

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 7, 2020

IN RE:)	
)	
JOINT APPLICATION OF AQUA UTILITIES)	DOCKET NO.
COMPANY, INC. AND LIMESTONE WATER)	19-00062
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)	

**ORDER APPROVING SALE OF ASSETS, PROPERTY, AND REAL ESTATE AND
CERTIFICATE OF PUBLIC CONVENIENCE OF AQUA UTILITIES COMPANY, LLC
SUBJECT TO CONDITIONS AND REQUIREMENTS OF THE TENNESSEE PUBLIC UTILITY
COMMISSION**

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on September 14, 2020, to consider the *Amended and Restated Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC for Authority to Sell or Transfer Title of the Assets, Property, and Real Estate of a Public Utility and for a Certificate of Convenience and Necessity* (“*Amended Application*”) filed by Aqua Utility, Inc. (“Aqua” or the “Company”) and Limestone Water Utility Operating Company, LLC (“Limestone”) (“Joint Applicants” collectively) on December 13, 2019.

BACKGROUND AND AMENDED APPLICATION

On July 26, 2019, Aqua and Limestone jointly filed an application with the Commission seeking approval for Aqua to sell or transfer title to the assets, property and real estate of Aqua to Limestone and grant Limestone a Certificate of Convenience and Necessity to operate a public utility in the State of Tennessee. On December 13, 2019, the *Amended Application* was filed by the Joint Applicants.

Aqua is a regulated public utility and owned by its president, Mr. James E. Clausel. Aqua was first granted a CCN from the Commission in 1990 in Commission Docket No. 90-04334. Aqua provides water and wastewater utility service in Tennessee and serves approximately 353 residential water customers, 66 irrigation customers, and 353 residential wastewater customers.¹ The Company's service territory is a development of approximately 3,000-acres on the Tennessee River, about seven miles south of Savannah, Tennessee. Aqua has been authorized to provide water and wastewater service to customers in the following subdivisions in Hardin County, Tennessee: Points of Pickwick, The Preserve, and Northshore (Phases 1, 2 and 3) which includes: Anchor Bay Pointe, Grand Villas, Grandview, High Pointe, Park Place, Ridge Point, Sailboat Pointe, Turtle Cove² and Pelican Point Subdivisions.³

Mr. Josiah Cox is the president of Central States Water Resources, LLC ("CSWR" or "Central"). CSWR established Limestone to be its Tennessee operating affiliate, and Limestone was formed to acquire Aqua's assets.⁴ Mr. Cox is also the company president for Limestone.⁵ Limestone's sole member is Limestone Water Utility Holding Company, LLC ("LWUHC"). CSWR

¹ David N. Dittmore, Pre-Filed Direct Testimony, p. 2 (April 2, 2020).

² *Amended Application*, p. 4 (December 13, 2019).

³ *Limestone Water Utility Operating Company's Response to the Consumer Advocate's First Discovery Request*, p. 11, DR 1-15 (February 14, 2020).

⁴ Josiah Cox, Pre-Filed Direct Testimony, p. 3 (December 13, 2019).

⁵ *Id.* at 1-4.

provides the financial, technical, and managerial expertise and services to Limestone and the other affiliates within the group and will manage Limestone if the *Amended Application* is approved.⁶

CSWR's affiliate group collectively owns and operates wastewater systems serving approximately 4,262 customers in Missouri, Arkansas, and Kentucky; along with drinking water systems serving approximately 1,689 customers in Missouri and Arkansas.⁷ One of Limestone's affiliates, Magnolia Utility Operating Company, was recently approved by the Louisiana Public Service Commission to acquire systems that serve 30,000 customers in Louisiana, that eventually resulted in 52,000 total connections.⁸ The Joint Applicants assert that Limestone is better suited to serve the public interest. Limestone has agreed to bring Aqua into compliance, upgrade system technology, and provide 24-hour customer service to ratepayers.⁹

On August 22, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") sought intervention which was subsequently granted.¹⁰ After conclusion of discovery, the Consumer Advocate filed the testimonies of David Dittmore, financial analyst, and Alex Bradley, accounting specialist, pursuant to the procedural schedule in effect at that time. It should be noted here that several pieces of financial information related to the proposed transaction have been designated "confidential" under a protective order issued in this docket.

