

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

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

JOINT PROPOSED AGREED PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other information, and to facilitate the prompt resolution of disputes as to the confidentiality of information, to adequately protect information entitled to be kept confidential and to ensure that protection is afforded only to information so entitled, the Tennessee Public Utility Commission (TPUC) hereby orders that:

1. For the purpose of this Protective Order (Order):
 - (A) Proprietary or confidential information, hereinafter referred to as "Confidential Information", shall mean documents, testimony, material, or information in whatever form which the Producing Party, in good faith, and based on reasonable inquiry, deems to contain trade secrets, confidential research, development or other sensitive information protected by state or federal law, regulation or rule, and which has been specifically designated by the Producing Party.
 - (B) A "Producing Party" is defined as the Party creating the Confidential Information as well as the Party having actual physical possession of information produced pursuant to this Order.

2. All summaries, notes, extracts, compilations or other direct or indirect reproduction from, or of, any CONFIDENTIAL INFORMATION, shall be entitled to protection under this Order.

3. Documents or other information containing CONFIDENTIAL INFORMATION shall be segregated from non-confidential information and clearly and conspicuously marked as "CONFIDENTIAL" by the Producing Party. The information must be produced in a way that will clearly and conspicuously identify to others on each page of the information that it contains CONFIDENTIAL INFORMATION and it shall be provided in a segregated, completely separate manner from non-confidential information provided.¹ Any information so designated shall be handled in accordance with this Order. The provisions of any information containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 17 of this Order, or as otherwise permitted by the Rules of Evidence, state or federal law, regulation or rule.

4. Any individual, Party, or non-Party subject to this Order, including Producing Parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging his/her/its obligations under this Order.

5. Parties or non-Parties subject to this Order shall include Aqua Utilities Company, Inc, Limestone Water Utility Operating Company, LLC, and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (Attorney General). If other Parties are permitted to intervene, they will be allowed access to CONFIDENTIAL

¹ If Confidential Information is not clearly and conspicuously marked CONFIDENTIAL, not marked CONFIDENTIAL at all, or is not segregated from non-confidential information, the Producing Party is required to provide substitute information clearly and conspicuously marked "CONFIDENTIAL" and/or provide segregated CONFIDENTIAL INFORMATION from non-confidential information within a reasonable time of notification from a Person of such failure to mark or segregate.

INFORMATION only to the extent and under the conditions permitted by a separate order consistent with this Order.

6. Subject to the exceptions noted in this Order, CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (A) Counsel of Record for the Parties in this Proceeding, associates, and support staff actively engaged in assisting outside counsel of record in this Docket and any appeals therefrom;
- (B) In-house Counsel for the Parties;
- (C) Officers, directors, commissioners, or employees of the Parties, including employees of the Attorney General and the State of Tennessee; provided that such persons shall be subject to the provisions of this Order, and shall not disclose such information further except as otherwise permitted under the terms of this Order;
- (D) TPUC Commissioners and members of the staff of the TPUC; and
- (E) Outside consultants and expert witnesses employed or retained by the Parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this Docket, provided that to the extent that any Party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness who is expected to testify on that Party's behalf, to the extent possible, the Party shall give seven days written notice to the Producing Party of intention to disclose Confidential Information. During such notice period, the Producing Party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the TPUC, the Hearing Officer, the Administrative Law Judge or court rules on the motion. Any such motion shall be filed within three days after service of the Notice. Pre-hearing conferences may be called to confer with the Parties on the Motions to limit disclosure of CONFIDENTIAL INFORMATION. All service shall be by the fastest method of hand delivery, facsimile or email. All filings by email in this Docket shall be followed up by delivering a hard copy of the filing to the Docket Manager of the TPUC.

Notwithstanding anything else to the contrary, under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to, or discussed with, any person associated with the marketing of goods or services in known competition with the goods or services of the Producing Party.

7. Prior to disclosure of the CONFIDENTIAL INFORMATION to any of the authorized persons, the Counsel representing the Party who is to receive the Confidential Information shall notify the person of this Order and notify the person where it can be found on the TPUC's website or provide a copy of the Order to the recipient, Commissioner, staff member, employee or officer, who shall be bound by the terms of this Order.

