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January 20, 2023

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Hon. Herbert H. Hilliard, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
TPUC.DocketRoom@tn.gov

RE: *In Re: Application of Limestone Water Utility Operating Company, LLC for Authority to Purchase Title to the Assets, Property, and Real Estate of a Water System, Candlewood Lakes, and for a Certificate of Public Convenience and Necessity, TPUC Docket No. 21-00059*

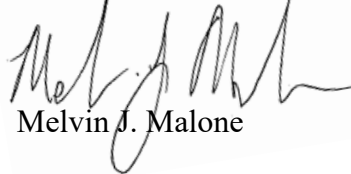
Dear Chairman Hilliard:

Attached for filing please find the *Petition for Reconsideration of Limestone Water Utility Operating Company, LLC of the Commission's 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* in the above-captioned matter.

As required, the original plus four (4) hard copies will be mailed to your office. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

clw

Attachment

cc: Russ Mitten

J.W. Luna

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**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

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

**PETITION FOR RECONSIDERATION OF LIMESTONE WATER UTILITY
OPERATING COMPANY, LLC OF THE COMMISSION’S 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**

Pursuant to Tenn. Code Ann. §§ 4-5-317 and 65-2-114 and the Tennessee Public Utility Commission’s Rule 1220-01-02-.20, Limestone Water Utility Operating Company, LLC (“Limestone” or “Petitioner”) respectfully submits this Petition for Reconsideration of the Tennessee Public Utility Commission’s (“Commission” or “TPUC”) January 5, 2023, *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* (the “Petition”). For the reasons set forth below, just cause shown, and to serve the public interest, Limestone respectfully requests that the Commission modify its *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* (the “Order”) and rescind the contingency related to the Water Availability Fee from its approval of the Settlement

Agreement and Transfer of Systems and granting of the Certificate of Convenience and Necessity. In the alternative, Limestone respectfully requests that the Commission modify the *Order*, sever the contingency related to the Water Availability Fee from both its approval of the Settlement Agreement and Transfer of Systems and its grant of the Certificate of Convenience and Necessity, and either permit customers subject to the Water Availability Fee to resolve any issues related to the assessment of said fee with Candlewood Lakes Property Owners Association, Inc. (“CLPOA”) or the Commission may pursue a resolution of the Water Availability Fee with CLPOA in a new and separate Commission docket.

I.

TRAVEL OF THE CASE

On May 20, 2021, Limestone submitted its Application of Limestone Water Utility Operating Company, LLC for Authority to Purchase Title to the Assets, Property, and Real Estate of a Water System, Candlewood Lakes, and for a Certificate of Public Convenience and Necessity (the “Application”). Pursuant to a Petition to Intervene submitted by the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate,” “CA” or “CAU”), the Commission granted the CAU’s request to intervene.¹ A Procedural Schedule was established by the Commission and the parties engaged in both the informal exchange of information and discovery. Limestone, CLPOA and Candlewood Lakes POA Water Works, Inc. (“CLPWW”), the parties to the pending acquisition, also responded to several data requests submitted by the Commission.

After the submission of testimony, and negotiations among the parties to the acquisition and the CAU, on August 19, 2022, Limestone, CLPOA, CLPWW and the CAU submitted a Joint

¹ *Order Granting the Petition to Intervene Filed by the Consumer Advocate*, TPUC Docket No. 21-00059 (Aug. 15, 2021).

Stipulation and Settlement Agreement on the Application (the “Settlement Agreement”), resolving all outstanding contested issues related to the Application, to the Commission. The Commission held a hearing on the Application and the Settlement Agreement on October 10, 2022, after which the Commission deferred its deliberations. During a regularly scheduled Commission Conference on November 7, 2022, the presiding panel deliberated and announced its findings and conclusions, which are memorialized in the *Order*.

