

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**January 5, 2023**

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF LIMESTONE WATER UTILITY</b>	)	
<b>OPERATING COMPANY, LLC FOR AUTHORITY TO</b>	)	<b>DOCKET NO.</b>
<b>PURCHASE TITLE TO THE ASSETS, PROPERTY,</b>	)	<b>21-00059</b>
<b>AND REAL ESTATE OF A WATER SYSTEM</b>	)	
<b>CANDELWOOD LAKES, AND FOR A CERTIFICATE</b>	)	
<b>OF PUBLIC CONVENIENCE AND NECESSITY</b>	)	

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**ORDER APPROVING SETTLEMENT AGREEMENT AND TRANSFER OF SYSTEMS,  
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY,  
AND DISALLOWING CONTINUATION OF CANDLEWOOD LAKES POA’S  
WATER AVAILABILITY FEE**

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This matter came before Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner Kenneth C. Hill, and Commissioner John Hie of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on November 7, 2022, for consideration of the *Application of Limestone Water Utility Operating Company, LLC, for Authority to Purchase Title to the Assets, Property, and Real Estate of a Water System and for a Certificate of Public Convenience and Necessity* (“*Application*”) filed by Limestone Water Utility Operating Company, LLC (“Limestone”) on May 20, 2021. In the *Application*, Limestone seeks Commission authority to purchase and transfer to Limestone all assets, property, and real estate of Candlewood Lakes Property Owners Association, Inc. (“CLPOA”) and Candlewood Lakes POA Water Works, Inc. (“CLPWW”) (collectively “Candlewood Lakes”) currently used to provide water service to customers of its water system in Hardeman County, Tennessee. In addition, Limestone requests that the Commission grant a Certificate of

Public Convenience and Necessity (“CCN”) to Limestone to serve the customers of the Candlewood Lakes water system.

#### **BACKGROUND AND APPLICATION**

CLPOA and CLPWW are Tennessee corporations with their principal offices located in Saulsbury, Tennessee. Candlewood Lakes owns and operates a water system providing service to customers located in Hardeman County, Tennessee. The *Application* includes a map of the service area served by Candlewood Lakes.<sup>1</sup>

Limestone is a Tennessee limited liability company that currently provides service to approximately 400 water customers and over 350 wastewater customers in Tennessee.<sup>2</sup> Limestone Water Utility Holding Company, LLC (“LWUHC”) is the sole member of Limestone and Josiah Cox is the sole officer. Limestone and LWUHC are members of affiliated companies owning and operating water or wastewater systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, and Tennessee to approximately 126,000 customers.<sup>3</sup> The *Application* provides charts depicting the organizational details and the relationship of affiliate companies as well as the number of customers served by each affiliate.<sup>4</sup> One of Limestone’s affiliates, Central States Water Resources, Inc. (“CSWR”) provides technical, managerial, and financial services to Limestone and its other affiliates. Further, CSWR will manage Limestone and the system that is the subject of the *Application* upon approval by the Commission.<sup>5</sup> Specifically, CSWR employs engineers and other qualified personnel with experience in the design and operation of water and wastewater systems, supplementing with qualified, licensed local operators by contract who are responsible for day-to-day plant operations. Limestone provides the resumes of key CSWR personnel who provide managerial and technical expertise and experience to Limestone.<sup>6</sup> Equity capital used to acquire Candlewood Lakes’ assets, to fund initial capital upgrades and improvements, and providing necessary

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<sup>1</sup> *Application*, p. 3, Exh. 1 (May 20, 2021).

<sup>2</sup> *Id.* at 3-4.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at Exhs. 5 and 6.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.* at 7-8 and Exh. 12.

working capital will be provided by CSWR.<sup>7</sup>

In the *Application*, Limestone states that, “Candlewood Lakes has determined it is in the best interests of both the company and its customers to sell the water [s]ystem at issue in this Application to a qualified operator.”<sup>8</sup> As a result of that determination, Candlewood Lakes and CSWR entered into an *Agreement for Sale of Utility System* (“*Sale Agreement*”), a copy of which is included with the *Application*.<sup>9</sup> The *Sale Agreement* provides the specific terms for Candlewood Lakes to sell all assets used for the provision of water services to its Hardeman County system to CSWR, including, “water service facilities and equipment, intangibles, franchises, inventory, contracts and contract rights, and real estate.”<sup>10</sup> As part of the *Sale Agreement*, CSWR will transfer all right, title, and interest in the obtained Candlewood Lakes assets to Limestone.<sup>11</sup>

