

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

IN RE:)	
)	
APPLICATION OF LIMESTONE)	
WATER UTILITY OPERATING)	
COMPANY, LLC FOR AUTHORITY TO)	DOCKET NO. 21-00055
SELL OR TRANSFER TITLE TO THE)	
ASSETS, PROPERTY AND REAL)	
ESTATE OF A PUBLIC UTILITY AND)	
FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY)	
)	

DIRECT TESTIMONY

OF

ALEX BRADLEY

July 28, 2022

1 **Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION FOR**
2 **THE RECORD.**

3 **A1.** My name is Alex Bradley. My business address is Office of the Tennessee Attorney
4 General, John Sevier State Office Building, 500 Dr. Martin L. King Jr. Blvd, Nashville,
5 Tennessee 37243. I am an Accounting & Tariff Specialist employed by the Consumer
6 Advocate Division of the Tennessee Attorney General's Office ("Consumer Advocate").

7 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**
8 **PROFESSIONAL EXPERIENCE.**

9 **A2.** I received a Bachelor of Science in Business Administration with a major in Accountancy
10 along with a Bachelor of Arts with a major in Political Science from Auburn University in
11 2012. I have been employed by the Consumer Advocate since 2013. My duties include
12 reviewing utility regulatory filings, preparing analysis used to support Consumer Advocate
13 testimony and exhibits, and preparing my own testimony and supporting exhibits. I have
14 completed multiple regulatory trainings, including those sponsored by the National
15 Association of Regulatory Utility Commissions ("NARUC") held by Michigan State
16 University.

17 **Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**
18 **TENNESSEE PUBLIC UTILITY COMMISSION ("TPUC" OR THE**
19 **"COMMISSION")?**

20 **A3.** Yes. I have previously testified in TPUC Docket Nos. 17-00108, 18-00009, 18-00107,
21 19-00010, 19-00034, 19-00042, 19-00043, 19-00057, 19-00062, 20-00028, 20-00049, 20-
22 00086, 21-00006, 21-00059, 21-00060, 21-00107, 22-00005, and 22-00032.

1 **Q4. ON WHOSE BEHALF ARE YOU TESTIFYING?**

2 **A4.** I am testifying on behalf of the Consumer Advocate.

3 **Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 **A5.** The purpose of my testimony is to provide recommendations regarding the request of
5 Limestone Water Utility Operating Company, LLC (“Limestone,” the “Company,” or
6 “Buyer”) and Central States Water Resources, Inc. (“CSWR”) to acquire the assets of
7 Shiloh Falls Utilities, Inc. (“Shiloh Falls” or the “Seller”). My testimony provides the
8 results of my review and provides multiple recommendations.

9 **Q6. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARATION FOR THIS**
10 **TESTIMONY?**

11 **A6.** I have reviewed the Petition of the parties along with their respective responses to
12 discovery.

13 **Q7. WHAT ARE THE PETITIONERS REQUESTING FROM THE COMMISSION IN**
14 **THIS PROCEEDING?**

15 **A7.** The petitioners are requesting the Commission authorize Limestone to purchase the
16 wastewater system currently owned by Shiloh Falls. It should also be noted that the
17 purchase agreement also includes land currently owned by the Shackelford Company.¹

18 **Q8. CAN YOU PROVIDE A SUMMARY OF THE SHILOH FALLS SYSTEM?**

¹ *Application Of Limestone Water Utility Operating Company, LLC For Authority to Sell or Transfer Assets, Property, and Real Estate of a Public Utility, Shiloh Falls Utilities, Inc., and for a Certificate of a Public Convenience and Necessity* (Corrected), Exhibit 7 (CONFIDENTIAL), p. 5 (June 22, 2021).

1 **A8.** Shiloh Falls is currently a for-profit wastewater system operating in Hardin County that
2 provides wastewater service to approximately 295 customers.² Shiloh Falls’ rates and
3 terms of service are regulated by the Commission. The current rates charged by Shiloh
4 Falls were approved in TPSC Docket No. 95-03948.³

5 **Q9. WHAT IS THE CURRENT REGULATORY SCHEME FOR SHILOH FALLS?**

6 **A9.** As laid out in Schedule 1 of the Settlement Agreement in TPSC⁴ Docket No. 95-03948,
7 Shiloh Falls’ rates were set using an Operating Margin/Ratio approach instead of the
8 traditional Rate of Return approach.