In the *Order*, the Commission approved the Settlement Agreement, and thus approved the acquisition of the water system owned and operated by CLPOA and CLPWW (the “System”) by Limestone, and granted Limestone a Certificate of Public Convenience and Necessity (“CCN”) to own and operate the System and to serve the customers currently served by CLPOA and CLPWW.² Further, the Commission conditioned its approval of the Settlement Agreement and its granting of the CCN upon CLPOA and CLPWW submitting the following to the Commission:

- (a) A sworn statement from an authorized representative stating that neither entity will access or collect the water availability fee after transfer of ownership of the water system;
- (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 is the only entity authorized to assess any fees or charges relating to water service; and
- (c) A list of water customers and lot owners who are currently assessed the annual water availability fee.³

² *Order* at 9-13.

³ *Id.* at 10-13.

II.

STATEMENT OF THE GROUNDS UPON WHICH RELIEF IS REQUESTED

Pursuant to Commission Rule 1220-01-02-.20(1), Petitioner's statement of the grounds upon which relief is requested are as follows:

- (1) CLPOA and CLPWW are not regulated utilities⁴;
- (2) The Water Availability Fee is a contractual agreement between private parties⁵;
- (3) The public interest, including promoting the health, safety and welfare of water customers served by the System, necessitates the sale and transfer of the System to Limestone;
- (4) Abandonment of the pending sale and transfer of the System does not serve the public interest; and,
- (5) The Commission should rescind or sever the contingencies set forth in the *Order*.

Petitioner's statement of the grounds upon which relief is requested are outlined with more specificity and detail below.

Also pursuant to Commission Rule 1220-01-02-.20, Petitioner seeks to present what may or may not be characterized by the Commission as "new evidence." In an abundance of caution, and to comply with Commission rules, Petitioner has assumed that the afore-referenced information constitutes proposed new evidence, as opposed to a restatement or affirmation of evidence already contained in the record.

⁴ See *Limestone's Responses to CA's March 18, 2022, Letter*, Response to No. 1, TPUC Docket No. 21-00059 (April 4, 2022) ("Due to Candlewood Lakes' currently being unregulated, there are no tariffs or rate schedules in effect.").

⁵ *Limestone Response to CA's First Set of Discovery Requests*, Response to CA DR 1-14(a), TPUC Docket No. 21-00059 (June 17, 2022) ("Limestone does not believe that the water availability fee is subject to the authority of the Commission.").

The reason this proposed new evidence was not introduced in the original proceedings is because the original proceedings were based upon the requirements of Tennessee law, primarily Tenn. Code Ann. § 65-4-201.⁶ As outlined in the *Order*, § 65-4-201 requires the Commission to consider the financial, technical and managerial capabilities of the applicant. The proposed new evidence primarily relates to CLPOA and CLPWW's lack of financial resources to continue to maintain and operate the System in a safe and reliable manner that serves the public interest, as well as CLPOA's conclusion that removing the Water Availability Fee is not feasible. Therefore, the information set forth in the attached Affidavit of J. David Kennamore is not evidence that must have been submitted in the original proceedings necessary for the Commission to act upon the Application. In fact, this proposition is borne out by the *Order*, which confirms that the Commission had sufficient evidence in the record pursuant to § 65-4-201 to approve the Settlement Agreement and grant Limestone a CCN. Hence, Limestone respectfully requests the Commission to allow the Affidavit of J. David Kennamore in support of its Petition for Reconsideration.

III.

RELEVANT BACKGROUND

A. The Agreement for Sale of Utility System

As set forth in the Application, there are three (3) parties to the acquisition transaction, namely Limestone, CLPOA and CLPWW. Limestone is a Tennessee limited liability company that currently provides services to approximately 400 water customers and over 350 wastewater customers in Tennessee. Limestone is a Tennessee public utility regulated by the Commission. As set forth in the Application and supporting documentation, CLPOA and CLPWW are Tennessee public benefit corporations.⁷ CLPOA and CLPWW (jointly the "Seller") own and

⁶ See *Order* at 8.

