

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, 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 6, 2023, for consideration of the *Application of Limestone Water Utility Operating Company, LLC for: (1) Authority to Expand Its Certificate of Convenience and Necessity to Include the Laurel Creek Subdivision and (2) Motion to Waive Commission Rule 1220-04-13-.17(c)(3)* (“*Petition*”) filed by Limestone Water Utility Operating Company, LLC (“Limestone,” “Company,” or “Petitioner”) on June 28, 2022. In its *Petition*, Limestone requests Commission approval of an amendment to the Company’s Certificate of Public Convenience and Necessity (“CCN”) in order to provide wastewater service to a residential subdivision located in Sevier County, Tennessee. In addition, the *Petition* requests a waiver of the Commission Rule requiring copies of all contracts related to any pending merger or acquisition of the petitioner or a corporate parent or affiliate.

BACKGROUND AND PETITION

Limestone is a limited liability company organized under the laws of the State of Tennessee with a principal place of business located at 1630 Des Peres Rd., Suite 140, Des Peres, Missouri. The Company holds a CCN to provide water and wastewater services within designated service areas in the State of Tennessee, serving approximately 455 water customers and 1,558 wastewater customers.¹ In its *Petition*, Limestone seeks to expand its service area to provide wastewater services to a subdivision known as Laurel Creek (“Laurel Creek”) in Sevier County.²

In support of its *Petition*, the Company filed maps showing the location of Laurel Creek, documents demonstrating the corporate structure and management experience of the Company, and information necessary to satisfy minimum filing requirements set forth in TPUC Rule 1220-04-13-.17.³ Upon completion of construction of the system, it will serve eleven (11) planned lots on 9.8 acres with a treatment capacity of 5,000 GPD.⁴

The Company also filed the testimony of Todd Thomas, Senior Vice President of Central States Water Resources, Inc. (“CSWR”), the holding company operating Limestone and other affiliated utility operating companies that operate utilities in twenty (20) different states.⁵ Mr. Thomas testifies that Limestone received its initial CCN in 2020, and has been granted other CCNs to acquire and operate water and wastewater utilities formerly owned and operated by Aqua Utilities Company and Cartwright Creek.⁶ Mr. Thomas states that Laurel Creek is located in Sevier County, Tennessee, and is planned for eleven (11) residential units.⁷ Mr. Thomas describes the system to be constructed as a decentralized wastewater system utilizing watertight, precast

¹ *Petition*, p. 3 (June 28, 2022).

² *Id.* at 4.

³ *Id.* at Appx. 2.

⁴ *Id.* at 4.

⁵ *Id.* at Appx. 1, Todd Thomas, Pre-Filed Direct Testimony, pp.1-2.

⁶ *Id.* at Appx 1, pp. 4-5.

⁷ *Id.* at Appx. 1, p. 10.

concrete septic tanks for each home with STEP system pumps and controls and PVC pipe collection force mains. The secondary fixed film treatment system will be located on the west end of the parcel consisting of an Orenco Advantex packed bed reactor sized at 5,000 gallons per day treatment capacity. The treated effluent will then be pump dispersed into the shallow soil horizon drip field system on gradual slopes on the west side of the parcel.⁸ Mr. Thomas also testifies that Limestone will abide by the orders and rules of the Commission in the operation of the wastewater facility and that granting the CCN is in the public interest.⁹

In the *Petition*, Limestone requests a waiver of Commission Rule 1220-04-13-.017(2)(c)(3) which requires copies of contracts related to pending acquisitions or mergers. In support of the motion, Limestone states that copies of required agreements can be found in TPUC “Docket Nos. 21-00059 (Candlewood Lakes Property Owners Association, Inc.), 21-0060 (Chapel Woods Homeowners’ Association), and 21-00055 (Shiloh Falls Utilities, Inc.).”¹⁰ In addition, Limestone states that it is part of a CSWR affiliate group providing water and/or wastewater services in ten (10) states. CSWR also has a pending application in South Carolina, which upon approval, would increase the number of states served by CSWR affiliates to eleven (11). CSWR affiliates currently have forty-five (45) acquisition applications pending in nine (9) states and another thirty-six (36) additional transactions under contract that have not been submitted for regulatory approval. Limestone asserts that providing contract documents for each of these documents is unduly burdensome and would provide no relevant information to the issues of this case.¹¹

No party sought intervention in this matter.