9 **Q10. CAN YOU ELABORATE ON THE OPERATING MARGIN/RATIO**
10 **REGULATORY APPROACH?**

11 **A10.** Under the Operating Margin/Ratio regulatory approach the utility’s operating expenses,
12 depreciation and taxes are substituted for the utility’s rate base for determining the
13 appropriate return the utility should realize. Put simply, the rates of the utility are set to
14 recover the costs of operating the utility and prescribe a reasonable return for the
15 owners/shareholders at a set percentage of those operating costs. Most recently in a
16 wastewater utility’s rate case, TPUC Audit and Compliance Director, Joe Shirley
17 explained:

18 In Tennessee, a “Fair Profit” for regulated wastewater companies may be
19 determined under two methods – the “Rate Base Method” and the
20 “Operating Margin Method.” Under the Rate Base Method, a Fair Profit
21 is deemed to be a reasonable rate of return on the owners' investment in

² Petition, Exhibit 9, Direct Testimony of Josiah Cox at p. 12.

³ *Initial Order*, Settlement Agreement, p.1, ¶4, TPSC Docket 95-03948 (May 31, 1996). The Tennessee Public Service Commission subsequently approved the Administrative Law Judge’s *Initial Order*. *Order*, TPSC Docket 95-03948 (June 27, 1996)

⁴ The Tennessee Regulatory Authority, or TRA, is the predecessor agency to the TPUC, just as the Tennessee Public Service Commission, or TPSC, predated the TRA. While the nomenclature has changed, the scope and function of these entities has remained essentially the same.

1 the utility system (e.g., net utility plant that is used and useful in providing
2 utility service.) Under the Operating Margin Method, a Fair Profit is
3 deemed to be a reasonable return on operating expenses requiring a return
4 factor (e.g., operation and maintenance expenses, purchased power,
5 depreciation and certain taxes.) In this case, I recommend computing the
6 Fair Profit component of the Company's Revenue Requirement under
7 the Operating Margin Method since the majority of TWSI's utility plant
8 is contributed by developers, thereby resulting in a minimal rate base
9 attributable to owners' investment requiring a rate of return.⁵

10 **Q11. TYPICALLY, WHY WOULD A UTILITY BE PRESCRIBED THE OPERATING**
11 **MARGIN/RATIO APPROACH INSTEAD OF THE RATE OF RETURN**
12 **APPROACH?**

13 **A11.** As explained by Mr. Shirley, an Operating Margin/Ratio approach is used when a utility
14 has little or no rate base.⁶ These are typically found in small water/wastewater utilities for
15 which the utility plant was paid for by the customers of the utility and not by the equity
16 owners of the utility.

17 **Q12. CAN YOU PROVIDE A SUMMARY OF THE OPERATIONS OF CSWR?**

18 **A12.** CSWR, an “upstream parent” company of Limestone, operates water and wastewater
19 utilities in Missouri, Arkansas, Kentucky, Tennessee, Texas, and Louisiana.⁷ Based on
20 Mr. Cox’s testimony it appears that CSWR, not Limestone, will manage the water system.
21 Specifically, Mr. Cox explained:

22 all management, financial reporting, underground utility safety and
23 location services, Commission regulatory reporting, environmental
24 regulatory reporting and management, operations oversight, utility asset
25 planning, engineering planning, ongoing utility maintenance, utility
26 record keeping, and final customer dispute management would be
27 performed by personnel at CSWR's corporate office, with a proportional

⁵ Direct Testimony of Joe Shirley at 2:16 – 3:4, TPUC Docket No. 20-0009 (January 31, 2020).

⁶ *Id.*

⁷ Petition at p. 7; Exhibit 6; and Exhibit 9, Direct Testimony of Josiah Cox at p. 3. Limestone identifies CSWR as an “upstream parent” and “U.S. Water” also as an upstream parent for equity needs. *Limestone’s Response to Consumer Advocate*, DR No. 2-1, TPUC Docket No. 21-00053 (August 11, 2021).