Limestone asserts that the *Sale Agreement* is in the public interest and in the interest of customers of the Candlewood Lakes systems because Limestone is willing and able to invest the capital needed to maintain compliance with regulations concerning water quality and environmental issues. In addition, Limestone asserts that it has access to capital to make necessary upgrades and improvements to the system and to continue to operate the system in a state of regulatory compliance.<sup>12</sup> Further, Limestone proposes to adopt the current rates in effect for Candlewood Lakes’ customers.<sup>13</sup>

The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) filed a *Petition to Intervene* on July 23, 2021. The Hearing Officer entered an order granting the Consumer Advocate’s intervention on August 15, 2021. Counsel for Candlewood Lakes entered its appearance on August 9, 2021.<sup>14</sup> Following exchange of discovery requests

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<sup>7</sup> *Id.* at 5.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* at 5 and Exh. 7.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 6 and Exh. 8.

<sup>12</sup> *Id.* at 5-6.

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Attorneys Charles B. Welch, Jr. and Tyler A. Cosby Notice of Appearance As Counsels for Candlewood Lakes Property Owners Association, Inc. and Candlewood Lakes POA Water Works, Inc.* (August 9, 2021). *See also Central States Water*

and responses and the filing of Pre-Filed Testimony of the witnesses for the parties, Limestone, Candlewood Lakes, and the Consumer Advocate filed a *Stipulation and Settlement Agreement* (“*Settlement Agreement*”).

#### **THE PROPOSED SETTLEMENT AGREEMENT**

On August 19, 2022, Limestone, Candlewood Lakes, and the Consumer Advocate filed a *Settlement Agreement* executed by each of the parties. The parties represented that upon approval of the jointly submitted *Settlement Agreement*, all issues related to this docket would be resolved.<sup>15</sup>

The terms of the *Settlement Agreement* are as follows:

1. In its first rate case, Limestone will be permitted to seek the establishment of rate base in the amount of the net book value of the assets acquired from Candlewood Lakes not to exceed the purchase price of \$60,000, while other parties will be allowed to contest the amount and present evidence to the contrary.
2. In its first rate case, Limestone will be permitted to establish and include in rate base, amounts incurred for legal and other transaction-related fees, while other parties will be allowed to contest the amount and present evidence to the contrary.
3. Limestone will not make any corrections or modifications to the accounting records of Candlewood Lakes without Commission approval.
4. Limestone will maintain separate asset and operating reports for the Candlewood Lakes system.
5. Within thirty (30) days of closing, Limestone shall file a balance sheet and supporting general ledger in the Uniform System of Accounts (“USOA”) format and in accordance with

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*Resources, Inc., Candlewood Lakes POA Water Works, Inc. and Candlewood Lakes Property Owners Association, Inc. Executed Joint Representation Conflict Waiver* (September 17, 2021).

<sup>15</sup> *Consumer Advocate, Limestone Water Utility Operating Company, LLC; Candlewood Lakes Property Owners Association, Inc.; and Candlewood Lakes POA Water Works, Inc. Joint Stipulation and Settlement Agreement* (August 19, 2022).

Commission Rule 1220-04-01-.11 showing Candlewood Lakes' ending and beginning balances of the assets acquired by Limestone as of the closing date.

6. Limestone is not requesting an acquisition premium. For ratemaking purposes, Limestone shall record the beginning value of the acquired assets as the amount recorded in the books and records of Candlewood Lakes at the date of acquisition. Further, Limestone does not have authorization to book an above-the-line regulatory asset for any amount where the purchase price exceeds the value of the acquired assets at the date of acquisition.
7. Any issues related to the disposition of regulatory and transactions costs are deferred and shall be addressed in Limestone's initial rate case. In its initial rate case, Limestone is restricted from requesting recovery of legal expenses in excess of 50% of the amount paid to local legal counsel.
8. Limestone must maintain its books and records in compliance with USOA and Candlewood Lakes will transfer complete copies of its accounting records for the two (2) calendar years immediately preceding the date of acquisition as well as complete year-to-date accounting records for the year in which closing occurs.
9. Within thirty (30) days of acquisition, Limestone shall post a bond compliant with Commission rules.
10. Limestone shall provide, within thirty (30) days of execution, copies of all contracts or pricing agreements between Limestone and any affiliate or contractor that provides any operations, maintenance, or billing services to the Candlewood Lakes system or its customers.
11. Within thirty (30) days of recording, Limestone is to file copies of all recorded deed(s) for land where Candlewood Lakes facilities are located and registered easements in Limestone's name for all the land and ownership rights for any and all access to the acquired water system.