⁶ *Amended Application*, p. 4 (December 13, 2019).

⁷ Josiah Cox, Pre-Filed Direct Testimony, p. 7 (December 13, 2019).

⁸ Josiah Cox, Pre-Filed Rebuttal Testimony, pp. 12-13 (July 27, 2020).

⁹ Josiah Cox, Pre-Filed Direct Testimony, pp. 3-7 (December 13, 2019).

¹⁰ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (September 23, 2019).

POSITION OF THE CONSUMER ADVOCATE

On behalf of the Consumer Advocate, Mr. David N. Dittmore submitted pre-filed direct testimony on April 2, 2020. In summary, the Consumer Advocate recommended approval of the transaction, contingent upon the adoption of the following conditions:¹¹

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 the books of Limestone.
3. Limestone shall record any Service Connection Fees it receives as CIAC.
4. Copies of the most recent two years' accounting records of Aqua shall be provided to Limestone.
5. Limestone shall be regulated on a Rate Base Rate of Return methodology. Its cost of debt should be no higher than debt costs for comparable firms. If actual debt costs are excessive, a hypothetical debt cost should be imputed.
6. The Acquisition Premium, the amount of which has been designated "Confidential," is comprised of the write-up of Land to its appraised value. According to the Consumer Advocate, the Acquisition Premium *should not* be recovered from ratepayers.
7. Regulatory/Transaction costs *should not* be recoverable from ratepayers.
8. Limestone shall comply with the Commissions' affiliate transaction rules.
9. Limestone should bear any future costs associated with any existing title issues and the cost to remediate any currently existing (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. Limestone shall not seek an increase in rates until it has operated the system for one year.

The Consumer Advocate expressed that the personnel identified within the testimony of Josiah Cox had the capabilities to operate the Aqua system.¹² Mr. Dittmore described the unique business model of CSWR and noted that no systemic quality evaluation has been performed regarding Central's provision of service in other states. Therefore, Mr. Dittmore recommended that Limestone should provide an update of its performance at the time of its next rate proceeding.¹³

¹¹ David N. Dittmore, Pre-Filed Direct Testimony, pp. 4-6 (April 2, 2020).

¹² *Id.* at 6.

¹³ *Id.*

While acknowledging CSWR's capacity and expertise to operate the Aqua system, the Consumer Advocate noted three issues of concern with recent financial losses and costs.¹⁴ Moreover, Mr. Dittmore testified that he did not believe the purchase price is reasonable.¹⁵ He asserted the amount of purchase price attributed to land is excessive and contended that the only known use of the purchased land is the operation of the utility. As such, he concluded that there is no basis for acquiring property for an amount more than its book value.¹⁶

Mr. Dittmore anticipates ratepayers will incur additional costs resulting from this transaction due to other factors. According to Mr. Dittmore, Aqua is underearning based on its 2018 financial statements¹⁷ and Limestone identified several capital projects in this proposal which would be needed regardless of ownership.¹⁸ Mr. Dittmore estimated the total impact on customer bills under Limestone ownership would increase significantly.¹⁹ As such, Mr. Dittmore argued that ratepayers deserve rates based upon original cost and not upon the purchase price of the acquiring utility.²⁰

Mr. Dittmore expressed concern with the "Gain on Sale," or portion of the acquisition payment in excess of net book value that accrues to the selling utility.²¹ The Consumer Advocate framed the term Gain on Sale as excess profits beyond those required to provide a utility owner the opportunity to earn a reasonable authorized return. As such, Mr. Dittmore provides the following criteria for evaluating a Gain on Sale with respect to what portion should be assigned to customers:²²

1. Whether the related Acquisition Premium is recoverable from ratepayers;

¹⁴ *Id.* at 7-9.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 9-10.

