

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:

**EXPEDITED JOINT APPLICATION OF
LIMESTONE WATER UTILITY
OPERATING COMPANY, LLC, AND DSH
& ASSOCIATES, LLC, FOR APPROVAL OF
THE ACQUISITION OF AND TO OPERATE
THE WASTEWATER SYSTEM OF DSH &
ASSOCIATES, LLC, AND TO TRANSFER
OR ISSUE A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

DOCKET NO. 23-00016

STIPULATION AND SETTLEMENT AGREEMENT

The Consumer Advocate Division of the Office of the Attorney General (the “Consumer Advocate”), Limestone Water Utility Operating Company, LLC (“Limestone” or “Buyer”), and DSH & Associates, LLC (“DSH” 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. 23-00016. Limestone requested approval from the Commission to allow it to acquire and operate the DSH wastewater system and requested the Commission to 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 DSH (hereinafter, individually “Party” and collectively “Parties”) stipulate and agree as follows and respectfully request Commission approval of the same:

I. BACKGROUND

1. Limestone and DSH entered into an *Agreement for Sale of Utility System* (“*Agreement*”) with Central States dated January 2, 2019.¹

2. On March 1, 2023, Limestone and DSH (collectively, “Joint Petitioners”) filed their *Petition*, seeking authorization for DSH to sell or transfer all assets, property, and real estate currently used to provide regulated wastewater services to customers in its service territory to Limestone.² Additionally, Limestone seeks authorization for DSH to transfer its CCN or, alternatively, for the Commission to grant Limestone a new CCN.³

3. On April 17, 2023, the Commission granted the Consumer Advocate’s *Petition to Intervene*. On August 7, 2023, the Consumer Advocate filed the *Direct Testimony of Alex Bradley*, which recommended approval of the transaction subject to seven conditions.

4. 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.

II. SETTLEMENT SPECIFIC TERMS

5. In its initial base-rate case that includes the DSH wastewater collection and treatment 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 DSH up to an amount not to exceed the

¹ *Petition* at 6, Exhibit 7.

² *Id.* at 1. Specifically, Limestone is seeking to acquire DSH’s wastewater system in Campbell County, Tennessee. The Tennessee Department of Environment and Conservation issued a State Operating Permit (“SOP”) for the Lakeside Estates WWTP, which is identified as SOP-07073. *Id.* at Exhibit 16.

³ *Id.*

purchase price paid for those assets (i.e., \$82,000.00). 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.

6. In its initial base-rate case that will include the DSH wastewater collection and treatment 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, limited to such costs incurred in this proceeding. 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.

7. 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.

8. Limestone is not requesting an acquisition premium, nor is the Commission being asked to approve any acquisition adjustment related to the purchase of DSH's assets. Accordingly, Limestone's beginning value of the acquired assets for ratemaking purposes shall be the value recorded in DSH's books and records at the date of acquisition. All changes to DSH records received at closing shall follow the process set out in Paragraph 9 below.

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 DSH's 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.

9. Limestone shall not make any corrections or modifications to accounting records received from DSH 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. Limestone will courtesy copy the Consumer Advocate on such requests to the Commission. 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.

10. The Parties agree and accept the Consumer Advocate's recommendation that Limestone must maintain separate asset and operating-cost records for the DSH wastewater collection and treatment system.

11. 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 DSH's 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 DSH as of the closing date.

12. 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.

13. The Parties agree that, at closing, DSH shall transfer to Limestone complete copies of DSH's 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 provide copies of DSH's accounting records within 30 days of closing to the Commission with the Consumer Advocate being courtesy copied. Limestone shall maintain these records intact at least through completion of its first rate proceeding before the Commission.

14. Limestone shall record on its books the balance of Contributions in Aid of Construction ("CIAC") that is equal to the balance of Plant in Service for the acquired system. Limestone and DSH shall provide documentation demonstrating the value of Plant in Service at closing, excluding any writeup of land costs supported by an appraisal. This balance shall not be amortized unless authorized by the Commission. The Parties agree that the Commission should review that balance in Limestone's initial rate case, and Limestone, the Consumer Advocate, or other interested parties may present evidence regarding whether the CIAC balance is accurate or should be adjusted.

15. Limestone shall maintain a separate escrow account specific to DSH operations. Limestone and DSH shall provide documentation demonstrating the value of the Escrow Accounts at closing, the combined value of which should be no less than \$26,000.00. The escrow proceeds and the \$10.24 monthly escrow charge per customer shall be maintained separately from other Limestone escrow accounts and such account shall be dedicated to the legacy DSH system.

16. The Parties agree that Limestone be required to adopt DSH's presently tariffed rates, charges, and terms of service, and it shall file a new tariff substituting itself in place of DSH as the service provider within 30 days after the date of acquisition.

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

18. 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 DSH system or customers served by that system.

19. The Parties agree Limestone must file copies of recorded deed(s) for land where DSH's 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 wastewater system within 30 days after the date of recording.

20. 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.

21. The Parties agree Limestone must a copy of the final executed Assignment of

Rights Agreement within 30 days after the date of acquisition.

22. The Parties agree Limestone must file a copy of the State Operating Permit "Request for Transfer" for current permit, within 30 days of issuance.

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

24. 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.

III. SETTLEMENT GENERAL TERMS

25. 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 out-of-town witnesses to be available by telephone or video conference to reduce the costs associated with such appearance.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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 DSH's acts or practices.

35. The Consumer Advocate's agreement to this Settlement Agreement is expressly premised upon the truthfulness, accuracy, and completeness of the information provided by the Limestone and DSH 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.

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

37. 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.

38. 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 25 day of September 2023.

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

Stipulation and Settlement Agreement
Tennessee Public Utility Commission Docket No. 23-00016
Limestone Water Utility Operating Company, LLC and DSH & Associates, LLC Signature Page

LIMESTONE WATER UTILITY OPERATING COMPANY, LLC and
DSH & ASSOCIATES, LLC

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

Stipulation and Settlement Agreement
Tennessee Public Utility Commission Docket No. 23-00016
Attorney General's Signature Page

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