⁷ See, e.g., *Agreement for Sale of Utility System*, TPUC Docket No. 21-00059 (Nov. 16, 2021).

operate the System. The record is clear that neither CLPOA nor CLPWW have previously been regulated by the Commission due to the exemptions established in Tenn. Code Ann. § 65-4-101 *et. seq.* CLPOA and CLPWW and are not public utilities under Tennessee law and are thus not subject to the Commission’s jurisdiction.⁸

Paragraph 9 of the Agreement for Sale of Utility System provides that if the parties to the agreement are unable to obtain the required regulatory approval or authorization to complete the transaction, then Limestone may terminate the agreement at its sole and absolute discretion.

B. The Water Availability Fee

Paragraph 10 of the Restrictive Covenants and Reservations of Candlewood Lakes Subdivision – Hardeman County, Tennessee (the “Candlewood Restrictive Covenants”) provides, in part, as follows:

“the GRANTEE will pay to the GRANTOR or its successors or assigns the sum of forty-eight dollars (\$48.00) per year, payable in advance, for each year during which water utility service is available to the said lot(s) on application made and payment of the connection fee as hereunder provided, whether or not GRANTEE has made a connection to said mains or uses such water utility service. This charge shall be known as the ‘water availability fee[.]’”

This is the Water Availability Fee referred to in the Commission’s *Order*. Moreover, in this same paragraph 10, the Candlewood Restrictive Covenants further provide:

“After the installation of such connection, the GRANTEE will no longer pay the water availability fee to GRANTOR[.]”

The Water Availability Fee is currently \$52.20 per year.⁹ As set forth in the Candlewood Restrictive Covenants, the primary purpose of the Water Availability Fee, as a

⁸ At the hearing on the Application, Limestone’s witness, Mr. Josiah Cox, noted that CLPOA and CLPWW are not regulated by the Commission. *See Hearing Transcript* at 9, L 5-6, Application of Limestone Water Utility Operating Company, LLC for Authority to Purchase Title to the Assets, Property, and Real Estate of a Water System, Candlewood Lakes, and for a Certificate of Public Convenience and Necessity, TPUC Docket No. 21-00059 (Oct. 10, 2022) (hereinafter “*Hearing Tr.*”).

⁹ *Hearing Tr.* at 19.

consideration of sale, was to provide for the overall common development of the subdivision, not to provide water services via a direct connection to a water utility provider.

C. Essential System Maintenance and Upgrades Are Required to Ensure the Provision of Safe and Reliable Water

During the hearing on the Application, Mr. Josiah Cox, the witness for Limestone, testified that the Seller lacked the financial resources to appropriately maintain and upgrade the System.¹⁰ Further, Mr. Cox testified that it would be prudent to evaluate the need for an additional well to support the System, as a moratorium, prohibiting additional development (i.e. new construction or modification) until the System is adequately supported, was issued by the Division of Water Resources of the Tennessee Department of Environment and Conservation.¹¹ Mr. Cox also outlined additional immediate corrective action that would be undertaken by Limestone to avoid future violations, including, but not limited to, vegetation control, fencing, protection of power outlets providing System power, regrading around the wellhead to prevent rainwater pooling, cleaning corroded piping within the chlorine room and the installation of a secondary containment device on the disinfection system.¹² In commenting further, Witness Cox noted that:

“From a compliance standpoint, it appears Candlewood has experienced numerous violations over the past few years, some of which remain unresolved. That’s not surprising because the property owners association that currently owns and operates the system is not well-equipped to deal with increasingly stringent health, safety and environmental regulations.”¹³

As reflected in the record, the Seller has not made any capital investment in the System since 2010.¹⁴ During discovery, in CA’s DR 1-3, Limestone was asked to:

¹⁰ *Hearing Tr.* at 9, L 13-16.

¹¹ *Id.* at 10, L 7-10.

¹² *Id.* at 10, L 11-18.

¹³ *Id.* at 10-11.

¹⁴ *Candlewood Lakes POA Response to the Consumer Advocate’s First Set of Discovery Requests*, p. 4, TPUC Docket No. 21-00059 (June 17, 2022) (Response to CA DR 1- 8).