¹⁷ *Id.* at 12.

¹⁸ *Id.*

¹⁹ *Id.* at 13-14.

²⁰ *Id.*

²¹ *Id.* at 14.

²² *Id.* at 15.

2. Whether the selling utility provided quality service to ratepayers;
3. Whether the selling utility invested necessary capital into the system;
4. Whether rate(s) increase as a result of the proposed transaction.

Mr. Dittmore recommended the Gain on Sale not be assigned to ratepayers, *contingent* upon a finding that ratepayers will not incur costs associated with the Acquisition Premium. Mr. Dittmore testified Aqua has provided an acceptable level of service to its customers, has invested funds into the system, and has no environmental Notice of Violations of which he is aware. Therefore, Mr. Dittmore asserted recovery of the Acquisition Premium should not be approved.²³

In the event recovery of the Acquisition Premium was approved or if a decision is deferred until a later hearing, the Consumer Advocate asserted Aqua should issue a pro-rata credit to ratepayers of the final Gain on Sale, once the actual number is finalized. Mr. Dittmore further recommended the Commission order the parties to submit information showing calculation of the Gain on Sale on the part of Aqua and provide a calculation of this distribution on a per customer basis.²⁴ Mr. Dittmore argued the distribution would be necessary to implement immediately rather than at a later time because once the transaction closes and the CCN passes to Limestone, the Commission will no longer have the ability to require Aqua's distribution of Gain on Sale to Ratepayers.²⁵

Also on behalf of the Consumer Advocate, Mr. Alex Bradley submitted Pre-filed Direct Testimony on March 31, 2020. The purpose of Mr. Bradley's testimony was to provide an overview of CIAC and to support two recommendations: (1) Ensure the appropriate balance of CIAC is transferred to the books of Limestone, and (2) Requiring Limestone to record funds

²³ *Id.* at 17.

²⁴ *Id.* at 18.

²⁵ *Id.*

received from Service Connection as CIAC instead of revenue, because Limestone wishes to determine its revenue requirement on a Rate Base rate of return.²⁶

CIAC consists of non-investor supplied funds that were provided to the Aqua for construction of the water and wastewater systems. As these funds are not provided by the utility, the appropriate ratemaking treatment is for them to serve as a deduction to Rate Base. Mr. Bradley testified that CIAC is amortized at a rate of 2.5% yearly to offset the Depreciation Expense of non-investor supplied plant.²⁷ The last approved rate case for Aqua was Commission Docket No. 15-00044, which established rates for the attrition period ending May 31, 2016, and Aqua had \$322,438 in CIAC for that date ended.²⁸

According to Mr. Bradley, \$0 value in CIAC was to be transferred as part of the proposed sale; however, in response to the Consumer Advocate DR 1-59 Limestone stated an amount in CIAC, the specific amount of which was designated “confidential” for this proceeding, would be transferred to the books of Limestone from Aqua. Mr. Bradley concluded the new amount was reasonable for what the CIAC balance should be.²⁹

Mr. Bradley asserted the CIAC’s balance is of great importance to the transaction due to Limestone’s stated intent to shift the utility from an Operating Margin method of recovery to a Rate Base rate of return method.³⁰ The difference between a Rate Base and Operating Margin method of recovery has been described in Aqua’s previous rate case in Commission Docket No. 15-00044:

“Under the Rate Base Method, a Fair Profit is deemed to be a reasonable rate of return on the owners’ investment in the utility system...Under the Operating Margin Method, a Fair Profit is deemed to be a reasonable return on operating expenses requiring a return factor...”³¹

²⁶ Alex Bradley, Pre-Filed Direct Testimony, p. 2 (April 2, 2020).

