

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

IN RE:)
)
JOINT APPLICATION OF LIMESTONE)
WATER UTILITY OPERATING)
COMPANY, LLC, AND INTEGRATED)
RESOURCE MANAGEMENT, INC.)
D/B/A IRM UTILITY, INC, FOR)
APPROVAL OF THE ACQUISITION OF)
AND TO OPERATE THE)
WASTEWATER SYSTEM OF)
INTEGRATED RESOURCE)
MANAGEMENT, INC. D/B/A IRM)
UTILITY, INC, AND TO TRANSFER OR)
ISSUE A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY)

DOCKET NO. 23-00037

**CONSUMER ADVOCATE’S RESPONSE TO STAFF’S
JOINT DATA REQUEST TO ALL PARTIES**

The Consumer Advocate Division of the Office of the Attorney General (“Consumer Advocate”), by and through Jonathan Skrmetti, Attorney General and Reporter for the State of Tennessee, pursuant to Rules 26, 33, and 34 of the Tennessee Rules of Civil Procedure, Tennessee Public Utility Commission (“TPUC” or the “Commission”) Rule 1220-1-2-.11 hereby submits its responses to the *Joint Set of Discovery Request of the Commission* to all parties in the docket, filed on February 16, 2024.

CONSUMER ADVOCATE’S RESPONSES TO STAFF’S DATA REQUEST

1. Please refer to paragraph 8 of the Stipulation and Settlement Agreement that states in part “any future proposed acquisition adjustment should be set aside in account 114.00 (Utility Plant Acquisition Adjustment” and to paragraph 9 that states in part “the legal and regulatory costs associated with this transaction should be set aside in Account 183.002 (PSI – Legal).”

- a. Is it the parties' intent to record the value of any future proposed acquisition adjustment into USOA Asset Account 114.00 and reflect such value in the reported balance of this account? Please explain your response.
- b. Is it the parties' intent to record the value of the legal and regulatory costs associated with this transaction into USOA Asset Account 183.002 and reflect such value in the reported balance of this account? Please explain your response.

RESPONSE:

- a. **Yes. This prescribed accounting does not dictate nor imply any particular ratemaking treatment of these amounts. Instead, this accounting requires the transparent reporting of amounts paid for assets in excess of their book value. The terms of the Stipulation and Settlement Agreement are consistent with the definition of Account 114.¹ Section 114-part C indicates that such balances may be amortized or otherwise disposed of as the Commission may direct, supporting the Consumer Advocate's position that there are no ratemaking implications associated with the underlying accounting contained in the Stipulation and Settlement Agreement. Absent extraordinary circumstances, the Consumer Advocate opposes the recovery of Acquisition Premium costs in rate base, and amortization of such balances as an above-the-line account for ratemaking purposes.²**
- b. **Yes. Similar to the response to 1(a), each party can support or oppose the recovery of legal and regulatory costs associated with the transaction in the Company's next rate proceeding.**

¹ **114. Utility Plant Acquisition Adjustments**

A. This account shall include the difference between (a) the cost to the accounting utility of utility plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated, if not known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated depreciation, accumulated amortization and contributions in aid of construction with respect to such property.

B. This account shall be subdivided so as to show the amounts included herein for each property acquisition and the amounts applicable to each utility department and to utility plant in service and utility plant leased to others (See Accounting Instruction 21).

C. The amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct.

² In TPUC Docket No. 19-00062 the Consumer Advocate supported consumer protections that would prevent recovery of acquisition premium costs and transaction costs from ratepayers. These recommendations were rejected by the Commission. *See Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC for Authority to Sell or Transfer Title to the Assets, Property, and Real Estate of a Public Utility and For a Certificate of Public Convenience and Necessity, Docket No. 19-00062 (July 26, 2019).*

2. In each prior acquisition case involving Limestone, the Commission has ordered that Limestone is not authorized to book a regulatory asset for ratemaking purposes for any portion of the amount by which the purchase price exceeds the book value of the acquired assets. Is it the parties' intent to change the previously ordered accounting treatment for acquisition adjustments by setting aside any future proposed acquisition adjustment into USOA Asset Account 114.00? Please explain and reconcile your response to the Commission orders referenced in footnote 1.

RESPONSE:

There are two aspects to this question: the accounting treatment for financial reporting purposes and the implication of the transaction on future ratemaking calculations. The Commission established a precedent in TPUC Docket No. 19-00062 indicating that a regulatory asset should not be created associated with the purchase price in excess of the net book value of the acquired assets. The Commission allowed Limestone the opportunity to argue for recovery of these costs in a future ratemaking proceeding.

While the Commission found that a regulatory asset should not be created regarding these costs, it did not identify how the transaction costs should be recorded. This raised legal questions regarding the future recoverability of Acquisition Premiums and transaction costs. If such costs are not recorded as assets, the only theoretical treatment left is to write them off as an expense. The Consumer Advocate is unaware of any regulatory treatment whereby costs that were charged to expense in historic periods were then resurrected for future recovery in a regulatory proceeding. Indeed, such regulatory treatment would raise concerns about retroactive ratemaking.