Provide a detailed cost estimate of the anticipated capital expenditures necessary to address the Tennessee Department of Environment and Conservation Director Order No. DWS17-0052 along with other anticipated capital expenditures, separated by project, to be incurred from 1/1/23 through 12/31/25.

Limestone responded to the above request on June 17, 2022 by producing a July 2021 Engineering Report estimating \$402,000.¹⁵

IV.

DISCUSSION AND ARGUMENTS

A. CLPOA and CLPWW are not subject to regulation as public utilities

While Limestone is a public utility regulated by the Commission, neither CLPOA nor CLPWW are regulated by the Commission due to the exemptions established in Tenn. Code Ann. § 65-4-101 *et. seq.*¹⁶ It is axiomatic that the Commission has authority with respect to the proposed transaction, but this authority is tied to its regulation of Limestone pursuant to §65-4-201.¹⁷ Still, the relevance and application of §65-4-201 to the proposed transaction does not change CLPOA and CLPWW's status from non-regulated to regulated or broaden the Commission's jurisdiction.¹⁸

¹⁵ See also *Pre-filed Direct Testimony of Limestone Witness Josiah Cox*, TPUC Docket No. 21-00059 (May 5, 2021) ("If the Commission grants Limestone the authority it seeks in the Application, Limestone and CSWR are willing and able to invest capital necessary to bring the Candlewood Lakes system up to standard and into compliance with applicable law.").

¹⁶ See *supra* note 8. See also *Pre-filed Direct Testimony CA Witness of Alex Bradley*, p. 5, L 14-15, TPUC Docket No. 21-00059 (July 8, 2022) ("I believe the age and current unregulated status of the system requires a different approach."); and see *supra* note ("Due to Candlewood Lakes' currently being unregulated, there are no tariffs or rate schedules in effect.").

¹⁷ See *Order* at 7 ("The Tennessee Supreme Court has interpreted the supervisory and regulatory powers of the Commission as practically plenary authority over the utilities within its jurisdiction.") (citation omitted).

¹⁸ Although the Tennessee Supreme Court has long-declared that the Commission has "practically plenary authority over the utilities within its jurisdiction[.]" the phrase "*over the utilities within its jurisdiction*" delineates and recognizes statutory jurisdictional limitations established by the Tennessee General Assembly. See *BellSouth Adver. & Publ'g Corp. v. Tenn. Reg. Auth.*, 79 S.W.3d 506, 512-513 (Tenn. 2002) (emphasis added). See also, e.g., *Citizens for a Better Johnson City v. City Johnson City, Tennessee*, 2001 WL 766997, at *4 (Tenn. Ct. App. July 10, 2001) ("Courts are not 'super' legislatures."); *Tennessee-Carolina Transp., Inc. v. Pentecost*, 206 Tenn. 551, 556, 334 S.W.2d 950, 953 (Tenn.1960) ("The powers of [an administrative agency] must be found in the statutes. If they are not there, they are non-existent."); *General Portland, Inc. v. Chattanooga-Hamilton County Air Pollution Control Bd.*, 560 S.W.2d 910, 913 (Tenn.Ct.App.1976) ("Administrative agencies have only such power as is granted them by statute, and any action which is not authorized by the statutes is a nullity."); *Coleman v. State*, 341 S.W.3d 221, 241 (Tenn. 2011) (Courts "must be circumspect about adding words to a statute that the General Assembly did not place

For instance, if Limestone failed to meet the requirements of §65-4-201(c)(1)(B) – a demonstration of sufficient managerial, financial, and technical abilities - and therefore the Commission did not approve the Settlement Agreement and did not grant Limestone a CCN to own, operate and manage the System, CLPOA and CLPWW would continue to own, operate and manage the System outside of regulation by the Commission. Similar to its treatment of utility districts, the Tennessee General Assembly has expressly defined “public utility” in state law such that CLPOA and CLPWW are excluded from the Commission’s jurisdiction.