12. Within thirty (30) days after acquisition, Limestone shall file a copy of the Purchase and Sale Agreement which has been fully executed and acknowledged by the Title Company attaching all exhibits with complete documentation.
13. A copy of the final executed Assignment of Rights Agreement shall be filed within thirty (30) days after the date of acquisition.
14. A copy of the State Operating Permit “Request for Transfer” for permits shall be filed within thirty (30) days of issuance for both water and wastewater.
15. Within thirty (30) days of availability, Limestone shall file copies of all maps and engineering designs for the water and wastewater systems.
16. Limestone shall comply with all applicable Commission rules and regulations.

The *Settlement Agreement* also outlines general terms and conditions. The parties agree that all Pre-Filed Testimony, discovery, and exhibits will be introduced as evidence without objection, and cross-examination of witnesses is waived with respect to Pre-Filed Testimony. In addition, the parties are not bound to any position or term of the *Settlement Agreement* if not approved by the Commission in whole. The *Settlement Agreement* establishes no binding or precedential effect in any proceeding before the Commission, or any state or federal court except to the limited extent necessary to implement the provisions of the *Settlement Agreement* or enforcement thereof.<sup>16</sup>

#### **HEARING ON THE MERITS**

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on October 10, 2022, as noticed by the Commission on September 30, 2022. Participating in the Hearing were Mason Rush, Esq. and Alex Bradley on behalf of the Consumer Advocate; Josiah Cox, president and founder of Limestone and CSWR on behalf of Limestone; and J. David Kennamore, president of CLPOA, on behalf of Candlewood Lakes. Charles B. Welch, Jr., Esq., and Tyler A. Cosby, Esq. appeared as counsel jointly representing Limestone and Candlewood Lakes.

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<sup>16</sup> *Id.*

David Foster and Joe Shirley, members of the Commission Staff, also participated in the Hearing. During the Hearing, Mr. Cox summarized his Pre-Filed Testimony and presented a summary of the *Settlement Agreement* to the Commission and was subject to questions from the panel and Commission Staff. In response to questions from Commission Staff, Mr. Cox clarified that revenue projections are based upon 106 actual customers rather than 308 available lots and that the rates, terms, and conditions of service to be applicable for the Candlewood Lakes system are those appearing in the proposed tariff filed in response to a Commission Staff data request.<sup>17</sup> Mr. Kennamore testified on behalf of Candlewood Lakes responding to questions from Commission Staff. The Commission opened the floor for public comment concerning the *Application*, but no person came forward to comment.

Following the Hearing, the Commission panel deferred deliberations on the *Application* to a future Commission Conference. During the regularly scheduled Commission Conference on November 7, 2022, which was duly noticed by the Commission on October 28, 2022, the panel reconvened to consider the matter. The voting panel then deliberated, announced findings and conclusions upon consideration of the entire record, including all exhibits and the testimony of witnesses, and voted unanimously in favor of the findings and conclusions.

#### **STANDARD OF REVIEW**

The Commission has “general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.”<sup>18</sup> The Tennessee Supreme Court has interpreted the supervisory and regulatory powers of the Commission as “practically plenary authority over the utilities within its jurisdiction.” *BellSouth Adver. & Publ’g Corp. v Tenn. Reg. Auth.*, 79 S.W.3d 506, 512-513 (Tenn. 2002).

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<sup>17</sup> See Commission Staff Data Request to Attorney Charles B. Welch (September 15, 2022); Limestone Water Utility Operating Company, LLC Response to Commission Staff Data Request Filed September 15, 2022 (September 29, 2022); Transcript of Hearing, pp. 87-88 (October 10, 2022).

<sup>18</sup> Tenn. Code Ann. § 65-4-104(a) (2022).