8. Prior to disclosure of CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or retained by a Party, Counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an affidavit in the form attached as Exhibit A to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the information labeled CONFIDENTIAL constitutes a violation of this Order. The Affidavit attached as Exhibit A shall be signed in the presence of and be notarized by a notary public. Counsel of Record for each Party shall provide the Producing Party a copy of each such Affidavit for retained experts expected to be called as a witness at the hearing of this Proceeding and shall keep the Affidavits executed by all other experts or consultants retained by that Party, whether or not expected to be called as a witness, on file (electronically or in paper) in their respective offices.

9. No person authorized under this Order to receive access to documents, information, or testimony designated as Confidential Information shall be granted access until such person has complied with the requirements set forth in this Order.

10. In no event shall the TPUC, Attorney General, the State of Tennessee or any other Party to this Order, be liable for any claims, injury, or damages resulting from the disclosure of information while not clearly and conspicuously marked CONFIDENTIAL or not so labeled as

CONFIDENTIAL at all, or not segregated from non-confidential information. The Party or non-Party who has produced the information shall notify the Recipient of the inadvertence in providing the CONFIDENTIAL INFORMATION in writing within five days of discovery of such inadvertence and the CONFIDENTIAL nature of the information and within a reasonable time provide substitute information clearly and conspicuously marked CONFIDENTIAL and segregated from non-confidential information.

11. An inadvertent failure to label a document as "CONFIDENTIAL" shall not constitute a waiver of confidentiality. The Party who has produced the document shall notify the Recipient of the document in writing of such inadvertent failure to label the document as CONFIDENTIAL. Upon such notice, pending resolution of a motion described below, Recipients will treat the subject document as CONFIDENTIAL INFORMATION. The Party, by written motion or by oral motion at a Pre-Hearing Conference or at the Hearing on the merits, may request designation of the information as CONFIDENTIAL, and Recipients shall then be governed by the order on the motion. An inadvertent failure to label information as CONFIDENTIAL, or to segregate it from non-confidential information shall not, in any way, affect the TPUC's determination as to whether the information is entitled to CONFIDENTIAL status under this Order. The TPUC, the Hearing Officer, or Administrative Law Judge may, at his or her discretion, either before or during the Pre-Hearing Conference or Hearing on the merits of the Docket allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

12. Any filings made in this Proceeding that contain, quote, paraphrase, compile or otherwise disclose information covered by the terms of this Order, shall be filed with the TPUC in sealed envelopes labeled CONFIDENTIAL. The Filing Party shall also include with the filing a

public version of the papers with any CONFIDENTIAL INFORMATION redacted. Only the redacted public version may be placed in TPUC's public file and/or posted on the TPUC website. In TPUC's files, each sealed envelope shall be labeled to reflect the style and docket number of this Proceeding and to identify the subject matter of the content of the sealed envelope. Further, the envelopes at the TPUC shall be maintained in a locked filing cabinet or may be converted to electronic format at the election of TPUC. The envelopes shall not be opened, or their contents reviewed by anyone except upon order by the Hearing Officer, Administrative Law Judge, or the Commission after due notice to Counsel of Record. Notwithstanding the foregoing, the Commissioners and the staff of the TPUC may review any filings containing CONFIDENTIAL INFORMATION and labeled CONFIDENTIAL without obtaining an order of the TPUC, Hearing Officer, or Administrative Law Judge, provided the Commissioners and staff maintain the confidentiality of the filing in accordance with the terms of this Order.

13. Information designated as CONFIDENTIAL INFORMATION and labeled CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the Hearing on the merits of this Proceeding and offered into evidence in any hearing related to this Proceeding subject to the applicable rules of evidence and to such future orders as the Hearing Officer, Administrative Law Judge, or the Commission may enter. To the extent possible, any Party intending to use documents, information, or testimony designated as CONFIDENTIAL INFORMATION shall inform the Producing Party and the TPUC, Hearing Officer, or Administrative Law Judge, prior to the Hearing on the merits of the case, of the proposed use, and shall advise the Hearing Officer, Administrative Law Judge, or the Commission, and the Producing Party before use of such CONFIDENTIAL INFORMATION during witness examinations so that

appropriate measures can be taken by the Hearing Officer, Administrative Law Judge, or the Commission to protect the CONFIDENTIAL nature of the information.