Therefore, the fees and charges of CLPOA and CLPWW are not subject to regulation by the Commission. If the Water Availability Fee was passing to Limestone under the proposed acquisition, and it is not, then the Water Availability Fee would be subject to the Commission’s jurisdiction. As the Water Availability Fee is not a part of the acquisition and will not be charged by Limestone, this fee, imposed by unregulated CLPOA, is not subject to the Commission’s jurisdiction.¹⁹

B. The Water Availability Fee is a contractual agreement between private parties

The Water Availability Fee, as noted above, is established in the Candlewood Restrictive Covenants. This fee was established by the real estate developer.²⁰ The Candlewood Restrictive Covenants are a contractual agreement between the real estate developer and the property owners.²¹ A contractual agreement between private parties cannot serve as the basis of the

there.”); and *Seagram Distillers Co. v. Jones*, 548 S.W.2d 667, 671 (Tenn. Ct. App. 1976) (“An administrative agency cannot enlarge its own jurisdiction[.]”).

¹⁹ See *Limestone Response to CA’s First Set of Discovery Requests*, Response to CA DR 1-14, TPUC Docket No. 21-00059.

²⁰ *Id.*

²¹ *Id.* (“[The Water Availability Fee] is a contractual charge between the developer and a property owner.”). See also *Candlewood Lakes POA Response to CA’s Informal Discovery Requests*, Response to CA DR No. 1, TPUC Docket No. 21-00059 (July 8, 2022).

Commission's jurisdiction.²² It is well-settled that neither an agreement of parties nor their consent can confer jurisdiction upon an administrative agency.²³

It is true that paragraph 10 of the Candlewood Restrictive Covenants contains language suggesting that after the property owner installs a water service connection, the Water Availability Fee established by the real estate developer will no longer be charged, but thereafter the applicable water service fee would be "subject to the jurisdiction of the Public Utilities Commission of Tennessee." Notwithstanding this language, and as evidenced above, Tennessee law simply does not permit such or similar language between private parties to, in and of itself, unilaterally grant jurisdiction to the Commission to review and regulate provisions of Candlewood Restrictive Covenants, including the Water Availability Fee.²⁴

²² See, e.g., *Seagram Distillers Co. v. Jones*, 548 S.W.2d 667, 671 (Tenn. Ct. App. 1976) ("An administrative agency cannot enlarge its own jurisdiction, nor can jurisdiction be conferred upon the agency by parties before it. Accordingly, it is held that deviations from any agency's statutorily established sphere of action cannot be upheld because based upon agreement, contract, or consent of the parties, nor can they be made effective by waiver or estoppel.").

²³ *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 734 (Tenn. Ct. App. 1989) (citing *Shelby County v. City of Memphis*, 211 Tenn. 410, 413, 365 S.W.2d 291, 292 (1963); and *Seagram Distillers Co. v. Jones*, 548 S.W.2d 667, 671 (Tenn.Ct.App.1976)) (Bureaucratic shuffling of public contractor's claim could not confer subject matter jurisdiction over claim upon Claims Commission because "only the Tennessee Constitution or the Legislature can confer subject matter jurisdiction.").