In performing its duties with regard to issues before the Commission in the current docket, several statutory provisions must be considered. First, Tenn. Code Ann. § 65-4-113(a) provides:

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.<sup>19</sup>

When considering a transfer of authority to provide utility services, the Commission must consider 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.” Upon a finding that the transfer furthers the public interest, the Commission shall approve the transfer.<sup>20</sup> After the Commission approves the transfer, the transferee is granted full authority to provide the transferred utility services while the transferor no longer has authority to provide transferred services.<sup>21</sup>

In addition, the Commission must consider whether to grant Limestone a CCN to provide water services. A public utility is not permitted to begin construction or operation of a new utility service without first obtaining a CCN from the Commission, as set forth in Tenn. Code Ann. § 65-4-201(a), which 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

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<sup>19</sup> Tenn. Code Ann. § 65-4-113(a)(2022).

<sup>20</sup> Tenn. Code Ann. § 65-4-113(b)(2022).

<sup>21</sup> Tenn. Code Ann. § 65-4-113(c)(2022).



public utility, or for substitute or additional facilities in or to territory already served by it.<sup>22</sup>

## **FINDINGS AND CONCLUSIONS**

The voting panel found that the terms of the *Settlement Agreement* provide reasonable and necessary accounting treatment related to the sale of assets and for the submission of necessary documentation post acquisition. Further, the *Settlement Agreement* allows the parties to avoid the time and cost associated with the extensive litigation associated with this type of matter. In addition, as Candlewood Lakes avers that it no longer desires to continue operating the water system, the *Settlement Agreement* permits the transfer of the ownership and operation of the wastewater system to an operator of public utilities that is well equipped with the financial, technical, and managerial capabilities to successfully operate and enhance the systems as they require maintenance, repairs, upgrades, and replacements. The level of commitment to operations and capital investments from Limestone will benefit the ratepayers. The panel further found that the *Settlement Agreement* includes terms that require compliance with accounting procedures that are needed to assist in the analytical review of transactions. The voting panel found that the *Application* complies with the requirements established in Tenn. Code Ann. § 65-4-113 relative to petitions for approval for transfer of authority to provide utility service and Commission Rule 1220-04-14 relating to utility acquisitions. Thereafter, the panel voted unanimously to approve the *Settlement Agreement*.

The panel next considered whether Limestone's acquisition of the Candlewood Lakes water system, as outlined in the *Settlement Agreement*, is in the public interest. As the current owners of the Candlewood Lakes water system do not wish to continue operating the water system and have proposed to sell the system to Limestone, a public need exists for an entity to own and properly operate and maintain the system so that the customers of the Candlewood Lakes water system continue receiving uninterrupted utility services. However, the parties have proposed retention of certain rights by Candlewood Lakes that

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<sup>22</sup> Tenn. Code Ann. § 65-4-109 (2022).

would permit the CLPOA to assess and collect an annual water availability fee from lot owners without a water tap for line maintenance. As proposed, CLPOA would continue to assess and collect the water availability fee despite having no continued involvement in the provision of water service upon completion of the sale of the Candlewood Lakes system to Limestone. Mr. Kennamore testified that CLPOA intends to continue assessing the water availability fee and would not agree to discontinue the charge upon completion of the sale of the water system.<sup>23</sup> The panel found that, as the authority to charge a fee for utility availability or access is regulated by the Commission for utilities under its jurisdiction, the retention of rights by CLPOA to continue assessing water availability fees after the sale of the water system is not in the public interest.

For utilities under its jurisdiction, the Commission has general supervisory and regulatory authority and jurisdiction over public utilities and their property, property rights, and facilities,<sup>24</sup> and the power to, “fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof....”<sup>25</sup> Therefore, the panel determined that no entity other than an entity that has been granted the appropriate CCN to provide utility services is permitted to assess and collect fees pertaining to the utility services of a utility under Commission jurisdiction. Upon transfer of the water system from Candlewood Lakes to Limestone, all rates, charges, and terms of services affecting the water services of the Candlewood Lakes system will be subject to the supervision and control of the Commission. The panel voted unanimously to condition the approval of the sale and transfer of the Candlewood Lakes water system to Limestone upon the discontinuance of the assessment and collection of the water availability fee by CLPOA and/or CLPWW. The Commission directed CLPOA and CLPWW to provide a sworn statement from an authorized representative stating that it will no longer assess or collect the water availability fee after transfer of ownership of the water system. In addition, the Commission directed CLPOA and CLPWW to provide a list of water customers and lot owners who are currently assessed the

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<sup>23</sup> Transcript of Hearing, pp. 92-93 (October 10, 2022).

<sup>24</sup> Tenn. Code Ann. § 65-4-104\*(a) (2022).