14. Except for filings made with the TPUC, all information covered by the terms of this Order that are disclosed to the Requesting Party shall be maintained in electronic records or paper files labeled "CONFIDENTIAL" at the offices of the requesting Party's counsel of record.

15. Nothing herein shall be construed as preventing any Party from continuing to use and disclose any information labeled CONFIDENTIAL:

- (A) That is in the public domain;
- (B) That subsequently becomes part of the public domain through no act of such Party, or violation of this Order;
- (C) That is disclosed to it by a third Party, where said disclosure does not itself violate any contractual or legal obligation or terms of this Order;
- (D) That is independently developed by a Party;
- (E) That is known or used by it prior to this Proceeding; or
- (F) If disclosure is otherwise required by state or federal law or by court order.

The burden of establishing the existence of (A) through (F) shall be upon the Party attempting to use or disclose such information marked CONFIDENTIAL.

16. Nothing in this Order shall prevent any Party from asserting any objection to discovery.

17. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information produced for use in this action as CONFIDENTIAL INFORMATION pursuant to the terms of this Order.

18. To the extent permitted by state and federal laws and regulations, any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

19. Upon an order becoming final in this Docket and conclusion of any appeals resulting from such an order, except as to the Attorney General, all the filings, exhibits and other information designated CONFIDENTIAL INFORMATION, and all copies thereof, shall be returned to Counsel of the Producing Party within fifteen business days of a written request from the Producing Party, or counsel in possession of such information shall certify to the best of his/her/its knowledge to counsel of the Producing Party that all the filings, exhibits and other information designated as CONFIDENTIAL INFORMATION and all copies thereof have been destroyed. If requested to return any CONFIDENTIAL INFORMATION, the Attorney General may elect to retain the CONFIDENTIAL INFORMATION provided it continues to comply with the terms of this Order. Further, the TPUC shall retain copies of information designated as CONFIDENTIAL or as may be necessary to maintain a complete record of this Docket intact.

20. After termination of this Proceeding and related appeals, the provisions of this Order relating to the confidential nature of CONFIDENTIAL INFORMATION shall continue to be binding, upon Parties hereto and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified or otherwise ordered by the TPUC.

21. Nothing herein shall prevent a Party or individual from seeking further protection for particular information or prevent entry of a subsequent order, upon an appropriate showing, requiring that any information designated as CONFIDENTIAL shall receive protection other than that provided in this Order.

22. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL INFORMATION shall receive protection other than that provided herein.

23. The Attorney General and its staff have authority to enter into non-disclosure agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

24. The Attorney General and its staff agree to keep CONFIDENTIAL INFORMATION in a secure location (which may be held electronically) and will not permit them to be seen by any person who is not an employee of the TPUC, the Attorney General, State of Tennessee, or other person who has signed confirming he/she will comply with this Order.

25. The Attorney General and its staff may make copies of CONFIDENTIAL INFORMATION and any portion thereof. To the extent permitted by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Order to the extent factual assertions are derived from the supporting information.

26. To the extent permitted by state law, the Attorney General's Office may provide timely notice of any public records request, so the Producing Party may take any action it deems appropriate. The Attorney General may, consistent with the discharge of its duties, handle materials received pursuant to this Order in accordance with Tenn. Code Ann. § 10-7-504(a)(5)(C) or any other law, regulation or rule.

27. The obligation of the Attorney General and its staff under this Order are further subject to the state's Public Records Act and other open records statutes. Nothing in this Order is intended to violate or alter the state's Public Records Act or Freedom of Information Act (FOIA). In the event that the Attorney General or member of its staff is served with a subpoena, public

records request, FOIA request, or other request that calls for the production of CONFIDENTIAL INFORMATION labeled as CONFIDENTIAL by the Producing Party, the Attorney General will, to the extent permitted by state or federal law, regulation or rule, any orders of a court, or other body issuing the subpoena or request, notify the Producing Party by notifying its Counsel of the existence of the subpoena, public records request, FOIA request, or other request. Further, the Attorney General will notify the Producing Party at least five business days before responding to any such request to the extent permitted by state law and orders of a court, as long as the Attorney General or its staff is able to respond to the request within a reasonable time. The Attorney General or its staff may elect to wait to produce such CONFIDENTIAL INFORMATION as allowed by state or federal law in order to provide the Producing Party an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of CONFIDENTIAL INFORMATION marked as CONFIDENTIAL by the Producing Party that is subject to such request.