²⁴ As the attached Affidavit of Mr. Kennamore attests, continuing to describe this charge as a "Water Availability Fee" may be something of a misnomer. Nonetheless, focusing more on what the fee is used for and less on how it is described may appropriately resolves the misnomer. See, c.f., *Brotherhood of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528-529 (1947) (citing *United States v. Fisher*, 2 Cranch 358, 386, 2 L.Ed. 304; *Cornell v. Coyne*, 192 U.S. 418, 430, 24 S.Ct. 383, 385, 386, 48 L.Ed. 504; *Strathearn S.S. Co. v. Dillon*, 252 U.S. 348, 354, 40 S.Ct. 350, 351, 64 L.Ed. 607) (Headings and titles are not meant to take the place of the detailed provisions of the text. Nor are they necessarily designed to be a reference guide or a synopsis. Where the text is complicated and prolific, headings and titles can do no more than indicate the provisions in a most general manner; to attempt to refer to each specific provision would often be ungainly as well as useless. As a result, matters in the text which deviate from those falling within the general pattern are frequently unreflected in the headings and titles. Factors of this type have led to the wise rule that the title of a statute and the heading of a section cannot limit the plain meaning of the text.). See also, c.f., *United States v. Phillips*, 9 F.4th 382, 383-384 (6th Cir. 2021) (citing *Brotherhood of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528-529 (1947)) (For interpretative purposes, headings and titles are of use only when they shed light on some ambiguous word or phrase. They are only tools available for the resolution of a doubt, and they cannot undo or limit that which the text makes plain.).

Tennessee, through its statutes and courts, adopts a similar approach. Pursuant to Tenn. Code Ann. § 1-3-109, headings to code sections "shall not be construed as part of the law." In furtherance of that rule, the Tennessee Supreme Court has held that courts must only consider the statutory text in determining whether an ambiguity exists. See *Nye v. Bayer Cropscience, Inc.*, 347 S.W.3d 686, 694 (Tenn.2011). Analogously, the description of the charge, here Water Availability Fee, should not be solely dispositive. Rather, that the charge is not connected to the provision of water

Tennessee law, however, does not leave the real estate developer or property owners without remedies as to their private agreements. These private parties may by their own accord agree to modify or amend their respective agreements or may, if deemed necessary by one, the other or both, seek recourse in the courts.²⁵

C. The public interest, including promoting the health, safety and welfare of water customers served by the System, necessitates the sale and transfer of the System to Limestone

As evidenced by the record cited above, the System has faced several compliance issues, some of which remain unresolved. The record also demonstrates that the System has not benefited from capital investments in quite some time. Compliance shortcomings, coupled with the lack of infrastructure investments and necessary maintenance and upgrades, can subject unsuspecting customers served by the System to unsafe and unreliable water, or no water at all, which could present serious health risks.²⁶ The pending acquisition provides CLPOA, CLPWW, the Commission and Limestone the opportunity to place the System in circumstances that will result in the resolution of outstanding compliance issues, lead to appropriate and necessary capital investments, including the drilling, installation and maintenance of a second well, and culminate in excellent operational and management oversight. In capitalizing on this opportunity, post-acquisition, the combination of compliance, investments and sound oversight will work together

and is not used for the provision of water via the System should be taken into account. In fact, pursuant to the Candlewood Restrictive Covenants, after a lot owner is connected to the System, the Water Availability Fee is no longer assessed.

²⁵ Post-acquisition of the System by Limestone, any non-payment of the Water Availability Fee will not impact the provision of water by Limestone. *See Limestone's Responses to Commission Staff's Data Request*, Response to DA No. 9, TPUC Docket No. 21-00059 (Sept. 28, 2022).

²⁶ *See Hearing Tr.* at 10-11 (The compliance issues are not surprising “because the property owners association that currently owns and operates the system is not in the water utility business and therefore is not well-equipped to deal with increasingly stringent health, safety and environmental regulations.”) (Testimony of Limestone Witness Josiah Cox).

to substantially lessen, if not all but eliminate, the potential serious health risk presently confronting customers served by the System.

To highlight one example of the System's shortcomings that presents potential risk to customers, the Division of Water Resources of the Tennessee Department of Environment and Conservation's Rule 0400-45-01-.17(13) requires all water systems having similar characteristics to the System to have duplicate water wells. Among other consequences, failure to meet this requirement could result in a serious water supply shortage for customers or a total loss of water. Although the Division of Water Resources has raised this finding, and noted the risk to customers, for a number of years, including in enforcement actions, it has gone unaddressed. The Seller has not stalled or foregone the need for a duplicate well because it is simply ignoring the Division. To the contrary, and as demonstrated in the record, the Seller simply does not have the financial resources and is unable to secure financing to drill and establish a back-up well.²⁷ The Seller was not only unable to pay for this necessary second well installation, but it does not have sufficient resources to pay for any upgrades to its existing equipment.²⁸