1 share of costs for those services passed down to Limestone. CSWR
2 personnel also would monitor the activities of the non-employee
3 contractors to make sure the system is being operated and maintained
4 properly and customers' needs are being met.⁸

5 **Q13. CAN YOU SUMMARIZE YOUR RECOMMENDATIONS FOR THIS**
6 **PROCEEDING?**

7 **A13.** I recommend the approval of the proposed transaction subject to the following conditions:

- 8 1. The Commission should require Limestone to record on its books a balance
9 of Contribution in Aid of Construction (“CIAC”) equal to the balance of
10 Contributed Capital currently held on the books of Shiloh Falls.
- 11 2. The Commission should require Limestone to treat future tap fees as CIAC,
12 not as revenues.
- 13 3. Legal expenses deferred as a regulatory asset and transaction costs should
14 be reduced by half to account for the Seller’s legal expenses. The remaining
15 50% of legal expenses should not be deferred as an above-the-line
16 regulatory asset and any future recoverability or disallowance should be
17 determined at a future rate proceeding.
- 18 4. Limestone should be precluded from restating historical account balances
19 post-acquisition and the prospective accounting entries for the acquisition
20 should be submitted to the Commission prior to closing for review as a
21 condition of Commission approval.
- 22 5. The requested Acquisition Premium in this case should be set aside in a
23 separate account and its ultimate treatment determined in a future
24 proceeding.
- 25 6. Limestone should maintain separate accounting records for Shiloh Falls,
26 distinct from its other systems.

27 **I. BOOK BALANCE OF UTILITY PLANT IN SERVICE (“UPIS”) INCLUDING**
28 **CIAC AND ACCUMULATED DEPRECIATION**

29
30 **Q14. WHAT IS YOUR RECOMMENDATION REGARDING THE UPIS BALANCE**
31 **TO BE TRANSFERRED TO LIMESTONE?**
32

⁸ Petition, Exhibit 9, Direct Testimony of Josiah Cox at p. 11.

A14. As discussed below, the acquisition should reflect that the assets to be transferred be fully offset with an entry to CIAC in the corresponding value.

Q15. CAN YOU ELABORATE ON YOUR CONCERNS REGARDING THE COMPANY'S REQUEST AND HISTORICAL ACCOUNTING RECORDS?

A15. Yes, I have concerns regarding the proposed accounting treatment of the assets to be transferred by Shiloh Falls to Limestone. In its response to discovery, the Company expressed its intent to book plant in service of approximately \$441,000 in the year following acquisition.⁹ Additionally, the same response shows the Company does not intend to book any CIAC for this acquisition. In my review of the Company's prior docket, the Commission required Shiloh Falls "to book a credit of \$193,881 (half of the gross plant in service [at the time]) to Other Paid in Capital in a specifically designated sub-account, Contributed Capital, in accordance with USOA. The offsetting debit will be made to owner's equity. The Contributed Capital account will be recognized as a reduction to rate base in any future proceedings."¹⁰

Q16. IS THIS TREATMENT CONSISTENT WITH THE USOA CURRENTLY?

A16. No. The USOA prescribes contributions recognized as a reduction to rate base to be booked in account 271 – Contributions in Aid of Construction.¹¹

Q17. WHAT IS THE CURRENT BALANCE OF THE CONTRIBUTED CAPITAL FOR SHILOH FALLS?

⁹ *Limestone's Response to Consumer Advocate*, DR No. 1-3, <Attachment 1-3> (June 16, 2022).

¹⁰ *Initial Order*, Settlement Agreement, p.1, ¶5, TPSC Docket 95-03948 (May 31, 1996). *See Order*, TPSC Docket 95-03948 (June 27, 1996).

¹¹ National Association of Regulatory Utility Commissioners, *Uniform Systems of Accounts for Class A. Wastewater Utilities*, p. 92, (1996).

1 **A17.** As shown on the Seller’s Balance Sheet, there was approximately \$553,018 recorded under
2 Account 279 - Contributed Capital as of December 31, 2021.¹² This account is not in the
3 current USoA for wastewater utilities.¹³

4 **Q18. DO YOU HAVE A RECOMMENDATION OF THE TREATMENT OF THIS**
5 **ACCOUNT BALANCE?**

6 **A18.** Given the information available, I recommend the Commission require the balance of
7 Account 279 be carried over to the books of Limestone as CIAC and booked appropriately
8 in Account 271.

