

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

IN RE:) Electronically Filed in TPUC Docket
) Room on August 7, 2023 at 1:15 p.m.
EXPEDITED JOINT APPLICATION OF)
LIMESTONE WATER UTILITY)
OPERATING COMPANY, LLC, AND)
DSH & ASSOCIATES, LLC, FOR)
APPROVAL OF THE ACQUISITION OF) DOCKET NO. 23-00016
AND TO OPERATE THE)
WASTEWATER SYSTEM OF DSH &)
ASSOCIATES, LLC, AND TO)
TRANSFER OR ISSUE A CERTIFICATE)
OF PUBLIC CONVENIENCE AND)
NECESSITY)

DIRECT TESTIMONY

OF

ALEX BRADLEY

August 7, 2023

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

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

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

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

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

20 **A3.** Yes. I have previously testified in TPUC Docket Nos. 17-00108, 18-00009, 18-00107,
21 19-00010, 19-00034, 19-00042, 19-00043, 19-00057, 19-00062, 20-00028, 20-00049, 20-
22 00086, 21-00006, 21-00055, 21-000059, 21-00060, 21-00107, 22-00005, 22-00032, 23-
23 00007, 23-00008, and 23-00029.

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

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

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

4 **A5.** The purpose of my testimony is to provide recommendations regarding the request of
5 Limestone Water Utility Operating Company, LLC (“Limestone” or “Buyer”) and Central
6 States Water Resources, Inc. (“CSWR”), along with DSH & Associates, LLC (“DSH” or
7 the “Seller”) (collectively, the “Applicants”), to acquire the assets of DSH. My testimony
8 provides the results of my review and a number of recommendations.

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

11 **A6.** I have reviewed the Joint Application along with the respective responses of the Applicants
12 to the Consumer Advocate’s discovery requests.

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

15 **A7.** The Applicants are requesting that the Commission authorize Limestone to purchase the
16 wastewater system currently owned by DSH.

17 **Q8. CAN YOU PROVIDE A SUMMARY OF DSH’S SYSTEM?**

18 **A8.** DSH is currently operating a wastewater system in Campbell County, Tennessee that
19 provides wastewater service to approximately 56 customers within the Lakeside Estates

Community.¹ DSH currently serves a mix of residential and commercial customers, which are predominately large rental units.²

Q9. CAN YOU PROVIDE A SUMMARY OF THE OPERATIONS OF CSWR?

A9. CSWR, an “upstream parent” company of Limestone, operates water and wastewater utilities in Missouri, Arkansas, Kentucky, Tennessee, Texas, and Louisiana.³

Q10. CAN YOU SUMMARIZE YOUR RECOMMENDATIONS FOR THIS PROCEEDING?

A10. I recommend the approval of the proposed transaction subject to the following conditions:

1. The Commission should require Limestone to record on its books a balance of Contribution in Aid of Construction (“CIAC”) equal to the balance of Plant in Service.
2. Limestone and DSH should provide documentation demonstrating the values of the Escrow Accounts at closing, the combined value of which should be no less than \$26,0000.
3. Legal expenses deferred as a regulatory asset and transaction costs should be reduced by half to account for the Seller’s legal expenses. The remaining 50% of legal expenses should not be deferred as an above-the-line regulatory asset and any future recoverability or disallowance should be determined at a future rate proceeding.
4. Limestone should provide documentation demonstrating the values of Plant in Service at closing, excluding any writeup of land costs supported by an appraisal.

¹ See the “DSH 2022 Annual Report,” specifically at “S-3,” found in *DSH & Associates, LLC’s Responses to First Discovery Request of the Consumer Advocate*, TPUC Docket No. 23-00016 (June 21, 2023) (pdf page 128 of 183).

² *Final Order Approving Rate Petition*, p. 2, TRA Docket No. 11-00162 (May 16, 2012).