There is certainly no intent on the part of the Consumer Advocate to purposefully deviate from the Commission's intent established in the 19-00062 docket in a substantive manner. The Consumer Advocate avers that it is important to provide clear guidance on how transactions should be recorded by jurisdictional utilities for regulatory purposes. As such, the terms of the Stipulation and Settlement Agreement seek to accomplish this objective.

Recording transaction-related costs to accounts 114 and 183 does not impact whether such costs will be recovered in a future rate-making proceeding, absent specific Commission language to the contrary. Since such language is not present within the Stipulation and Settlement Agreement, both parties have reserved their rights to

argue the recoverability issue, consistent with the Commission's ruling in Docket 19-00062 proceeding.³

The Consumer Advocate does not believe that the term "regulatory asset" implies the Company will recover these costs in a future ratemaking proceeding and does not support that conclusion. Instead, the Commission has previously indicated it will consider the appropriate treatment of these costs in a future rate proceeding, it is appropriate to reserve these costs as an asset until the Commission ultimately determines their recoverability from ratepayers. Once the Commission issues a rule on the recoverability of these costs, the appropriate accounting should follow.

The language requiring costs to be recorded to Accounts 114 and 183 for Acquisition Premium and legal/regulatory costs respectively, are intended to be 'holding accounts' until such time as the Commission issues a formal ruling on the ultimate recoverability of these costs from ratepayers. At that time, costs would then be considered confirmed regulatory assets, or be charged to a non-operating expense in accordance with the Commissions' ruling. The accounting treatment contained in the Stipulation and Settlement Agreement is similarly consistent the Commissions' order in TPUC Docket No. 18-00001 in which jurisdictional utilities were required to establish a regulatory liability for tax savings resulting from the Tax Cuts and Jobs Act ("TCJA"), whereby the future regulatory treatment was not identified in the order, but instead was to be determined in subsequent dockets.

Staff NOTE: If the parties do not intend to record the value of (1) any future proposed acquisition adjustment and (2) the legal and regulatory costs associated with this docket as assets in the accounting books and records of Limestone, and if the parties do not intend to change the accounting treatment of Limestone's acquisition transactions set forth in the Commission orders referenced in footnote 1, then disregard responding to item nos. 3 through 8.

Consumer Advocate Response to NOTE: The Consumer Advocate acknowledges that the Commission indicated how costs should *not* be recorded in the referenced orders. However, the Commission did not specify how such costs *should* be accounted for, a determination clearly under the authority of the Commission. Thus, the Consumer Advocate cannot determine whether the accounting for transaction-related costs within the Stipulation and Settlement Agreement is consistent with the accounting envisioned by the Commission in these orders, since none were provided within the Commission order. Nonetheless, the Consumer Advocate will respond to questions 3 – 8.

As a preliminary matter, the Consumer Advocate must address the applicability of ASC 980 contrasted with the Commission's jurisdiction over utility accounting records. Compliance with pronouncements like ASC 980 and other similar pronouncements issued by the Financial Accounting Standards Board ("FASB") is required for publicly held entities

³ See a discussion of the implications of ASC 980 for ratemaking purposes in the following response.

subject to oversight by the Securities and Exchange Commission ("SEC"). However, the Commission has exclusive authority over the accounting applied for ratemaking purposes for its jurisdictional utilities. In other words, the Commission has jurisdiction over the regulatory books and records of Limestone, distinct from whatever FASB requirements may apply to the company.

The classification of accounts pursuant to definitions within ASC 980 does not dictate the ratemaking treatment required of the Commission. It is common for publicly held utilities to have separate sets of accounting records; one to comply with SEC requirements and another to comply with state regulatory commission requirements. The Consumer Advocate believes that the Commission may preserve costs associated with transaction costs and identify it as a regulatory asset without any corresponding implication that the Company will recover the costs in a future rate proceeding as is suggested within ASC 980. Whether such a classification meets the definition of a regulatory asset for *SEC reporting* purposes would fall under the guidance of ASC 980. In summary, the Commission has exclusive authority over the 'regulatory books' of its jurisdictional utilities, which may differ from the utility's books for SEC financial reporting purposes. The Consumer Advocate believes that jurisdictional utilities such as Limestone should comply with Generally Accepted Accounting Principles ("GAAP") adopted by the FASB, except where otherwise dictated by the Commission. The accounting for these transactional costs as a Commission-authorized regulatory asset, as set out in the Stipulation and Agreement, is one such exception to the accounting required for SEC reporting.

3. Please refer to the GAAP definition of "asset" set forth in SFAC No. 8, attached hereto as Attachment A?

- a. If the parties' intent is to record the value of any future proposed acquisition adjustment into USOA Asset Account 114.00, do the parties contend that this value constitutes a present right to an economic benefit for Limestone within the meaning of SFAC No. 8? Please explain.
- b. If the parties' intent is to record the value of the legal and regulatory costs associated with this transaction into USOA Asset Account 183.002, do the parties contend that this value constitutes a present right to an economic benefit within the meaning of SFAC No. 8? Please explain.