CLPOA, CLPWW, the Commission and Limestone are all well-aware of the compliance issues related to the System and of the lack of financial resources available to the Seller.²⁹ The customers served by the System are well-aware of the foregoing as well.³⁰ Aware of both the

²⁷ *Candlewood Lakes POA's Response to CA's First Set of Supplemental Discovery Requests*, TPUC Docket No. 21-00059 (June 21, 2022) ("We have extinguished all available avenues of funding available to cover the costs, which is estimated at \$180,000 - \$220,000 for the backup well alone.") (*quoting* Sept. 9, 2021 Notice of Special Called Member Meeting.).

²⁸ *Candlewood Lakes POA's Response to CA's First Set of Supplemental Discovery Requests*, TPUC Docket No. 21-00059 (June 21, 2022) ("Property owners will then continue to bear the costs of any and all future system repairs and upgrades, including, but not limited to, metering, line repairs and replacements, tank rehab and painting, pump repairs and replacements, etc.") (*quoting* Sept. 9, 2021 Notice of Special Called Member Meeting.).

²⁹ *See Order* at 9 ("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.").

³⁰ *See supra* notes 27 and 28. *See also Candlewood Lakes POA's Response to CA's First Set of Supplemental Discovery Requests*, TPUC Docket No. 21-00059 (June 21, 2022) (CLPOA Board explaining why it is in the best

compliance issues under the Seller's operational and managerial oversight and of the lack of financial resources available to the Seller, re-affirming the contingencies set forth in the *Order* that at this stage will leave Limestone no option but to abandon the pending acquisition, pursuant to Paragraph 9 of the Agreement for Sale of Utility System, and will not serve the public interest. Doing so, re-affirming the contingencies, would have immediate and dire consequences. It would render Limestone without a path to perform under the Agreement for Sale of Utility System and close the transaction and unnecessarily subject the customers served by the System to potential known risks and not promote and support the provision of safe and reliable water.

V.

CONCLUSION

Notwithstanding the above, Limestone very much respects the Commission's expressed concerns related to the continuation of the Water Availability Fee charged by CLPOA post-acquisition. We are not suggesting here that concerns, if any, raised by System water customers with respect to the Water Availability Fee should be ignored. Rather, any such concerns expressed by impacted customers should be addressed and resolved among CLPOA, the water customers, and if necessary, the courts.

Practically, there is no dispute that the CLPOA and CLPWW have the authority to conduct business and operate pursuant to their respective internal rules. As evidenced by the Affidavit of David Kennamore, the Water Availability Fee is used for operations unassociated with providing water services. From a practical standpoint, we are risking not upgrading the System and bringing

interest of the community to sell the System to Limestone (Sept. 9, 2021 Notice of Special Called Member Meeting and October 14, 2021 Important Member Notice Meeting.).

it into state compliance to ensure the provision of safe and reliable water due to an inartful misnomer in a decades-old private agreement.

For the foregoing reasons, for just cause shown, and to serve the public interest, including ensuring the provision of safe and reliable water now and going forward to the water customers currently served by the System, Limestone Water Utility Operating Company, LLC respectfully requests the Commission to modify its *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* and rescind the contingency related to the Water Availability Fee from its approval of the Settlement Agreement and Transfer of Systems and granting of the Certificate of Convenience and Necessity. In the alternative, Limestone respectfully requests that the Commission modify the *Order*, sever the contingency related to the Water Availability Fee from its approval of the Settlement Agreement and Transfer of Systems and granting of the Certificate of Convenience and Necessity and either permit customers subject to the Water Availability Fee to resolve any issues related to the assessment of said fee with CLPOA or for the Commission to pursue a resolution of the Water Availability Fee with CLPOA

in a new and separate Commission docket. Otherwise, Limestone will be compelled, against its wishes, to abandon the acquisition.