⁸ *Id.* at Appx. 1, pp. 10-11.

⁹ *Id.* at Appx 1, pp. 11-13.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 5-8.

THE HEARING

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on November 6, 2023, as noticed by the Commission on October 27, 2023. Participating in the Hearing were:

Limestone Water Utility Operating Company – Melvin Malone, Esq., and Katherine Barnes, Esq., Butler Snow, The Pinnacle at Symphony Place, 150 3rd Avenue South, Suite 1600, Nashville, Tennessee; Todd Thomas, Senior Vice President of 1630 Des Peres Rd., Suite 140, Des Peres, Missouri.

During the Hearing, Todd Thomas, Senior Vice President of CSWR, the parent company of Limestone, presented testimony on behalf of the Company and adopted and summarized his Pre-Filed Direct Testimony. Mr. Thomas was subject to questions from the voting panel of Commissioners and Commission Staff. Members of the public were given an opportunity to offer comments, at which time, no comments were submitted.

STANDARD FOR COMMISSION APPROVAL

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 public utility, or for substitute or additional facilities in or to territory already served by it.¹²

Additionally, in order to obtain a CCN to provide wastewater service, TPUC Rule 1220-04-13-.17 (1) provides:

Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (“CCN”) in accordance with Tenn. Code Ann. §§ 65-4-201, et seq., shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann. § 65-4-201, and these rules.¹³

The rule further establishes minimum information filing guidelines for applications for new or expanded CCNs.¹⁴ Commission Rule 1220-04-13-.17 requires applications for a new or expanded CCN to include information providing evidence of sufficient managerial ability. The rule requires the filing of, “[c]opies of all contracts related to any pending merger or acquisition of the applicant, corporate parent or affiliate.”¹⁵ Commission Rule 1220-01-01-.05 allows the Commission to waive the requirements or provisions of any rule in a proceeding “for good cause.”¹⁶

FINDINGS AND CONCLUSIONS

In its *Petition*, Limestone requested a waiver of Commission Rule requirements that copies of all contracts for mergers or acquisitions of the Company and its parent or affiliates be filed as proof of managerial ability. The Commission and its Staff have reviewed contracts submitted in Limestone’s previous acquisition dockets before this Commission. The voting panel found that providing documentation of contracts for each of the forty-five (45) acquisition matters pending in nine (9)

¹² Tenn. Code Ann. § 65-4-109 (2023).

¹³ Tenn. Comp. R. & Regs. 1220-04-13-.17.

¹⁴ *Id.*

¹⁵ Tenn. Comp. R. & Regs. 1220-04-13-.17(c)(3).

¹⁶ Tenn. Comp. R. & Regs. 1220-01-01-.5(1).

different states would be overly burdensome. Further, the panel found that contracts concerning acquisitions by affiliated companies are not directly relevant to this docket, as contracts concerning agreements with developers and third-party agreements concerning the provision of services to Limestone for the operation of the Laurel Creek wastewater system are the primary issue before the Commission relative to Limestone's managerial abilities. Therefore, the voting panel unanimously voted to approve Limestone's motion for waiver of Commission Rule 1220-04-13-.17(c)(3) for sufficient good cause shown.

Limestone also requested in its *Petition* that the Commission approve an amendment to Limestone's CCN to include the Laurel Creek Subdivision in Sevier County, Tennessee, asserting that the Company possesses the managerial, technical, and financial capability to provide wastewater service to the subdivision. Based on a review and consideration of the pleadings, the Pre-Filed Testimony, and the entire administrative record, the voting panel made the following findings and conclusions:

The panel found that the Laurel Creek Subdivision requires wastewater service to move forward with the proposed development and that the proposed subdivision is not currently connected to a wastewater treatment facility operated by any other municipal utility, utility district, or other private wastewater utility. No other utility is seeking to serve the parcel. Therefore, the panel voted unanimously that there exists a public need to provide wastewater service to the Laurel Creek Subdivision as required by Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1).