²⁷ *Id.*

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.* at 3-4 (internal citations omitted).

Mr. Bradley submitted that under the Rate Base method, CIAC serves as a deduction to utility plant in service which reduces the revenue requirement. Thus, CIAC lowers the calculated return on utility plant in service and the amortization of CIAC serves as a contra expense to Depreciation.³²

Previously in Commission Docket No. 06-00187, the Commission ordered that: “Service Connection Charges shall be booked as Revenue at the tariff rate and added Utility Plant in Service at actual cost.”³³ Mr. Bradley asserted this treatment should not be continued if this transaction is approved because Limestone wishes to shift from the Operating Margin method to a Rate Base method of recovery. Mr. Bradley recommended an amount, designated “confidential” in this proceeding, placed on the books of Limestone as CIAC.³⁴ In conclusion, the Consumer Advocate recommended that the Company record Service Connection Fees as CIAC instead of revenue, and recommended the Commission clarify that the CIAC balance should be amortized at an annual rate of 2.5%.³⁵

JOINT APPLICANT’S “LIST OF ISSUES FOR DETERMINATION” AND MOTION IN LIMINE

On April 21, 2020, the Joint Applicants sought additional time for filing Pre-Filed Rebuttal Testimony due to delays related to the COVID-19 public health emergency. On May 19, 2020, the Joint Applicants filed the *Aqua Utilities Company, LLC and Limestone Water Utility Operating Company’s List of Issues for Determination* (“*List of Issues*”). In the filing, the Joint Applicants asserted that the Consumer Advocate attempted to raise issues concerning rates which were beyond the scope of the docket.³⁶ The Joint Applicants argued the issues to be determined by the Commission are limited to whether Limestone has sufficient managerial, financial, and technical

³² *Id.* at 4.

³³ *Id.* (internal citations omitted).

³⁴ *Id.* at 5.

³⁵ *Id.*

³⁶ Applicant’s *List of Issues*, p. 1 (May 19, 2020).

capability to provide utility service.³⁷ In response, the Consumer Advocate filed a competing issues list, consisting primarily of issues related to “public interest” concerns and recommended conditions for approval of the transfer discussed in Mr. Dittmore’s Pre-Filed Direct Testimony.³⁸

The Hearing Officer held a telephonic status conference on May 29, 2020, and after hearing arguments found that, consistent with Tenn. Code Ann. § 65-4-113, the Commission would consider whether Limestone has the managerial, financial, and technical ability to provide utility service and whether the transaction is in the public interest.³⁹ The Hearing Officer’s order did not make a determination as to whether any issue or pre-filed testimony should be deemed irrelevant or otherwise excluded from the record.⁴⁰ The Hearing Officer noted that the Commission is within its authority to consider other relevant issues as it deems appropriate.

On June 30, 2020, the Joint Applicants filed the *Notice of Objection to Pre-Filed Testimony and Motion in Limine* (“*Motion in Limine*”) seeking to strike issues they contended were irrelevant to the proceeding. The issues they sought to limit were primarily related to the testimony of Mr. Dittmore concerning the potential rate impact of the transaction.⁴¹ In summary, the Joint Applicants argued such matters could be taken up in any future rate case. The Consumer Advocate opposed the *Motion in Limine* and asserted that the issues involved in the sale, including the purchase price and any potential rate impact, should be examined to determine whether the sale furthers the public interest consistent with the provisions of Tenn. Code Ann. § 65-4-113.⁴²

The Hearing Officer found that the provisions of Tenn. Code Ann § 65-4-113 provide the Commission with the latitude to consider a wide range of issues with respect to determining

³⁷ *Id.* at 1-2.

³⁸ *Consumer Advocate’s Identification of Issues* (May 20, 2020).

³⁹ *Order on May 29, 2020 Status Conference*, pp. 2-3 (June 1, 2020).

⁴⁰ *Id.* at 3.

⁴¹ *Motion in Limine*, pp. 1-2 (June 30, 2020).