28. The designation of any information in accordance with this Order as constituting CONFIDENTIAL INFORMATION and the Attorney General or its staff's treatment of such information as CONFIDENTIAL in compliance with this Order is not an admission of an agreement by the State of Tennessee, the Attorney General, or its staff that the information constitutes or contains CONFIDENTIAL INFORMATION protected by state or federal law and shall not be deemed to be either a waiver of the State's right to challenge such designation or an acceptance of such designation. The Producing Party agrees to designate information provided to the Attorney General as CONFIDENTIAL INFORMATION only if it has a good faith basis for the claim at law. The Producing Party will, upon request of the Attorney General or its staff, provide a written explanation of the details, including statutory authority that support its

CONFIDENTIAL INFORMATION claim within five days of a written request. The Producing Party also specifically agrees that it will not designate any information as CONFIDENTIAL INFORMATION or label such information as CONFIDENTIAL if the information:

- (A) Has been distributed to the public, consumers or others; or
- (B) Is not maintained by the Producing Party as CONFIDENTIAL INFORMATION.

29. Nothing in this Order shall prevent the Attorney General from using the CONFIDENTIAL INFORMATION received for investigative purposes in the discharge of the duties of the Office of the Attorney General. Additionally, nothing in this Order shall prevent the Attorney General from informing state officials and third parties of the fact of an investigation, as needed, to conduct the investigation. Without limiting the scope of this Paragraph, nothing in the Order shall prevent the Attorney General from contacting consumers whose names were provided by the Producing Party or from discussing with any consumer any information that he or she allegedly received from the Producing Party or confirming that a consumer actually received the information.

30. CONFIDENTIAL INFORMATION is subject to this Order which is entered pursuant to Rule 26 of the Tennessee Rules of Civil Procedure and to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann. § 10-7-503(a)(2)(A) “. . . unless otherwise provided by state law.”

31. All information designated as CONFIDENTIAL INFORMATION and produced in accordance with this Order may be disclosed in testimony or offered into evidence at any TPUC or court hearing, trial, motion or proceeding of this Docket or appeals thereof in a related Docket or proceeding, subject to the provisions of this Order, the applicable rules of evidence, and any order the TPUC may enter to protect the confidentiality of information offered at any hearing or

other proceeding. The Party who produced the information designated CONFIDENTIAL INFORMATION agrees to stipulate to the authentication of such information in any such proceeding. If any Party identified information in the CONFIDENTIAL INFORMATION that indicates that unlawful conduct (civil or criminal) has occurred or may occur, nothing in the Order shall prevent such Party from reporting such alleged conduct to the appropriate law enforcement or regulatory agency.

32. Nothing in this Order is intended to or shall restrict, limit, or alter any federal or state laws, regulations or rules.

33. Any person who has signed an Affidavit in the form attached as Exhibit A to this Order or is otherwise bound by the terms of this Order shall continue to be bound by this Order and/or Affidavit even if no longer engaged by the TPUC or any of the Intervenors.

34. This Order shall be construed subject to the laws of the State of Tennessee, conflicts of law notwithstanding.

35. No person subject to this Order shall be required to appear outside any venue in the State of Tennessee regarding this Order or any alleged violations of this Order.

HEARING OFFICER

This ____ day of _____, 2019.

JOINTLY SUBMITTED FOR ENTRY:

BY: Karen H. Stachowski
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TPUC Docket No. 19-00062, Joint Proposed Agreed Protective Order

EXHIBIT A

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:

**JOINT APPLICATION OF AQUA
UTILITIES COMPANY, INC., AND
LIMESTONE WATER UTILITY
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AUTHORITY TO SELL OR TRANSFER
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UTILITY AND FOR A CERTIFICATE
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DOCKET NO. 19-00062

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

I have reviewed the Protective Order entered in the above captioned Docket and agree to abide and be bound by its terms. I understand that unauthorized disclosure of information deemed Confidential Information under the Protective Order will be a violation of the Protective Order.

DATE

NAME

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquainted, who
acknowledged that he or she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____