<sup>25</sup> Tenn. Code Ann. § 65-5-101(a) (2022).

annual water availability fee, proof of notice to lot owners and existing water service customers that it will no longer assess any water fees, including, specifically, the annual water availability fee, and that Limestone is the only entity authorized to assess any fees or charges relating to water service.

The panel noted that the *Settlement Agreement* recognizes that the Commission must approve a CCN for Limestone to assume operation of the Candlewood Lakes water system also requested in Limestone's *Application*. The Commission found that Limestone demonstrated that it has sufficient financial, managerial, and technical expertise to operate the Hardeman County water system at issue.

Specifically, LWUHC is the sole member of Limestone. In addition, Limestone is part of a group of affiliated companies that own and operate water and wastewater systems in Missouri, Arkansas, Kentucky, Louisiana, and Texas. One of the affiliates, CSWR, provides the financial, technical, and managerial expertise to Limestone and the other affiliates within the group. CSWR will manage Limestone and the wastewater system at issue.

Josiah Cox, President of Limestone and of CSWR, attests that Limestone possesses the necessary technical, managerial, and financial capabilities to provide wastewater service to the Candlewood Lakes wastewater system to be transferred.<sup>26</sup> Mr. Cox states that the companies in the affiliated group, of which Limestone is a member, have been granted certificates in water acquisitions in Missouri, Arkansas, Kentucky, Louisiana, Texas, and Tennessee. He also testifies that the affiliated group has secured an ongoing commitment from Sciens Capital Management, a Wall Street private equity firm, to provide capital necessary to purchase small and/or distressed water and wastewater systems and to bring the systems into compliance with applicable health, safety, and environmental law and regulations.<sup>27</sup>

Limestone provided evidence of employees' credentials and company responsibilities. Mr. Cox has an education in environmental science and has work experience in engineering, business, and utility

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<sup>26</sup> *Application*, Exh. 9, Josiah Cox, Pre-Filed Direct Testimony, pp. 6-12 (May 20, 2021).

<sup>27</sup> *Id.* at 9-10.

operations.<sup>28</sup> In addition, the *Application* includes resumes that demonstrate the education and experience of key members of CSWR's senior team who will be involved in Tennessee operations.<sup>29</sup>

The panel found that the evidence in the record demonstrates that Limestone, through CSWR and the group of affiliated companies, possesses the requisite financial, managerial, and technical abilities to operate the Candlewood Lakes water facility to be transferred. Therefore, the panel voted unanimously to grant Limestone's request for a CCN to operate the Candlewood Lakes water system to be transferred.

**IT IS THEREFORE ORDERED THAT:**

1. The *Stipulation and Settlement Agreement*, a copy of which is attached to this Order as Exhibit 1 and is incorporated in this Order as if fully rewritten herein, executed and submitted by the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General; Limestone Water Utility Operating Company, LLC; and Candlewood Lakes Property Owners Association, Inc. and Candlewood Lakes POA Water Works, Inc. on August 19, 2022, is approved.

2. In accordance with Tenn. Code Ann. § 65-4-201, a Certificate of Public Convenience and Necessity is granted to Limestone Water Utility Operating Company, LLC to serve the Candlewood Lakes POA Water Works, Inc. water system in Hardeman County, Tennessee, currently served by Candlewood Lakes POA Water Works, Inc.

3. Approval of the *Stipulation and Settlement Agreement* authorizing the transfer of the Candlewood Lakes POA Water Works, Inc. water system to Limestone Water Utility Operating Company, LLC and the granting of the Certificate of Public Convenience and Necessity to Limestone Water Utility Operating Company, LLC to serve the Candlewood Lakes POA Water Works, Inc. water system are contingent upon Candlewood Lakes Property Owners Association, Inc. and Candlewood Lakes POA Water Works, Inc. filing the following in this docket:

a. A sworn statement from an authorized representative stating that neither entity

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<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Application*, Exh. 12 (May 17, 2021).

will assess or collect the water availability fee after transfer of ownership of the water system; and

b. A proof of notice to lot owners and existing water service customers that neither entity will assess any water fees after completion of the sale of the water system, including specifically the annual water availability fee, and that Limestone Water Utility Operating Company, LLC is the only entity authorized to assess any fees or charges relating to water service.

c. A list of water customers and lot owners who are currently assessed the annual water availability fee.