³ *Limestone Water Utility Operating Company, LLC Response to Second Set of Data Requests*, DR No. 2-1, TPUC Docket No. 21-00053 (Aug. 10, 2021). Limestone identifies CSWR, LLC as an “upstream parent” and “U.S. Water” also as an upstream parent for equity needs. *Id.* In a previous docket, Limestone explained that [REDACTED]

[REDACTED] *Limestone’s Water Utility Operating Company’s Response to the Consumer Advocate’s First Set of Discovery Requests*, DR No. 1-1, TPUC Docket No. 19-00062 (Feb. 14, 2020) (CONFIDENTIAL). Central States [REDACTED] *Limestone’s Water Utility Operating Company’s Response to the Consumer Advocate’s First Set of Discovery Requests*, DR No. 1-4b(ii), TPUC Docket No. 19-00062 (Feb. 14, 2021) (CONFIDENTIAL).

- 1 5. Limestone should be precluded from restating historical account balances
2 post-acquisition and the prospective accounting entries for the acquisition
3 should be submitted to the Commission prior to closing for review as a
4 condition of Commission approval.
- 5 6. The requested Acquisition Premium, in this case, should be set aside in a
6 separate account and its ultimate treatment determined in a future
7 proceeding.
- 8 7. Limestone should maintain separate accounting records for DSH, distinct
9 from its other systems.

10 **I. BOOK BALANCE OF PLANT INCLUDING CONTRIBUTIONS IN AID OF**
11 **CONSTRUCTION**

12 **Q11. WHAT IS YOUR RECOMMENDATION REGARDING THE PLANT BALANCE**
13 **TO BE TRANSFERRED TO LIMESTONE?**

14 **A11.** As discussed below, the acquisition should reflect that the assets to be transferred be offset
15 with an entry to CIAC in the corresponding value.

16 **Q12. CAN YOU ELABORATE ON YOUR CONCERNS REGARDING THE**
17 **PROSPECTIVE ACCOUNTING TREATMENT AND HISTORICAL**
18 **ACCOUNTING RECORDS?**

19 **A12.** Yes. I have concerns regarding the proposed accounting treatment of the assets to be
20 transferred by DSH to Limestone. In Limestone's response to Consumer Advocate's DR
21 No. 1-13, Limestone indicated it intends to book Utility Plant in Service ("UPIS") of
22 approximately \$137,557 in the year following acquisition. Based on the responses to
23 Consumer Advocate's DR Nos. 1-2 and 2-5, all UPIS was either contributed to DSH or
24 funded with the use of Escrow funds. While Limestone has stated that it intends to book
25 an offsetting entry to CIAC, the value of balance of UPIS and the corresponding CIAC is
26 currently unknown. In the Seller's 2022 Annual Report, DSH listed a UPIS balance of
27 \$90,606 while the 2021 Annual Report showed a balance of \$137,557. Additionally,

DSH's response to Consumer Advocate DR No. 1-5 shows approximately \$165,232 in additions since 2017, with approximately \$159,000 of those expenditures incurred within the last 3 years. Finally, the same 2022 Annual Report shows a CIAC balance of \$0 while the 2021 Annual Report showed a balance of \$137,557.

Q13. WHY IS THIS PROBLEMATIC?

A13. Having accurate information to determine the present value of the system is essential information for establishing the plant balances post-acquisition. Without this knowledge, I can only speculate on the appropriate UPIS balance.

Q14. WHAT DOES THIS IMPLY FOR THE RATEPAYERS OF THE SYSTEM?

A14. Without this information, ratepayers could be put in the untenable position of paying for a return of and on of utility assets that were originally paid for by the same ratepayers. The fact that the information made available by the Seller is conflicting should not put ratepayers at risk for double-payment. The burden of demonstrating that plant in service was not funded by ratepayers should fall on the utility.

II. BALANCE OF ESCROW ACCOUNTS

Q15. ARE THERE ANY OTHER CONSIDERATIONS REGARDING THE HISTORICAL ACCOUNTING BALANCES?

A15. Yes. DSH currently has 3 fees contained within its Tariff. Those fees include the following:

- a) Sewer Access fee of \$120 per year;
- b) Tap Fee; and
- c) Escrow Fee of 23% of the total rate.