9 **Q19. WHY IS THIS ACCOUNTING TREATMENT IMPORTANT IN THIS MATTER?**

10 **A19.** Under Limestone’s request, that ratepayers would not receive the benefit of their
11 contributions to the system. As stated earlier, Limestone’s proposal did not reflect any
12 CIAC to be transferred over to its books. This accounting treatment is important because,
13 as stated in TPUC Docket No. 21-00053, Limestone “believes that a Rate Base rate of
14 return methodology is most appropriate given the characteristics of Limestone’s
15 operations.”¹⁴ Without this treatment, ratepayers would not receive the benefit of their
16 prior contributions to the system and would be put in the position of paying for utility plant
17 that they had already paid for and a return on that plant.

18 **II. FUTURE TREATMENT OF TAP FEES**

19
20 **Q20. HOW IS SHILOH FALLS CURRENTLY BOOKING TAP FEES?**

¹² Shiloh Falls’ Response to Consumer Advocate DR No. 1-6, Attachment C (June 16, 2022).

¹³ National Association of Regulatory Utility Commissioners, *Uniform Systems of Accounts for Class A. Wastewater Utilities* (1996).

¹⁴ Limestone’s Response to Consumer Advocate, DR No. 1-27, TPUC Docket No. 21-00053 (July 16, 2021).

1 **A20.** The Commission previously ordered that the tap fee of \$850 was to be “recorded as
2 revenues by the [Shiloh Falls].”¹⁵

3 **Q21. DO YOU BELIEVE THIS TREATMENT IS APPROPRIATE MOVING**
4 **FORWARD?**

5 **A21.** No, I do not.

6 **Q22. CAN YOU ELABORATE ON YOUR CONCERN REGARDING TAP FEES?**

7 **A22.** Yes, I can. This Commission has historically treated tap fees as revenues,¹⁶ which provided
8 an immediate offset to the revenue requirement. My recommendation is that given the
9 Company’s position to move to a Rate of Return approach and away from an Operating
10 Margin/Ratio approach requires a different treatment of tap fees moving forward.

11 **Q23. WHY IS ANOTHER APPROACH WARRANTED IN THIS MATTER?**

12 **A23.** Previously, in TPUC Docket No. 19-00034, the Commission held that “continuing to book
13 tap fees as revenue could result in a double recovery of costs from ratepayers who pay the
14 tap fee, as it does not recognize any offset to rate base for investments funded by tap fees
15 for ratemaking purposes.”¹⁷ Further, the Commission ordered the utility to classify and
16 report tap fees “in its books and records as Contributions in Aid of Construction (‘CIAC’)
17 in accordance with the Uniform System of Accounts (‘USOA’), rather than operating
18 revenues.”¹⁸ In its decision, the Commission recognized that “[t]he USOA provides that
19 money, services or property that represents an addition to the utility, which is provided at

¹⁵ *Initial Order*, Settlement Agreement, p.1, ¶3, TPSC Docket No. 95-03948 (May 31, 1996). *See Order*, TPSC Docket 95-03948 (June 27, 1996).

¹⁶ *Direct Testimony of Alex Bradley*, p. 4, TPUC Docket No. 19-00034.

¹⁷ *Order Approving Increase of Tap Fees*, p. 9, TPUC Docket No. 19-00034 (August 19, 2019).

¹⁸ *Id.*

1 no cost to the utility by any person or governmental entity, and is utilized to offset
2 acquisition improvement or construction costs of the utility's property, facility or
3 equipment used to provide public utility services shall be recorded as CIAC.”¹⁹

4 I recommend the Commission direct an approach similar to the one it directed in TPUC
5 Docket No. 19-00034. A similar approach is warranted in this Docket due to Limestone’s
6 stated position of transitioning to Rate of Return regulation.²⁰

7 **III. RECOVERY OF LEGAL EXPENSES RESULTING FROM THE TRANSACTION**

8 **Q24. WHAT IS YOUR RECOMMENDATION REGARDING THIS ISSUE?**

9 **A24.** It is still the Consumer Advocate’s position that:

10 Commission authorize that these costs be recorded in a separate asset account
11 that may be considered for recovery in a future proceeding. Limestone
12 should have the burden of proof to demonstrate that such costs are
13 appropriate to recover from its customers. There should be no presumption
14 that such costs are recoverable from customers.²¹

15
16 However, as I previously testified in two other Limestone acquisition dockets, “[l]egal
17 expenses deferred as a regulatory asset and transaction costs should be reduced by half to
18 account for the Seller’s legal expenses” which I discuss further below.²²

19 **Q25. HOW DID THIS ISSUE ARISE?**

¹⁹ *Id.* FN33 quoting National Association of Regulatory Utility Commissioners, *Uniform Systems of Accounts for Class A. Wastewater Utilities*, p. 92, (1996).

