

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

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF LIMESTONE WATER</b>	)	
<b>UTILITY OPERATING COMPANY, LLC</b>	)	<b>Docket No. 21-00053</b>
<b>FOR AUTHORITY TO SELL OR TRANSFER</b>	)	
<b>TITLE TO THE ASSETS, PROPERTY AND</b>	)	
<b>REAL ESTATE OF A PUBLIC UTILITY,</b>	)	
<b>CARTWRIGHT CREEK, LLC, AND FOR</b>	)	
<b>A CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	

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**CONSUMER ADVOCATE’S RESPONSE TO FIRST SET OF DISCOVERY REQUESTS**

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The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (“Consumer Advocate”), by and through counsel, pursuant to Tenn. Code Ann. § 65-4-118, respectfully responds to *Limestone Water Utility Operating Company, LLC, First Set of Discovery Requests to The Consumer Advocate* as follows:

**GENERAL OBJECTIONS**

1. The Consumer Advocate objects to the definitions and instructions contained in the discovery requests to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than required by the Tennessee Rules of Civil Procedure and applicable statutes and regulations governing contested case hearings.

2. The Consumer Advocate objects to the requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. The Consumer Advocate objects to the requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations with regard to identification of privileged

documents beyond those required by the Tennessee Rules of Civil Procedure and applicable statutes and regulations governing contested case hearings.

3. The Consumer Advocate objects to the Company's requests to the extent they seek information relating to matters not at issue in this litigation or to the extent they are not reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material, or admissible into evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

4. The Consumer Advocate objects to the Company's requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations to supplement its responses beyond those required by the Tennessee Rules of Civil Procedure and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's requests to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the Tennessee Rules of Civil Procedure and applicable statutes and regulations governing contested case hearings.

6. The Consumer Advocate objects to the Company's requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody, or control. It is unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company.

7. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

8. The Consumer Advocate's responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in response to any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future discovery requests, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objections made in this response.

9. The Consumer Advocate will supplement its responses in accordance with the requirements of state law.

10. The Consumer Advocate expressly incorporates these general objections into its responses set forth below.

Subject to and without waiving any objections stated above, the Consumer Advocate responds to the specific requests as follows:

#### **DISCOVERY RESPONSES**

**1-1.** Provide a copy of the final decision in the asset sale case proceeding, Tennessee Public Service Commission Docket No. U-84-7308, where the Commission ordered Kingsport Power Company to accumulate and defer a "gain on sale."

#### **RESPONSE:**

A copy of the Order in TPSC Docket No. U-84-7308 is provided in Mr. Dittmore's Testimony as Exhibit DND-5.

**1-2.** In the Tennessee case in which Kingsport Power Company was ordered to accumulate and defer a “gain on sale,” did that company sell all or only a part of its Tennessee assets? Did Kingsport Power Company continue to operate as a regulated utility in Tennessee after that asset sale referenced in the preceding question was consummated?

**RESPONSE:**

The Consumer Advocate objects to this request to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control. Subject to this objection, to the best of the Consumer Advocate’s present knowledge the asset sale involved in the referenced matter was not a sale of all Tennessee assets. To the best of the Consumer Advocate’s present knowledge, Kingsport Power continues to operate as a jurisdictional utility in Tennessee.

**1-3.** Is Mr. Dittmore aware of any case in which the Tennessee Public Service Commission approved a “gain on sale” adjustment where the seller did not continue operations as a regulated, Tennessee utility after consummating the sale transaction at issue in the case? If so, please identify each such case.

**RESPONSE:**

The Consumer Advocate asserts the General Objections described above. Specifically, the Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome and to the extent it seeks information that is outside the Consumer Advocate’s possession, custody, or control and is publicly available to Limestone. Furthermore, it seeks documents or other information beyond that actually relied upon by the Consumer Advocate or any of its witnesses in the formation of their opinion or testimony. The Consumer Advocate

reserves the right to rely on any authority in this matter, whether now known or hereafter discovered.

**1-4.** Is Mr. Dittmore aware of any case in which the Tennessee Public Utility Commission required a buyer to record on its books a regulatory liability for a seller's "gain on sale" and then amortize that liability as a reduction in rate base or operating expense in the buyer's future rate cases? If so, please identify each such case.