4. Any person who is 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.

5. Any person who is 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 Herbert H. Hilliard,  
Commissioner Robin L. Morrison,  
Commissioner Clay R. Good  
Commissioner Kenneth C. Hill, and  
Commissioner John Hie concurring.**

None dissenting.

**ATTEST:**

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**Earl R. Taylor, Executive Director**

# **EXHIBIT 1**

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

<b>IN RE:</b>	)	
	)	
<b>APPLICATION OF LIMESTONE</b>	)	
<b>WATER UTILITY OPERATING</b>	)	
<b>COMPANY, LLC FOR AUTHORITY TO</b>	)	<b>DOCKET NO. 21-00059</b>
<b>PURCHASE TITLE TO THE ASSETS,</b>	)	
<b>PROPERTY AND REAL ESTATE OF A</b>	)	
<b>WATER SYSTEM AND FOR A</b>	)	
<b>CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	

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**STIPULATION AND SETTLEMENT AGREEMENT**

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The Consumer Advocate Division of the Office of the Attorney General (the “Consumer Advocate”), Limestone Water Utility Operating Company, LLC (“Limestone” or “Buyer”), Candlewood Lakes Property Owners Association, Inc., and Candlewood Lakes POA Water Works, Inc. (together “Candlewood Lakes” or “Seller”) jointly submit this Stipulation and Settlement Agreement (the “Settlement Agreement”) to the Tennessee Public Utility Commission (“TPUC” or the “Commission”) in TPUC Docket No. 21-00059. Limestone requested approval from the Commission to allow it to acquire and operate the Candlewood Lakes water system and requested the Commission authorize and grant Limestone a Certificate of Public Convenience and Necessity (“CCN”) pursuant to Tenn. Code Ann. § 65-4-201 and TPUC Rule 1220-04-13.-17. Subject to TPUC’s approval, the Consumer Advocate, Limestone, and Candlewood Lakes (hereinafter,

individually “Party” and collectively “Parties”) stipulate and agree as follows and respectfully request Commission approval of the same:

## **I. BACKGROUND**

1. On May 20, 2021, Limestone filed its Petition, seeking authorization for it to purchase all assets, property, and real estate currently used to provide regulated water services to customers currently served by Candlewood Lakes and to also grant Limestone a CCN.

2. On August 15, 2021, the Commission granted the Consumer Advocate’s Petition to Intervene. On September 17, 2021, Candlewood Lakes filed a notice stating that it joins as a party in support of the Petition. On July 8, 2022, the Consumer Advocate filed the Direct Testimony of Alex Bradley, which recommended approval of the transaction subject to four conditions.

## **II. SETTLEMENT TERMS**

3. The Parties to this Settlement Agreement have undertaken discussions to resolve this case. As a result of the information obtained during the discussions between the Parties, and for the purpose of avoiding further litigation and resolving this matter upon acceptable terms, the Parties have reached this Settlement Agreement. Subject to the TPUC’s approval, in furtherance of this Settlement Agreement, the Parties have agreed to the settlement terms set forth below.

4. In its initial base-rate case including the Candlewood Lakes system, Limestone shall be allowed to present evidence seeking to establish and include in rate base the net book value of assets it acquires from Candlewood Lakes up to an amount not to exceed the purchase price paid for those assets (i.e., \$60,000). The Consumer Advocate or other interested parties may oppose such values or present their own evidence and argument concerning the value of such assets and



the proper calculation of rate base, and the Consumer Advocate specifically reserves its right to do so.

5. In its initial base-rate case including the Candlewood Lakes system, Limestone shall be allowed to present evidence seeking to establish and include in rate base amounts incurred for legal and other transaction-related fees and services. The Consumer Advocate or other interested parties may oppose such values or present their own evidence and argument concerning the proper amounts of these expenses to be recovered in rates.

6. Limestone shall not make any corrections or modifications to accounting records received from Candlewood Lakes at closing. If Limestone believes accounting entries should be corrected or changed, it shall seek approval from the Commission to make the necessary accounting corrections at least 180 days prior to its initial request to increase base rates. The Consumer Advocate reserves its rights to oppose such a request for any reason, including but not limited to if such a request should occur during an acquisition docket as a part of the Buyer's due diligence.

7. The Parties agree and accept the Consumer Advocate's recommendation that Limestone must maintain separate asset and operating-cost records for the Candlewood Lakes' well, water treatment, and distribution system.