²⁰ *Order Approving Increase of Tap Fees*, p. 9, TPUC Docket No. 19-00034.

²¹ Direct Testimony of David N. Dittmore at 25:16 – 26:2, TPUC Docket No. 21-00053 (August 30, 2021). See Direct Testimony of Alex Bradley at 8:13-14, TPUC Docket No. 21-00059 (July 8, 2022) and Direct Testimony of Alex Bradley at 8:4-5, TPUC Docket No. 21-00060 (July 8, 2022).

²² Direct Testimony of Alex Bradley at 8:12-13, TPUC Docket No. 21-00059 (July 8, 2022) and Direct Testimony of Alex Bradley at 8:3-4, TPUC Docket No. 21-00060 (July 8, 2022).

1 **A25.** The issue arose in response to Consumer Advocate’s DR No. 1-10, where the Seller
2 indicated that “[the Seller] is not responsible for any attorney fees.”

3 **Q26. IS THIS THE APPROACH TAKEN IN PRIOR ACQUISITION DOCKETS?**

4 **A26.** Yes. In TPUC Docket No. 21-00053, the regulatory and transaction costs relating to the
5 acquisition of the Cartwright Creek system by Limestone were to be deferred and the
6 appropriate treatment/recovery of these costs were to be determined in Limestone’s initial
7 rate case.²³

8 **Q27. DO YOU AGREE THIS APPROACH IS APPROPRIATE FOR THIS MATTER?**

9 **A27.** I agree with this approach with one caveat. As stated earlier, the legal expenses for both
10 parties are being borne by Limestone; in my opinion, this could lead to the possibility of
11 rate recovery of legal expenditures that should be borne by the Seller. Legal and transaction
12 costs deferred as a regulatory asset should be only include 50% of the legal fees
13 accumulated by the parties’ collective counsel. In summary, only the Buyer’s transaction
14 costs should be deferred. The agreement between the parties that the Seller should not bear
15 any transaction costs should not then require the ratepayers to bear the costs truly incurred
16 by the Seller and which should be borne by the departing entity, Shiloh Falls.

17 **IV. HISTORICAL ACCOUNT BALANCES**

18 **Q28. WHAT IS YOUR RECOMMENDATION REGARDING THIS ISSUE?**

19 **A28.** As discussed below, as a matter of public interest Limestone should not be permitted to
20 restate the account balances for the Shiloh Falls’ system at a later date. Additionally, the

²³ *Order Approving Settlement Agreement and Transfer of Systems, and Granting Certificate of Convenience and Necessity*, Exhibit 1, Settlement Agreement, p. 4, ¶11, TPUC Docket No. 21-00053 (January 24, 2022).

prospective accounting entries to record the acquisition should be submitted to the Commission prior to closing.

Q29. HOW DID THIS ISSUE ARISE?

A29. In its Response to Consumer Advocate’s DR No. 1-10, Limestone stated it “will seek to reserve the opportunity to modify historical account balances.”²⁴

Q30. DO YOU AGREE WITH THE COMPANY ON THIS POINT?

A30. I do not agree with the Company’s position.

Q31. CAN YOU ELABORATE ON YOUR DISAGREEMENT?

A31. Reserving the right to modify the recorded balances of the Shiloh Falls system removes the Commission’s ability analyze the impact of the proposed transaction. As stated by Mr. Dave Dittemore:

Accounting entries should be submitted to the Commission before closing for review as a condition of the Commission’s approval of the transaction. The Commission, its Staff, and the Consumer Advocate should have the opportunity to review Limestone’s proposed accounting entries used to record the acquisition.²⁵

The prospective buyer has the responsibility to perform its due diligence before submitting its request to the Commission. Any “corrections” to accounting records would impact the value of the utility as well as have potentially significant implications on the purchase price agreed to between the parties.

Q32. DO YOU HAVE A RECOMMENDATION REGARDING THIS ISSUE?

²⁴ Limestone’s Response to Consumer Advocate, DR No. 1-10, TPUC Docket No 21-00055.

²⁵ Direct Testimony of David Dittemore at 21:17-20, TPUC Docket No. 21-00053 (August 30, 2021).