The panel found that Limestone has demonstrated that it possesses the requisite managerial, financial, and technical capabilities to provide wastewater service to the Laurel Creek Subdivision. In addition, Limestone is in good standing with the Commission and complies with all Commission rules. Based upon these findings, the panel voted unanimously to grant the Company's *Petition*, contingent upon the filing of the following documents:

1. The deed and/or easements for all the land and ownership rights to the wastewater system within fifteen (15) days of being issued and before the first customer is connected to the wastewater system, as set forth in contracts submitted to the Commission by Limestone;

2. A final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation ("TDEC") within fifteen (15) days of issuance;

3. A copy of the as-built plans with signed certification by Limestone indicating the wastewater system has been inspected and is approved to begin operation;

4. A copy of the signed plat, once the area of development is approved by the City and/or County government within fifteen (15) days of being issued and before the first customer is connected to the wastewater system;

The panel also directed the Company to file a report in this docket demonstrating its compliance with the filing requirements prior to providing wastewater service to the Laurel Creek Subdivision. In the event the compliance report is not filed, the panel directed Limestone to file within six (6) months from the date of this order, and every three (3) months thereafter until the installation is complete, a report on the status of providing wastewater service to the Laurel Creek Subdivision, as well as the status of its compliance with each of the aforementioned filing requirements.

IT IS THEREFORE ORDERED THAT:

1. The *Application of Limestone Water Utility Operating Company, LLC for: (1) Authority to Expand Its Certificate of Convenience and Necessity to Include the Laurel Creek Subdivision and (2) Motion to Waive Commission Rule 1220-04-13-.17(c)(3)* filed by Limestone Water Utility Operating Company, LLC is granted regarding the Motion to Waive Commission Rule 1220-04-13-.17(c)(3).

2. The *Application of Limestone Water Utility Operating Company, LLC for: (1) Authority to Expand Its Certificate of Convenience and Necessity to Include the Laurel Creek Subdivision and (2) Motion to Waive Commission Rule 1220-04-13-.17(c)(3)* filed by Limestone Water Utility Operating Company, LLC is approved, with regard to the expansion of its Certificate of Convenience and Necessity, contingent upon Limestone Water Utility Operating Company, LLC filing the following in this docket:

a. The deed and/or easements for all the land and ownership rights to the wastewater system within fifteen (15) days of being issued and before the first customer is connected to the wastewater system as set forth in contracts submitted to the Commission by Limestone Water Utility Operating Company, LLC;

b. A final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation (“TDEC”) within fifteen (15) days of issuance;

c. A copy of the as-built plans with signed certification by Limestone Water Utility Operating Company, LLC indicating the wastewater system has been inspected and is approved to begin operation;

d. A copy of the signed plat, once the area of development is approved by the City and/or County government within fifteen (15) days of being issued and before the first customer is connected to the wastewater system;

3. Limestone Water Utility Operating Company, LLC is directed to file a report in this docket demonstrating its compliance with the filing of the above referenced documents. If the required documentation is not filed within six (6) months of this order, then Limestone Water Utility Operating Company, LLC is directed to file a report on the status of the provision of wastewater service to the Laurel Creek Subdivision as well the status of the filing of required documentation. The compliance

report shall be updated every three (3) months until installation of the wastewater system is complete.

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.

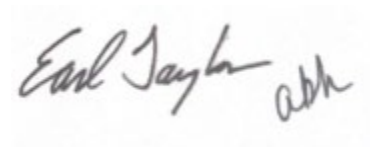
5. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Herbert H. Hilliard,
Vice Chairman David F. Jones,
Commissioner Clay R. Good,
Commissioner Kenneth C. Hill, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" followed by a stylized monogram or initials "abh".

Earl R. Taylor, Executive Director