Respectfully submitted,

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COUNSEL FOR LIMESTONE WATER UTILITY
OPERATING COMPANY, LLC

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

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

AFFIDAVIT OF J. DAVID KENNAMORE

STATE OF TENNESSEE

COUNTY OF Harden

I, J. David Kennamore, having been duly sworn in accordance with the law, state as follows.

- I, J. David Kennamore, do hereby attest to being the President of Candlewood Lakes Property Owners Association, Inc. ("CLPOA") and the President of Candlewood Lakes POA Water Works, Inc. ("CLPWW"). I am authorized to make this affidavit on behalf of CLPOA and CLPWW.
- As I testified at the October 10, 2022 hearing in the above-captioned matter, the Water Availability Fee is not based on the provision of water from CLPWW or any other water utility, even though it is called the Water Availability Fee. The Water Availability Fees are placed in the CLPOA's general account for general expenses of the CLPOA. The general expenses for the benefit of the members of the CLPOA include maintenance of common area,, grass cutting;

graveling roads, maintaining levees; maintenance/operation of office, clubhouse, and pool; maintenance/operation of community gates; general liability insurance, directors/officers insurance; property taxes; and other POA expenses incurred.

3. As I testified at the hearing on October 10, 2022, I believe that removing the Water Availability Fee is not practically possible. A change to the Restrictive Covenants and Reservations of the Candlewood Lakes Subdivision ("Candlewood Restrictive Covenants") requires either a written agreement of two-thirds of the lot owners or by action of the CLPOA supported by at least a majority of the membership. I have been President of the CLPOA for about ten (10) years. Based upon my experience and familiarity with the CLPOA and its membership, I firmly believe, without any doubt whatsoever, that it would be futile to attempt to change the Candlewood Restrictive Covenants to remove or rename the Water Availability Fee. We would never come close to obtaining either the required two-thirds of the lot owners in writing or a majority of the members in a duly called meeting. It's just how the membership has always operated. Further, CLPOA members are all over the country, including in Alaska and Hawaii. It's just not practicably doable. It is not going to happen, and would be futile, and maybe even de-stabilizing, to even try.

4. As set forth in the record in TPUC Docket No. 21-00059, the CLPOA and CLPWW do not have the financial resources to satisfy the applicable state water system compliance requirements and the necessary repairs, maintenance and upgrades. Presently, the CLPOA has a balance of less than Two Thousand Dollars (\$2,000.00) in its financial accounts, and CLPWW has a balance of less than Eighteen Thousand Dollars (\$18,000.00) in its financial accounts.

5. As set forth in the record in TPUC Docket No. 21-00059, due to CLPOA and CLPWW's inability to satisfy the applicable state water compliance requirements and the necessary repairs,

maintenance and upgrades, failure to promptly sell the water system may subject those served by the water system to potential health and safety risks.

FURTHER AFFLIANT SAYETH NOT.

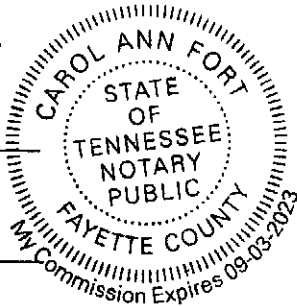
J. David Kennamore
J. David Kennamore, President of Candlewood
Lakes Property Owners Association, Inc., and
President of Candlewood Lakes POA Water Works,
Inc.

STATE OF TENNESSEE
COUNTY OF Fayette

Sworn to and subscribed before me this
20th day of January, 2023.

Carol Ann Fort
Notary Public

My Commission Expires: 9/3/23



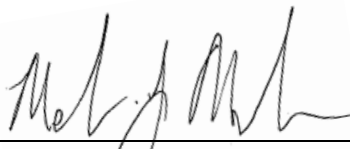
CERTIFICATE OF SERVICE

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

James P. Urban, Esq.
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This the 20th day of January 2023.



Melvin J. Malone