⁴² *Consumer Advocate’s Response to the Applicant’s Notice of Objection and Motion in Limine*, pp. 1-2 (July 14, 2020).

whether a transaction is within the public interest.⁴³ The Hearing Officer denied the *Motion in Limine*, concluding the issues the Joint Applicants sought to exclude may assist the Commission in its deliberations.⁴⁴

REBUTTAL TESTIMONY OF THE JOINT APPLICANTS

On July 27, 2020, the Joint Applicants submitted the Pre-Filed Rebuttal Testimony of Mr. Josiah Cox. Generally, the Joint Applicants maintained several of the “conditions” proposed by the Consumer Advocate should be handled in a future rate case. Nevertheless, Mr. Cox expressed that Limestone would accept several of the conditions proposed at pages 4 and 5 of Mr. Dittmore’s Pre-Filed Direct Testimony. With specific reference to Mr. Dittmore’s list and corresponding with his numbered conditions, the following conditions were deemed acceptable by Limestone:⁴⁵

Condition 2: Limestone agreed to reflect the amounts on Aqua’s balance sheet at the date of transaction closure.

Condition 3: Limestone will record any service connection fees it collects in the future as CIAC.

Condition 4: Aqua will 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: Limestone agreed to be regulated on a rate base/rate of return basis. Limestone agreed its cost of debt should be no higher than debt costs for firms with a comparable risk profile to Limestone; and should the Commission determine Limestone’s actual debt costs are excessive, hypothetical debt costs would be imputed and used for ratemaking purposes.

Condition 8: Limestone agreed to comply with the Commission’s affiliate transaction rules.

⁴³ *Order on Motion in Limine*, pp. 4-5 (August 7, 2020).

⁴⁴ *Id.* at 5.

⁴⁵ Josiah Cox, Pre-Filed Rebuttal Testimony, pp. 4-5 (July 27, 2020).

However, Limestone opposed the remaining conditions proposed by the Consumer Advocate. Again, with specific reference to Mr. Dittmore's list and corresponding with his numbered conditions, the following conditions were unacceptable to Limestone:⁴⁶

Condition 1: Limestone asserted issues related to the recovery of capital and operating costs incurred to comply with Commission rules regarding system maps and/or any other required maps should not be decided in this acquisitional case, but rather deferred to future Limestone rate cases.⁴⁷

Condition 6: Mr. Cox asserted that Limestone is not requesting an "acquisition premium" in this case, and any decision related to the recovery of the real estate value should be addressed in a future rate case. Mr. Cox also asserted that the difference between purchase price and net book value between Limestone's purchase price for Aqua's assets is largely attributed to intangible assets, referred to as "goodwill." Furthermore, Mr. Cox testified that this amount over book value is not an amount Limestone intends to ask the Commission to include in the rate base used to set rates in the future.⁴⁸

Condition 7: Limestone proposed to adopt Aqua's current rates, which the Commission already 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 of those costs should be recovered from ratepayers should be deferred to a future rate case.⁴⁹

Condition 9: Limestone proposed to adopt Aqua's current rates. Therefore, issues concerning existing title issues related to Aqua's assets, costs incurred to remediate those title issues, and whether any or all of those costs should be recovered from ratepayers should be addressed in a future rate case.⁵⁰

Condition 10: Mr. Cox argued the rate cap proposed by the Consumer Advocate is arbitrary. 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.⁵¹

⁴⁶ *Id.* at 5-6.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 8-9.

⁴⁹ *Id.* at 7-8.

⁵⁰ *Id.* at 7-8.

⁵¹ *Id.* at 9.