1 DSH currently has two bank accounts containing the funds collected through the Escrow
2 fee and Tap Fees.⁴ Those accounts are the Lakeside Equipment Escrow account
3 (“Equipment Escrow Account”) and the Lakeside Expansion Escrow account (“Expansion
4 Escrow Account”, collectively “Escrow Accounts”).

5 **Q16. CAN YOU ELABORATE ON THESE FEES?**

6 **A16.** Yes. These Escrow Accounts represent funds that ratepayers have provided as a “means
7 to prepay the costs for non-routine system maintenance to minimize future financial impact
8 of such maintenance on the rate payer and the utility”.⁵ As shown in the DSH’s 2022
9 Annual Report, DSH had a balance of \$10,630 in the Equipment Escrow Account and
10 \$22,764 in the Expansion Escrow Account, for a combined value of \$33,394. However,
11 based on the DSH’s response to Consumer Advocate DR No. 2-7, it intends to use
12 approximately \$7,000 of Escrow funds to replace a pump before the transaction closes.
13 Finally, the Escrow Accounts will continue to accrue funds monthly as the fee is collected
14 so the final balance of the Escrow Accounts will be unknown until the closing date. Given
15 these facts, the combined Escrow Accounts balance should be at least \$26,000 at the time
16 of transfer (\$33,394 – \$7,000 = \$26,394).

17 **Q17. WHAT IS YOUR RECOMMENDATION REGARDING THE BALANCE OF THE**
18 **ESCROW ACCOUNTS?**

19 **A17.** It is my opinion that DSH and Limestone should provide the bank statements of the Escrow
20 Accounts for DSH prior to closing and for Limestone after closing. This will allow the
21 Commission, its Staff, and the Consumer Advocate an opportunity to review the balances

⁴ DSH & Associates, LLC’s Response to Second Set of Discovery Requests of the Consumer Advocate,
DR No. 2-3, TPUC Docket No. 23-00016 (July 12, 2023).

⁵ Final Order Approving Rate Petition, p. 11, TRA Docket No. 11-00162 (May 16, 2012).

1 of the Escrow Accounts to confirm they were accurately transferred to Limestone. Finally,
2 I would recommend that the combined balances of the Escrow Accounts be at least \$26,000
3 at the time of transfer.

4 **III. RECOVERY OF LEGAL EXPENSES RESULTING FROM THE**
5 **TRANSACTION**

6 **Q18. WHAT IS YOUR RECOMMENDATION REGARDING THIS ISSUE?**

7 **A18.** As discussed below, legal expenses deferred as a regulatory asset and transaction costs
8 should be reduced by half to account for the Seller's legal expenses. The recoverability or
9 disallowance of the remaining costs should be determined at a future rate proceeding.

10 **Q19. HOW DID THIS ISSUE ARISE?**

11 **A19.** The issue arose in response to Consumer Advocate's DR No. 1-9, where Limestone
12 indicated that "[t]he legal fees of Butler Snow LLP on behalf of both parties will be
13 separately billed to and paid by Limestone."

14 **Q20. IS THIS THE APPROACH TAKEN IN PRIOR ACQUISITION DOCKETS?**

15 **A20.** Yes. In TPUC Docket No. 21-00053, the regulatory and transaction costs relating to the
16 acquisition of the Cartwright Creek system by Limestone were to be deferred and the
17 appropriate treatment/recovery of these costs were to be determined in Limestone's initial
18 rate case.⁶

19 **Q21. DO YOU AGREE THIS APPROACH IS APPROPRIATE FOR THIS MATTER?**

20 **A21.** I am in agreement with this approach with one caveat. As stated earlier, the legal expenses
21 for both parties are being borne by Limestone; in my opinion, this could lead to the

⁶ *Order Approving Settlement Agreement and Transfer of Systems, and Granting Certificate of Convenience and Necessity*, p. 17, TPUC Docket No. 21-00053 (Jan. 24, 2022).

possibility of rate recovery of legal expenditures that should be borne by the Seller. Legal and transaction costs deferred as a regulatory asset should only include 50% of the legal fees accumulated by the Applicants' collective counsel. In summary, only the Buyer's transaction costs should be deferred. The agreement between the Applicants that the Seller should not bear any transaction costs should not then require the ratepayers to bear the costs truly incurred by the Seller and which should be borne by the departing entity, DSH.