A32. Yes. The Commission should not permit an acquiring utility to restate the historical accounting records of the selling utility in the future unless such accounting issue was raised within the Application and specifically approved by the Commission within the acquisition docket. Additionally, the prospective accounting entries of Limestone should be submitted to the Commission before closing to allow the Commission, its Staff, and the Consumer Advocate an opportunity to review the proposed accounting entries for the acquisition.

V. ACQUISITION PREMIUM

Q33. WHAT IS YOUR RECOMMENDATION REGARDING THIS ISSUE?

A33. As discussed below, any potential acquisition premium should be recorded to a separate account and its treatment, for ratemaking purposes, be determined in a future proceeding.

Q34. WHAT IS AN ACQUISITION PREMIUM?

A34. As previously explained by Mr. Dittmore, “[a]n Acquisition Premium represents the acquisition costs of utility assets in excess of their net book value.”²⁶

Q35. IS THE COMPANY REQUESTING AN ACQUISITION PREMIUM IN THIS CASE?

A35. No. However, if the Commission accepts my proposed accounting treatment regarding the Seller's current Contributed Capital account, the net book value of the wastewater plant would be zero. With this treatment, the purchase price of \$375,000 would represent an acquisition premium.

²⁶ *Id.* at 23:5-6.

1 **Q36. ARE YOU RECOMMENDING THE COMMISSION RULE ON THE**
2 **APPROPRIATE REGULATORY TREATMENT OF THE ACQUISITION**
3 **PREMIUM IN THIS PROCEEDING?**

4 **A36.** No.

5 **Q37. WHAT ARE YOU RECOMMENDING REGARDING ACCOUNTING FOR THE**
6 **ACQUISITION PREMIUM?**

7 **A37.** Any potential Acquisition Premium should be set aside in a separate account, and its
8 ultimate disposition determined in a future proceeding. There should be no assumption
9 that this balance will be recoverable in a subsequent rate case proceeding. The burden to
10 justify the recovery of this balance rests with Limestone.

11 **Q38. IS THIS RECOMMENDATION CONSISTENT WITH THE COMMISSION'S**
12 **RULING ON ACQUISITION PREMIUM ACCOUNTING IN TPUC DOCKET NO.**
13 **19-00062?**

14 **A38.** Yes. In that order, the Commission held:

15 Limestone is not requesting an acquisition premium and the Commission is
16 not approving any acquisition adjustment related to the purchase of Aqua's
17 assets; accordingly, Limestone's beginning value of the acquired assets for
18 ratemaking purposes shall be the value recorded in Aqua's books and
19 records at the date of the acquisition. Further, Limestone is not authorized
20 to book an above-the-line regulatory asset for rate-making purposes for any
21 portion of the amount by which the purchase price exceeds the value of the
22 acquired assets as reflected in Aqua's books and records at the date of
23 acquisition. In any future rate proceeding, Limestone may present evidence
24 and argument concerning the value of assets used and useful for
25 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.²⁷

VI. SEPARATE ACCOUNTING RECORDS

Q39. ARE THERE ANY OTHER CONDITIONS YOU WOULD RECOMMEND?

A39. Yes. I recommend that Limestone be required to maintain separate accounting records for Shiloh Falls, distinct from its other systems. This is the same recommendation made by Mr. Dittmore in TPUC Docket No. 21-00053²⁸ and which Limestone was previously agreeable to.²⁹

VII. OTHER CONSIDERATIONS

Q40. BASED ON YOUR REVIEW, IS SHILOH FALLS IN COMPLIANCE WITH ITS STANDARD OPERATING PERMIT (“SOP”) FROM THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION (“TDEC”) REGARDING OWNERSHIP OF THE SYSTEM?

A40. No. The SOP for Shiloh Falls requires the Utility to either own the land or have a perpetual easement of the land on which the treatment facilities are located, including the land used for spray or spray irrigation. The specific terms of the SOP are as following.³⁰

Part III. Other Requirements

D. OWNERSHIP OF THE TREATMENT FACILITIES a. The permittee shall own the treatment facilities (and the land upon which they are constructed) including the land to be utilized for spray or spray irrigation.

²⁷ 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, pp. 17-18(8), TPUC Docket No. 19-00062 (December 7, 2020).

²⁸ Direct Testimony of David Dittmore, p. 22, TPUC Docket No. 21-00053.