With respect to the Consumer Advocate's issue of a Gain on Sale, Limestone submitted there is no support for Mr. Dittmore's proposal that utility customers would be entitled to an ownership interest or a portion of the sale proceeds.⁵²

Mr. Cox testified to several recent developments within Limestone's affiliate network attesting to its technical, managerial, and financial qualification to own and operate a water and wastewater utility. The Magnolia Utility Operating Company was authorized by the Louisiana Public Service Commission to acquire systems serving approximately 30,000 connections and is currently providing service to approximately 52,000 customers in Louisiana.⁵³ Mr. Cox asserted additional wastewater systems in Kentucky and water/wastewater systems in Missouri have been approved. In each of those states, Mr. Cox argued that regulators concluded they possessed the technical, managerial, and financial ability to operate those systems. He stated that to date, CSWR has invested more than \$85 million in equity to acquire, improve, and operate systems where they provide service.⁵⁴

PRE-HEARING MOTIONS

The hearing was noticed and scheduled for August 10, 2020.⁵⁵ On August 3, 2020, the Joint Applicants submitted the *Affidavit of James Clausel*, the owner of Aqua Utilities. In summary, Mr. Clausel attested to his opinion that running the utility is no longer financially sustainable and that the transaction was in the best interests of the utility and its customers. Following an objection filed by the Consumer Advocate noting the affidavit was untimely and alleging the affidavit contained information that conflicted with discovery responses, the Joint Applicants submitted the *Motion to*

⁵² *Id.* at 12.

⁵³ *Id.* at 12-13.

⁵⁴ *Id.* at 13.

⁵⁵ *Notice of Hearing Held Electronically Via WebEx* (July 31, 2020).

Admit the Affidavit of James Clausel (“*Motion to Admit Affidavit*”) on August 6, 2020. The Hearing Officer denied the *Motion to Admit Affidavit* based on a lack of timeliness.⁵⁶

On August 7, 2020, the Consumer Advocate filed the *Motion in Limine re: Case Studies 1,2,3 and Videos of Elm Hills Utility Operating Company-CWSR and Indian Hills Utility Operating Company-Transformation* (“*Consumer Advocate Motion in Limine*”) seeking to exclude documents and items the Joint Applicants indicated they would use at the hearing as a demonstrative exhibit. The Hearing Officer reviewed the disputed demonstrative materials and denied the *Consumer Advocate’s Motion in Limine*, concluding in part, the exhibits were not of a technical nature or prejudicial to the issues presented by the Consumer Advocate.⁵⁷ No appeals of the orders of the Hearing Officer were undertaken by the parties.

THE HEARING

The hearing in this matter was noticed by the Commission on July 31, 2020 and held during the regularly scheduled Commission Conference on August 10, 2020. The hearing was held electronically via WebEx. Pursuant to Executive Order No. 16 issued by Governor Bill Lee on March 20, 2020, and subsequently extended most recently by Executive Order No. 60, the Commission met electronically and without a physical quorum. Electronic access to the hearing was made available to the parties and the public. Making appearances were the following:

Aqua Utilities Company, LLC and Limestone Water Utility Operating Company, LLC – Charles B. Welch, Jr. Esq., Faris Bobango PLC, 414 Union Street, Suite 1105, Nashville, Tennessee 37219; Lyman Russell Mitten, Esq.⁵⁸ Limestone Water Utility Operating Company, LLC 1650 Des Peres Road, Suite 303, St. Louis, MO 63131.

Consumer Protection and Advocate Division – Karen H. Stachowski, Esq., Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee 37202-0207.

⁵⁶ *Order Denying Motion to Admit Affidavit*, pp. 3-4 (August 28, 2020).

⁵⁷ *Order Denying Motion in Limine*, pp. 2-3 (September 1, 2020).

⁵⁸ *Order Granting Permission to Plead and Practice Pro Hac Vice* (August 5, 2020).

The Hearing Panel heard the testimony of Josiah Cox, Alex Bradley, and David Dittimore. The opportunity for public comment was made available, but no comments were made. The hearing concluded on August 10, 2020, and deliberations were scheduled for September 14, 2020.