IV. HISTORICAL ACCOUNT BALANCES

Q22. WHAT IS YOUR RECOMMENDATION REGARDING THIS ISSUE?

A22. As discussed below, as a matter of public interest, Limestone should not be permitted to restate the account balances for the DSH system at a later date. Additionally, the prospective accounting entries to record the acquisition should be submitted to the Commission prior to closing.

Q23. HOW DID THIS ISSUE ARISE?

A23. In response to Consumer Advocate's DR No. 1-15, "Limestone commits to recording assets and liabilities at their net book values assuming that the items are to be conveyed per the purchase and sale agreement and that **Limestone is able to obtain sufficient, reliable and complete records.**"⁷ Additionally, in response to Consumer Advocate's DR No. 2-1, Limestone stated that it "continues to have questions about DSH's fixed asset balances and procedures."⁸

Q24. DO YOU AGREE WITH LIMESTONE ON THIS POINT?

⁷ *Limestone Water Utility Operating Company, LLC's Responses to Consumer Advocate's Informal First Set of Discovery Requests*, DR No. 1-15, TPUC Docket No 23-00016 (June 8, 2023) (emphasis added).

⁸ *Limestone Water Utility Operating Company, LLC's Responses to Second Set of Discovery Requests of the Consumer Advocate*, DR No. 2-1, TPUC Docket No 23-00016 (July 12, 2023).

1 **A24.** Yes and no. As stated earlier, the current balance of both UPIS and CIAC is vague;
2 however, uncertainty should not preclude the ability to review the balances recorded by
3 Limestone when the sale is complete.

4 **Q25. CAN YOU ELABORATE ON YOUR DISAGREEMENT?**

5 **A25.** Reserving the right to modify the recorded balances of the system removes the
6 Commission's ability analyze the impact of the proposed transaction. As stated by Mr.
7 David Dittmore in TPUC Docket No. 21-00053:

8 Accounting entries should be submitted to the Commission before closing
9 for review as a condition of the Commission's approval of the transaction.
10 The Commission, its Staff, and the Consumer Advocate should have the
11 opportunity to review Limestone's proposed accounting entries used to
12 record the acquisition.⁹

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

17 **Q26. DO YOU HAVE A RECOMMENDATION REGARDING THIS ISSUE?**

18 **A26.** Yes. The Commission should not permit an acquiring utility to restate the historical
19 accounting records of the selling utility in the future unless such accounting issue was
20 raised within the application and specifically approved by the Commission within the
21 acquisition docket. Additionally, the prospective accounting entries of Limestone should
22 be submitted to the Commission before closing to allow the Commission, its Staff, and the

⁹ *Direct Testimony of David N. Dittmore*, p. 21, TPUC Docket No. 21-00053 (Aug. 30, 2021).

1 Consumer Advocate an opportunity to review the proposed accounting entries for the
2 acquisition.

3 **V. ACQUISITION PREMIUM**

4 **Q27. WHAT IS YOUR RECOMMENDATION REGARDING THIS ISSUE?**

5 **A27.** As discussed below, any potential acquisition premium should be recorded to a separate
6 account and its treatment, for ratemaking purposes, be determined in a future proceeding.

7 **Q28. WHAT IS AN ACQUISITION PREMIUM?**

8 **A28.** As stated by Mr. Dittmore in TPUC Docket No. 21-00053, “[a]n Acquisition Premium
9 represents the acquisition costs of utility assets in excess of their net book value.”¹⁰

10 **Q29. IS THE COMPANY REQUESTING AN ACQUISITION PREMIUM IN THIS**
11 **CASE?**

12 **A29.** No. However, as stated earlier in my testimony, the discovery responses of the Seller lead
13 me to the opinion that the wastewater treatment plant has been funded completely by
14 ratepayers. If this is the case, the net book value of the assets would be zero, and the
15 purchase price of \$82,000 would represent an Acquisition Premium.