²⁹ Limestone’s Response to Consumer Advocate, DR No. 2-3, TPUC Docket No. 21-00053 (August 10, 2021).

³⁰ Shiloh Falls Utilities, Inc., TDEC, SOP-94011 (Effective, February 8, 2022). The language at issue was also a part of Shiloh Falls’ previous permit. Shiloh Falls Utilities, Inc., TDEC, SOP-94011 (Effective, December 1, 2016).

1 A perpetual easement (properly recorded) may be accepted in lieu of
2 ownership. Evidence of ownership of the treatment facility land application
3 site(s) and/or a copy of the perpetual easement(s) must be furnished to the
4 division for approval prior to construction of the wastewater collection and
5 treatment system.

6 **Q41. HOW IS SHILOH FALLS DEFICIENT OF THESE REQUIREMENTS?**

7 **A41.** In its response to discovery, Shiloh Falls explained that “[t]he property upon which the
8 spray field is located is the only portion (of the utility plant) still held by the Shackelford
9 Company.”³¹ As stated earlier, TDEC requires that the Utility own the assets and property
10 used for the provision of utility services. The fact the Shackelford Company is the owner
11 of the land used for these services is not consistent with these rules; I am not aware of any
12 filing by Shiloh Falls requesting any waiver from these requirements. Finally, it should be
13 noted that Shiloh Falls is owned by the Shackelford family.³²

14 **Q42. DO YOU HAVE A RECOMMENDATION REGARDING THE FAILURE TO**
15 **ADHERE TO THESE REQUIREMENTS?**

16 **A42.** Yes. I believe this information is relevant for the Commission to consider in any future
17 rate setting. Shiloh Falls should already have owned in fee or had permanent easements
18 through the property now Limestone seeks to purchase. If they had, the land transfer would
19 have been governed by the Commission’s rules regarding affiliate transactions. The fact
20 that the Company was not in possession of the land in question should not permit the
21 possibility of over-valuation after the transaction closes.

22 The Commission order should require that Limestone provide the amounts paid to either
23 party. The future consideration of the payments made to the Shackelfords should be limited

³¹ *Limestone’s Response to Consumer Advocate*, DR No. 1-13, TPUC Docket No 21-00055.

³² Staff Audit Report for Shiloh Falls, p. 3, TRA Docket 02-00289 (April 24, 2003).

1 in treatment as described in the Commission's rules regarding affiliate transactions.
2 Specifically, Rule 1220-04-13-.16(4)(a), which states "[w]hen an affiliate sells leases,
3 trades, or transfers an asset to a public wastewater utility, such transactions shall be
4 recorded in the public wastewater utility's accounts at the lower of the affiliate's net book
5 value or the fair market value of the asset."

6 **Q43. DID THE COMPANY PROVIDE A STATEMENT ABOUT THE EFFECT OF THE**
7 **ACQUISITION ON RATES?**

8 **A43.** Limestone stated its "contention that the provision of service will not be adversely
9 impacted by the acquisition is based on the fact Limestone proposes to adopt Shiloh Falls
10 current rates. No change in rates means the affordability of rates won't be adversely
11 affected."³³

12 **Q44. DO YOU HAVE A RESPONSE TO THE COMPANY'S STATEMENT?**

13 **A44.** Yes. I am concerned about the results of this proceeding will have on future rates. While
14 Limestone is not asking for a change of rates in this proceeding, the operating costs and
15 the level of capital expenditures will have a future impact on the revenue requirement when
16 Limestone petitions the Commission for its initial rate increase request. The Commission
17 should require all prospective buyers to estimate the impact of the acquisition on future
18 rates in subsequent acquisition filings so that the Commission may evaluate whether the
19 acquisition is in the public interest.

20 **Q45. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 **A45.** Yes.

³³ *Limestone's Response to Consumer Advocate*, DR No. 1-11, TPUC Docket No 21-00055.

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AT NASHVILLE, TENNESSEE

IN RE:

APPLICATION OF LIMESTONE
WATER UTILITY OPERATING
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ASSETS, PROPERTY AND REAL
ESTATE OF A PUBLIC UTILITY AND
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY

DOCKET NO. 21-00055

AFFIDAVIT

I, Alex Bradley, on behalf of the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.


ALEX BRADLEY

Sworn to and subscribed before me
this 28th day of July, 2022.


NOTARY PUBLIC

My commission expires: September 28, 2023