STANDARD OF REVIEW

In accordance with Tenn. Code Ann. § 65-4-113 (a), (b), and (c); § 65-4-201(a) and the Commission's rules for wastewater companies (1220-04-13), the Commission must consider the managerial, financial, and technical abilities of the petitioner; and also determine whether a public need exists for service in the requested area and whether transfer of authority for providing public utility services furthers the public interest.

Tenn. Code Ann. § 65-4-113(a) states:

No Public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the commission, to any individual, partnership, corporation or other entity without first obtaining the approval of the commission.

Tenn. Code Ann. § 65-4-113(b) states:

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 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(c) states:

Following approval of the transfer pursuant to this section, the transferee shall be granted full authority to provide the transferred services subject to the continuing regulation of the commission. The transferor shall no longer have any authority to provide the transferred services, but shall retain authority to provide other services, if any are retained, which were not included in such transfer.

Tenn. Code Ann. § 65-4-201(a) states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.

Commission Rule 1220-04-13-.17 (2018):

(1) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (“CCN”) in accordance with Tenn. Code Ann. §§ 65-4-201, et seq., shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

As such, the Commission has the authority to consider multiple factors, including the public interest, and may impose terms and/or conditions upon such transfers or sales.

FINDINGS AND CONCLUSIONS

Based on the evidentiary record, the Hearing Panel found that Limestone has the requisite managerial, technical, and financial capabilities to operate the water system and wastewater system in Hardin County serving Points of Pickwick, The Preserve, and Northshore (Phases 1, 2, and 3) now owned by Aqua. The Hearing Panel further found that the *Amended Application* is compliant with Tenn. Code Ann. § 65-4-113 relating to petitions for approval of transfer of authority to provide utility services. Additionally, under the facts in this case, the Hearing Panel concluded that there

exists a public need for Limestone to service the area and that the transfer of authority to provide utility services to Limestone furthers the public interest.

Therefore, the Hearing Panel voted unanimously to approve Limestone's petition for a Certificate of Convenience and Necessity contingent upon Limestone filing the following documents in this docket:

- (1) A copy of the recorded deed for the land where the lagoon, spray fields and treatment plant are located and registered easements in the Utility's name for all the land and ownership rights for any and all access to the water system and wastewater system within 30 days after the date of recording;
- (2) A copy of the Purchase and Sale Agreement that has been fully executed by Seller and Buyer acknowledged by the Title Company with the recorded effective date and with all Exhibits attached, complete with documentation, within 30 days after the date of acquisition;
- (3) A copy of the final executed Assignment of Rights Agreement within 30 days after the date of acquisition;
- (4) A copy of the State Operating Permit "Request for Transfer" for current permits, both for water and wastewater, within 30 days of issuance;
- (5) A tariff identifying all residential subdivisions by each subdivision name, as well as any commercial customers being served by this CCN, within 30 days of the date of acquisition;
- (6) Copies of contracts or pricing agreements between Limestone and Central States Water Resources, LLC, as well as between Limestone and contractors that will ultimately service the Limestone account, such as Midwest Water Operations, LLC and Nitor Billing Services, LLC, within 30 days of execution;
- (7) Copies of maps and engineering designs for the water and wastewater systems within 30 days of availability; and
- (8) A bond compliant with the Commission's financial security rules within 30 days of the date of acquisition.

The Hearing Panel further directed Limestone to file a report in this docket demonstrating its compliance with these filing requirements, and in the event the compliance report is not filed within six (6) months of the date the order is issued in this docket, directed Limestone to file a report on the status of its compliance with each of the aforementioned filing requirements.