16 **Q30. ARE YOU RECOMMENDING THE COMMISSION RULE ON THE**
17 **APPROPRIATE REGULATORY TREATMENT OF THE ACQUISITION**
18 **PREMIUM IN THIS PROCEEDING?**

19 **A30.** No.

¹⁰ *Id.* at p. 23.

1 **Q31. WHAT ARE YOU RECOMMENDING REGARDING ACCOUNTING FOR THE**
2 **ACQUISITION PREMIUM?**

3 **A31.** Any potential Acquisition Premium should be set aside in a separate account and its
4 ultimate disposition determined in a future proceeding. There should be no assumption
5 that this balance will be recoverable in a subsequent rate case proceeding. The burden to
6 justify the recovery of this balance rests with Limestone.

7 **Q32. IS THIS RECOMMENDATION CONSISTENT WITH THE COMMISSION'S**
8 **RULING ON ACQUISITION PREMIUM ACCOUNTING IN TPUC DOCKET NO.**
9 **19-00062?**

10 **A32.** Yes. In that order, the Commission found:

11 Limestone is not requesting an acquisition premium and the Commission is
12 not approving any acquisition adjustment related to the purchase of Aqua's
13 assets; accordingly, Limestone's beginning value of the acquired assets for
14 ratemaking purposes shall be the value recorded in Aqua's books and
15 records at the date of the acquisition. Further, Limestone is not authorized
16 to book an above-the-line regulatory asset for rate-making purposes for any
17 portion of the amount by which the purchase price exceeds the value of the
18 acquired assets as reflected in Aqua's books and records at the date of
19 acquisition. In any future rate proceeding, Limestone may present evidence
20 and argument concerning the value of assets used and useful for
21 provisioning public utilities services, and the Consumer Advocate or other
22 interested parties may oppose such values or present their own evidence and
23 argument concerning the value of such assets.¹¹

24 **VI. SEPARATE ACCOUNTING RECORDS**

25 **Q33. ARE THERE ANY OTHER CONDITIONS YOU WOULD RECOMMEND?**

26 **A33.** Yes. I recommend that Limestone be required to maintain separate accounting records for
27 DSH, distinct from its other systems. This is the same recommendation made by Mr.

¹¹ *Order Approving Sale of Assets, Property, and Real Estate and Certificate of Public Convenience of Aqua Utilities Company, LLC Subject to Conditions and Requirements of the Tennessee Public Utility Commission, pp. 17-18, TPUC Docket No. 19-00062 (Dec. 7, 2020).*

1 Dittemore in TPUC Docket No. 21-00053¹² and which Limestone was previously
2 agreeable to.¹³

3 **VII. OTHER CONSIDERATIONS**

4 **Q34. DO YOU HAVE CONCERNS REGARDING THE EFFECT OF THE**
5 **ACQUISITION ON CURRENT RATES?**

6 **A34.** Yes. I am concerned about the impact the results of this proceeding will have on future
7 rates. While Limestone is not asking for a change of rates in this proceeding, the operating
8 costs and the level of capital expenditures will have a future impact on the revenue
9 requirement when Limestone petitions the Commission for its initial rate increase request.
10 The Commission should require all prospective buyers to estimate the impact of the
11 acquisition on future rates in subsequent acquisition filings so that the Commission may
12 evaluate whether the acquisition is in the public interest.

13 **Q35. DOES THIS CONCLUDE YOUR TESTIMONY?**

14 **A35.** Yes. However, I reserve the right to supplement my testimony if additional information
15 becomes available.

¹² *Direct Testimony of David N. Dittemore*, p. 22, TPUC Docket No. 21-00053 (Aug. 30, 2021).

¹³ *Limestone Water Utility Operating Company, LLC Response to Second Set of Data Requests*, DR No. 2-3, TPUC Docket No. 21-00053 (Aug. 10, 2021).

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DOCKET NO. 23-00016

AFFIDAVIT

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

Alex Bradley
ALEX BRADLEY

Sworn to and subscribed before me
this 27th day of July, 2023.

Terra Allen

NOTARY PUBLIC



My commission expires: January 31, 2027.