**RESPONSE:**

The Consumer Advocate asserts the General Objections described above. Specifically, the Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome and to the extent it seeks information that is outside the Consumer Advocate's possession, custody, or control and seeks information that is publicly available to Limestone. Furthermore, it seeks documents or other information beyond that actually relied upon by the Consumer Advocate or any of its witnesses in the formation of their opinion or testimony. Subject to and without waiving these objections, the Consumer Advocate responds that it is aware of two Commission decisions specifically addressing "Gain on Sale." Copies of these two decisions are provided in Mr. Dittmore's testimony as Exhibits 5 and 6. Mr. Dittmore is not aware of such situations in Tennessee. Nor can Mr. Dittmore confirm such situations have not occurred in Tennessee. The Consumer Advocate reserves the right to rely on any authority in this matter, whether now known or hereafter discovered.

**1-5.** At page 26 of his testimony, Mr. Dittmore estimates a "Gain on the Sale" of Cartwright Creek's assets of \$1,902,706. If the sale transaction at issue in this case is approved as

proposed, which party would realize that "Gain on the Sale" -Cartwright Creek or Limestone? Please explain your response.

**RESPONSE:**

Cartwright Creek's owners would realize the gain on the sale that results from Limestone's payment of funds.

**1-6.** Regarding the 1994 study entitled *State Public Service Commission Disposition of the Gain on Sale of Utility Assets* that was attached to Mr. Dittmore's testimony as Exhibit DND-4:

- (a) Where a regulatory commission determined all or a portion of a "gain on sale" of utility assets should be returned to customers, in how many cases studied for the report was that burden imposed on the utility seller.
- (b) Where a regulatory commission determined all or a portion of a "gain on sale" of utility assets should be returned to customers, in how many cases studied for the report was that burden imposed on the buyer.

**RESPONSE:**

- (a) The Consumer Advocate asserts the General Objections described above. Specifically, the Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome and to the extent it seeks information that is outside the Consumer Advocate's possession, custody, or control and seeks information that is publicly available to Limestone. Furthermore, it seeks documents or other information beyond that actually relied upon by the Consumer Advocate or any of its witnesses in the formation of their opinion or testimony. Subject to and without waiving this objection, the Consumer Advocate responds that it does not have any information or supporting documentation beyond what is located in the *Report* itself. The *Report* states that the NRRI surveyed state

commissions regarding treatment of Gain on Sale. According to the report, 49 of the 52 possible Commissions responded to NRRI. *Report* pp. 2-3.

- (b) Same as (a) above.

RESPECTFULLY SUBMITTED,



KAREN H. STACHOWSKI (BPR #019607)

Senior Assistant Attorney General

SARAH A. HIESTAND (BPR #014217)

Senior Assistant Attorney General

RACHEL C. BOWEN (BPR #039091)

Assistant Attorney General

Office of the Tennessee Attorney General

Financial Division, Consumer Advocate Unit

P.O. Box 20207

Nashville, Tennessee 37202-0207

Phone: (615) 741-2370

Fax: (615) 532-2910

Email: [karen.stachowski@ag.tn.gov](mailto:karen.stachowski@ag.tn.gov)

Email: [sarah.hiestand@ag.tn.gov](mailto:sarah.hiestand@ag.tn.gov)

Email: [rachel.bowen@ag.tn.gov](mailto:rachel.bowen@ag.tn.gov)

***TPUC Docket No. 21-00053***

***CA Response to Limestone First Discovery Request***



### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail,  
with a courtesy copy by electronic mail, upon:

Cartwright Creek, LLC  
C/O Henry Walker  
Bradley Arant Boult Cummings, LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203  
Email: [hwalker@babco.com](mailto:hwalker@babco.com)

Limestone Water Utility Operating Company, LLC  
C/O Charles B. Welch, Jr., Esq.  
C/O Tyler A. Cosby, Esq.  
Farris Bobango PLC  
414 Union Street, Suite 1105  
Nashville, TN 37219  
Email: [cwelch@farris-law.com](mailto:cwelch@farris-law.com)  
Email: [tcosby@farris-law.com](mailto:tcosby@farris-law.com)

This the 14th day of September, 2021.



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KAREN H. STACHOWSKI  
Senior Assistant Attorney General