8. The Parties agree that Limestone must file, within 30 days after closing, a balance sheet and supporting general ledger, in the format prescribed by the Uniform System of Accounts and in accordance with Commission Rule 1220-04-01-.11, showing Candlewood Lakes' ending balances of the assets acquired by Limestone as of the closing date. Limestone also shall file a balance sheet and supporting general ledger, in the format prescribed by the Uniform System of

Accounts and in accordance with Commission Rule 1220-04-01-.11, showing Limestone's beginning balances of the assets acquired from Candlewood Lakes as of the closing date.

9. Limestone is not requesting an acquisition premium, nor is the Commission being asked to approve any acquisition adjustment related to the purchase of Candlewood Lakes' assets. Accordingly, Limestone's beginning value of the acquired assets for ratemaking purposes shall be the value recorded in Candlewood Lakes' 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 Candlewood Lakes' 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-utility 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. In Limestone's initial base-rate case, Limestone, the Consumer Advocate, or other interested parties, also may present evidence and set forth their respective arguments related to the appropriateness of an acquisition premium for this transaction.

10. The Parties agree that a determination of recoverable regulatory and transaction costs related to the subject acquisition will be deferred to Limestone's initial rate case involving those costs. Limestone agrees that it will not seek to recover in rates any amount exceeding 50% of the legal expenses paid to local counsel for the representation of Buyer or Seller in the instant regulatory proceeding. The Consumer Advocate and other interested parties may present independent evidence and argument concerning the proper amounts to be recovered in rates. Limestone will file within 30 days of closing the amount of legal costs, separated by represented party, incurred for this matter.

11. The Parties agree Limestone must maintain its books and records in compliance with the Uniform System of Accounts as set forth in Commission Rule 1220-04-01-11.

12. The Parties agree that, at closing, Candlewood Lakes shall transfer to Limestone complete copies of Candlewood Lakes' accounting records, to the extent they exist, 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.

13. The Parties agree Limestone must post a bond compliant with the Commission's financial security rules within 30 days of the date of acquisition.

14. The Parties agree Limestone must file within 30 days of execution copies of contracts or pricing agreements between Limestone and any affiliate and between Limestone and contractors that provide ongoing operations and maintenance or billing services to the Candlewood Lakes system or customers served by that system.

15. The Parties agree Limestone must file copies of recorded deed(s) for land where Candlewood Lakes' facilities are located and copies of recorded easements in Limestone's name for all the land and ownership rights for any and all access to the acquired water system and water systems within 30 days after the date of recording.

16. The Parties agree Limestone must file a copy of the Purchase and Sale Agreement that has been fully executed by Seller and Buyer and 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.

17. The Parties agree Limestone must a copy of the final executed Assignment of Rights Agreement within 30 days after the date of acquisition.

18. The Parties agree Limestone must file a copy of the State Operating Permit "Request for Transfer" for current permits, both for water and wastewater, within 30 days of issuance.

19. The Parties agree Limestone must file copies of maps and engineering designs for the water and wastewater systems within 30 days of availability.

20. The Parties agree Limestone must comply with all applicable Commission rules and regulations, including but not confined to the Commission's rules governing transactions with affiliates.

21. All pre-filed discovery (formal and informal), testimony and exhibits of the Parties will be introduced into evidence without objection, and the Parties waive their right to cross-examine all witnesses with respect to all such pre-filed testimony. If, however, questions should be asked by any member of the public, Commissioners, or Commission Staff, the Parties may present testimony and exhibits to respond to such questions and may cross-examine any witnesses with respect to such testimony and exhibits. The Parties would ask to permit any witnesses from out of town to be available by telephone or video conference to reduce the costs associated with such appearance.

22. After the filing of this Settlement Agreement, the Parties agree to support this Settlement Agreement before the Commission and in any hearing, proposed order, or brief conducted or filed in this matter. The provisions of this Settlement Agreement are agreements reached in compromise and solely for the purpose of settlement. The provisions in this Settlement Agreement do not necessarily reflect the positions asserted by any Party. None of the Parties to this Settlement Agreement shall be deemed to have acquiesced in or agreed to any ratemaking or accounting methodology or procedural principle.

23. This Settlement Agreement, which is the product of negotiations and substantial communication and compromise between the Parties, is just and reasonable and in the public interest.

24. This Settlement Agreement shall not have any precedential effect in any future proceeding or be binding on any of the Parties in this or any other jurisdiction except to the limited extent necessary to enforcement and implementation of the provisions hereof.

