[,]* Notice of Objection to Pre-Filed Testimony and Motion in Limine ("Consumer Advocate's Response").

**MOTION IN LIMINE**

The Joint Applicants generally object to the testimony of Consumer Advocate's witness, David Dittmore, in all aspects that relate to setting consumer rates. In the *Motion in Limine*, the Joint Applicants seek to strike all portions of the testimony filed by the Consumer

Advocate's witness, David Dittmore, pertaining to customer rate revision or "issues appropriately considered in a rate case proceeding."<sup>1</sup> The Joint Applicants argue Mr. Dittmore's 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."<sup>2</sup> According to the Joint Applicants, if the *Amended and Restated Joint Application of Aqua Utilities Company, LLC and Limestone Water Utility Operating Company, LLC, for Authority to Sell or Transfer Title to Asset Property and Real Estate of a Public Utility and for a Certificate of Public Convenience and Necessity* ("Joint Application") is approved, customer rates will remain the same; so the only issues properly before the Commission is whether Limestone Utility Operating Company, LLC ("Limestone") has the technical, managerial, and financial ability to own and operate the system it seeks to acquire. The Joint Applicants maintain that the Consumer Advocate's arguments suggest 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."<sup>3</sup> According to the Joint Applicants, "[n]o 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 [and] experience of actually operating the systems at issue in this case."<sup>4</sup> For these reasons, the Joint Applicants object to Mr. Dittmore's testimony that pertains to customer rates and seek to have certain portions struck from the record.

#### **CONSUMER ADVOCATE'S RESPONSE**

On July 14, 2020, the Consumer Advocate filed the *Consumer Advocate's Response to*

---

<sup>1</sup> *Motion in Limine*, p. 1 (June 29, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

*Joint Applicants’, Aqua Utilities Company, LLC and Limestone Utility Operating Company’s[,] Notice of Objection to Pre-Filed Testimony and Motion in Limine (“Consumer Advocate’s Response”)* asking that the *Motion in Limine* be denied. The Consumer Advocate argues that:

the Motion is contrary to the Hearing Officer’s recent *Order on May 29, 2020 Status Conference*; the Motion ignores the plain language of Tenn. Code Ann. § 65-4-113; the Motion seeks to exclude evidence which has probative value as would be accepted by reasonable prudent persons as set out [in] Tenn. Code Ann. § 65-2-109(1); and the Motion seeks to limit information relevant to the consideration to the Tennessee Public Utility Commission (TPUC or Commission) regarding a sale or transfer of a water utility.<sup>5</sup>

The Consumer Advocate maintains this is the Joint Applicants’ second attempt to try to limit the issues in this docket to whether Limestone has the technical, managerial, and financial ability to provide the water and wastewater services.<sup>6</sup> The Consumer Advocate continues to argue that determination of whether the sale furthers the public interest includes issues the Advocate seeks to raise such as the acquisition premium, purchase price, potential rate impacts, rate base, operating expenses, etc.<sup>7</sup> The Consumer Advocate asks the Hearing Officer to uphold the previous decision that “consistent with Tenn. Code Ann. § 65-4-113, the primary issues for consideration [in this docket] are whether Limestone has the technical, managerial, and financial ability to provide the utility services and whether the transaction is in the public interest.”<sup>8</sup> According to the Consumer Advocate, the “testimony targeted by the Joint Applicants should be admitted by the Commission and be given probative effect, as it involves relevant information that easily would be ‘accepted by reasonably prudent persons in the conduct of their affairs.’”<sup>9</sup> Further, the Consumer advocate maintains that the Joint Applicants have had adequate notice and opportunity to present rebuttal testimony. Therefore, the Consumer Advocate asks that the *Motion in Limine* be denied.

---

<sup>5</sup> *Consumer Advocate’s Response*, pp. 1-2 (July 14, 2020).

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (emphasis omitted), quoting *Order on May 29, 2020 Status Conference*, p. 2 (June 1, 2020).

<sup>9</sup> *Id.* at 6.

## FINDINGS AND CONCLUSIONS

On June 1, 2020, the Hearing Officer issued the *Order on May 29, 2020 Status Conference* denying the Joint Applicants attempt to limit the issues in this docket to whether Limestone has the technical, managerial, and financial ability to provide the water and wastewater service it seeks in its *Joint Application*. The Hearing Officer concluded that:

consistent with Tenn. Code Ann. § 65-4-113, when evaluating the transfer of a certificate of convenience and necessity (“CCN”), the Commission considers the technical, financial and managerial ability of the acquiring entity to provide the applied for utility services. In addition, Tenn. Code Ann. § 65-4-113 allows the Commission to consider all relevant factors and approve the transaction if it finds it is in the public interest.<sup>10</sup>

Therefore, the Order stated the ruling “establishes that consistent with Tenn. Code Ann. § 65-4-113, the primary issues for consideration are whether Limestone has the technical, managerial, and financial ability to provide the utility services and whether the transaction is in the public interest. Of course, the Commission is within its authority provided under the statute to consider other issues, as it deems appropriate.”<sup>11</sup> Similar to its previous attempt to limit the issues in the docket, the Joint Applicants’ *Motion in Limine* once again seeks to limit the issues raised in the docket by striking any portion of Mr. Dittmore’s testimony related to customer rates. The Joint Applicants generally object to the testimony as it relates to setting rates as irrelevant and not probative because the issue of rates is not currently before the Commission since the Joint Applicants have stated customer rates will remain the same.

Transfers of control of public utilities are evaluated pursuant to Tenn. Code ann. § 65-4-113 which provides in pertinent part:

(b) Upon petition for approval of the transfer of authority to provide utility services, the commission shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the

---

<sup>10</sup> *Order on May 29, 2020 Status Conference*, p. 3 (June 1, 2020).

<sup>11</sup> *Id.*

transfer. The commission shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Tenn. Code Ann. § 65-4-113 allows the Commission to consider all relevant factors and approve the transaction if it finds it is in the public interest. This statute gives the Commission a lot of latitude when considering whether a transfer is in the public interest. The Hearing Officer agrees with the Consumer Advocate's arguments that the testimony the Joint Applicants seek to strike is relevant and may assist the Commission in its deliberations on whether the sale/acquisition is a benefit to the public and in the public interest. Further, the Hearing Officer is reluctant to limit relevant information from being presented to the voting panel when such information is clearly admissible under the statute. The Hearing Officer notes the objections of the Joint Applicants to Mr. Dittmore's testimony concerning rates but concludes that the Hearing Panel is in the best position to determine the weight it chooses to allocate to the testimony at issue; therefore, the *Motion in Limine* should be denied.

**BE IT THEREFORE ORDERED THAT:**

The *Joint Applicants', Aqua Utilities Company, LLC and Limestone Water Utility Operating Company's[,] Notice of Objection to Pre-Filed Testimony and Motion in Limine* is **DENIED.**

A handwritten signature in black ink that reads "Monica Smith-Ashford". The signature is written in a cursive, flowing style.

Monica Smith-Ashford, Hearing Officer