Additionally, the Hearing Panel voted unanimously to approve of the sale and transfer of authority of Aqua to CSWR with the immediate assignment at closing to its affiliate, Limestone, subject to the following:

- (1) Limestone shall adopt Aqua's presently tariffed rates, charges and terms of service and it shall file a new tariff substituting itself in place of Aqua as the service provider within 30 days after the date of acquisition;
- (2) Limestone shall maintain its books and records in compliance with the Uniform System of Accounts as set forth in TPUC Rule 1220-04-01-.11;
- (3) The recoverability or disallowance of any requested costs associated with mapping the system shall be deferred to a future rate proceeding; however, Limestone is not authorized to defer any such system mapping costs as an above-the-line regulatory asset for ratemaking purposes;
- (4) Aqua's balance sheet balances at the date of acquisition, including its Contributions in Aid of Construction, shall be transferred as the beginning balances on the regulatory books of Limestone. Within 30 days after the date of acquisition, Aqua shall file a balance sheet and supporting general ledger in the Uniform System of Accounts format required by TPUC Rule 1220-04-01-.11 showing Aqua's ending balances of the assets acquired by Limestone as of the date of acquisition; and Limestone shall file a balance sheet and supporting general ledger in the Uniform System of Accounts format required by TPUC Rule 1220-04-01-.11 showing Limestone's beginning balances of the assets acquired from Aqua as of the date of acquisition;
- (5) Limestone shall record any service connection fees it receives as Contributions in Aid of Construction;
- (6) At closing, Aqua shall transfer to Limestone complete copies of Aqua's accounting records for the two calendar years immediately preceding the date of acquisition as well as the complete year-to-date accounting records for the calendar year in which closing occurs. Limestone shall maintain these records intact at least through completion of its first rate proceeding before the Commission;
- (7) The appropriate methodology for determining Limestone's fair profit or rate of return shall be deferred and determined in Limestone's first rate proceeding before the Commission to allow the opportunity for a closer examination of the utilization of the plant for ratemaking purposes;
- (8) Limestone is not requesting an acquisition premium and the Commission is not approving any acquisition adjustment related to the purchase of Aqua's assets; accordingly, Limestone's beginning value of the acquired assets for ratemaking purposes shall be the value recorded in Aqua's books and records at the date of acquisition. Further, Limestone is not authorized to book an above-the-line

regulatory asset for ratemaking purposes for any portion of the amount by which the purchase price exceeds the value of the acquired assets as reflected in Aqua's books and records at the date of acquisition. In any future rate proceeding, Limestone may present evidence and argument concerning the value of assets used and useful for provisioning public utilities services, and the Consumer Advocate or other interested parties may oppose such values or present their own evidence and argument concerning the value of such assets;

(9) The recoverability or disallowance of any requested regulatory or transaction costs related to the acquisition shall be deferred to a future rate proceeding; however, Limestone is not authorized to defer any such regulatory or transaction costs as an above-the-line regulatory asset for ratemaking purposes;

(10) Limestone shall comply with all applicable TPUC rules and regulations, including but not confined to the Commission's rules governing transactions with affiliates; and

(11) The recoverability or disallowance of any requested costs associated with any existing title issues or costs to remediate any currently existing but unknown environmental or easement issues shall be deferred to a future rate proceeding; however, Limestone is not authorized to defer any such title or remediation costs as an above-the-line regulatory asset for ratemaking purposes;

Finally, although rate caps may be ordered in appropriate circumstances, the Commission declines in this proceeding to place a cap on prospective Limestone rate increases in this docket.

IT IS THEREFORE ORDERED THAT:

1. The *Amended and Restated Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC for Authority to Sell or Transfer Title of the Assets, Property, and Real Estate of a Public Utility and for a Certificate of Convenience and Necessity* filed on December 13, 2019, by Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC is approved, subject to the conditions and requirements herein.

2. Limestone shall file a report in this docket demonstrating its compliance with the conditions and requirements addressed to the transfer of the Certificate of Convenience and Necessity described herein, and in the event the compliance report is not filed within six (6) months of the date the order is issued in this docket, Limestone shall file a report on the status of its compliance with each of the aforementioned filing requirements.

3. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

4. Any party aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill,
Vice Chairman Herbert H. Hilliard, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director