25. The Parties agree and request the Commission to order that the settlement of any issue pursuant to this Settlement Agreement shall not be cited by the Parties or any other entity as binding precedent in any other proceeding before the Commission, or any court, state or federal, except to the limited extent necessary to implement the provisions hereof and for the limited purpose of enforcement should it become necessary.

26. The terms of this Settlement Agreement have resulted from negotiations between the signatories and the terms hereof are interdependent. The Parties jointly recommend that the Commission issue an order adopting this Settlement Agreement in its entirety without modification.

27. If the Commission does not accept the settlement in whole, the Parties are not bound by any position or term set forth in this Settlement Agreement. In the event that the Commission does not approve this Settlement Agreement in its entirety, each of the signatories to this Settlement Agreement retains the right to terminate this Settlement Agreement by giving notice of the exercise of such right within 15 business days of the date of such action by the Commission; provided, however, that the signatories to this Settlement Agreement could, by unanimous consent, elect to modify this Settlement Agreement to address any modification required by, or issues raised by, the Commission within the same time frame. Should this Settlement Agreement terminate, it would

be considered void and have no binding or precedential effect, and the signatories to this Settlement Agreement would reserve their rights to fully participate in all relevant proceedings notwithstanding their agreement to the terms of this Settlement Agreement.

28. By agreeing to this Settlement Agreement, no Party waives any right to continue litigating this matter should this Settlement Agreement not be approved by the Commission in whole or in part.

29. No provision of this Settlement Agreement shall be deemed an admission of any Party. No provision of this Settlement Agreement shall be deemed a waiver of any position asserted by a Party in this matter or any other docket.

30. Except as expressly noted herein, the acceptance of this Settlement Agreement by the Attorney General shall not be deemed approval by the Attorney General of Limestone's or Candlewood Lakes' acts or practices.

31. The Consumer Advocate's agreement to this Settlement Agreement is expressly premised upon the truthfulness, accuracy, and completeness of the information provided by Limestone and Candlewood Lakes to TPUC and the Consumer Advocate throughout the course of this Docket, which information was relied upon by the Consumer Advocate in negotiating and agreeing to the terms and conditions of this Settlement Agreement.

32. This Settlement Agreement shall be governed by and construed under the laws of the State of Tennessee, notwithstanding conflicts of law provisions.

33. The Parties agree that this Settlement Agreement constitutes the complete understanding among the Parties and that any and all oral statements, representations, or agreements made prior to the execution of this Settlement Agreement shall be null and void.


34. The signatories to this Settlement Agreement warrant that they have informed, advised, and otherwise consulted with the Parties for whom they sign regarding the contents and significance of this Settlement Agreement, and, based on those communications, the signatories represent that they are authorized to execute this Settlement Agreement on behalf of the Parties.

The foregoing is agreed and stipulated to this \_\_\_\_ day of August 2022.


*[signature pages follow – remainder of page intentionally left blank]*

Stipulation and Settlement Agreement  
Tennessee Public Utility Commission Docket No. 21-00059  
Limestone Water Utility Operating Company, LLC Signature Page

LIMESTONE WATER UTILITY OPERATING COMPANY, LLC and  
CANDLEWOOD LAKES PROPERTY OWNERS ASSOCIATION AND  
CANDLEWOOD LAKES POA WATER WORKS, INC. <sup>INC.</sup>

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ACKNOWLEDGED AND AGREED.

  
David Kennamore, President  
Candlewood Lakes Property Owners Association and <sup>INC.</sup>  
Candlewood Lakes POA Water Works, Inc.

*[additional signature page follows – remainder of page intentionally left blank]*



Stipulation and Settlement Agreement  
Tennessee Public Utility Commission Docket No. 21-00059  
Attorney General's Signature Page

CONSUMER ADVOCATE DIVISION

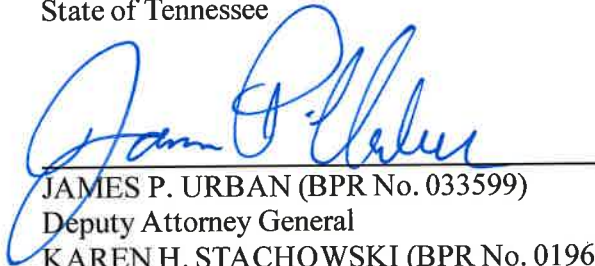
BY:

OFFICE OF THE TENNESSEE ATTORNEY GENERAL



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