RESPONSE:

- a. The intent of the Consumer Advocate regarding the accounting for Acquisition Premium is that the amount paid for the system in excess of book value be recorded to Account 114, Utility Plant Acquisition Adjustment. This classification does not dictate the accounting treatment of these costs within future ratemaking proceedings. This classification is consistent with the NARUC Uniform System of

Accounts for Water and Wastewater Utilities. The accounting for the acquisition adjustment outlined in the Stipulation and Settlement Agreement does not constitute a present right to an economic benefit for Limestone.

- b. The Consumer Advocate does not believe that the accounting for the legal and regulatory costs outlined in the Stipulation and Settlement Agreement constitutes a present right to an economic benefit for Limestone.**

- 4. Please refer to the GAAP standards for recognition of assets created by rate regulators, such as the Commission, set forth in ASC 980, attached hereto as Attachment B, which are further discussed in section 12.02[2] of Hahne & Aliff's "Accounting for Public Utilities," attached hereto as Attachment C.

- a. If the parties' intent is to record the value of any future proposed acquisition adjustment into USOA Asset Account 114.00, do the parties contend it is probable that this value will be included as allowable costs in a future ratemaking action and that future revenue will be provided to permit recovery of this value, consistent with the standards set forth in ASC 980? Please explain.
- b. If the parties' intent is to record the value of the legal and regulatory costs associated with this transaction into USOA Asset Account 183.002, do the parties contend it is probable that this value will be included as allowable costs in a future ratemaking action and that future revenue will be provided to permit recovery of this value, consistent with the standards set forth in ASC 980? Please explain.

RESPONSE:

- a. **The Consumer Advocate does not contend that it is probable that the value of acquisition adjustment costs will be included as allowable costs in a future ratemaking action.**
 - b. **The Consumer Advocate does not contend it is probable that legal and regulatory transaction costs will be included as an allowable cost in a future ratemaking action.**
- 5. Please refer to paragraph 8 of the Stipulation and Settlement Agreement, which generally provides that Limestone is not requesting an acquisition adjustment in this docket, but that

Limestone may in its initial rate case present evidence and argument regarding the value of an acquisition adjustment while the Consumer Advocate or other interested parties may oppose such value or present their own evidence and argument concerning such value. If the parties' intent is to record any future proposed acquisition adjustment into USOA Asset Account 114.00, do the parties contend that such recording is consistent with the asset recognition standards referenced in item nos. 3 and 4, above, in light of the parties' respective positions outlined in paragraph 8? Please explain.

RESPONSE:

The Consumer Advocate does not believe that the provisions of SFAC No. 8 and ASC 980 have any implications on the future regulatory treatment of acquisition premium costs referenced in paragraph 8 of the Stipulation and Settlement Agreement. The accounting set forth in the Stipulation and Settlement Agreement is inconsistent with the asset recognition standards set forth in questions 3 and 4 contained within this request that pertains to financial reporting requirements. Such consistency is not required within Limestone's regulatory books and records.

6. Please refer to Commission Rule 1220-04-14-.04(2) regarding factors the Commission may consider when determining the recoverability of an acquisition adjustment. If the parties' intent is to record the value of any future proposed acquisition adjustment into USOA Asset Account 114.00, do the parties contend that such recording is appropriate without consideration of Commission Rule 1220-04-14-.04(2) in this case? Please explain.

RESPONSE:

The Consumer Advocate believes it is preferable to determine the recoverability of any acquisition premium and regulatory transaction costs at the time of the pending acquisition,⁴ however, the Commission rejected that policy recommendation in its order in TPUC Docket No. 19-00062. Recording the costs to Account 114 does not

⁴ *Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC for Authority to Sell or Transfer Title to the Assets, Property, and Real Estate of a Public Utility and For a Certificate of Public Convenience and Necessity, Direct Testimony of David Dittmore, Docket No. 19-00062 (July 26, 2019).*

imply such costs are recoverable in the next rate case proceeding. Instead, the recording is consistent with the NARUC chart of accounts, and the appropriate ratemaking treatment is an entirely different issue from the accounting identified within the Stipulation and Settlement Agreement. The Commissions' rules will govern the recoverability of such costs in the Company's rate case.

7. Please refer to paragraphs 9 and 13 of the Stipulation and Settlement Agreement which generally provide that the determination of recoverable regulatory and transaction costs will be deferred to Limestone's initial rate case and that, subject to certain limitations, Limestone may seek recovery of such costs while the Consumer Advocate or other interested parties may oppose such costs or present their own evidence and argument concerning the amount of such costs to be recovered in rates. If the parties' intent is to record the value of the legal and regulatory costs associated with this transaction in USOA Asset Account 183.002, do the parties contend that such recording is consistent with the asset recognition standards referenced in item nos. 3 and 4, above, in light of the parties' respective positions outlined in paragraphs 9 and 13? Please explain.

RESPONSE:

The Consumer Advocate does not believe the accounting treatment contained in the Stipulation and Settlement Agreement is consistent with the asset recognition standards referenced in questions 3 and 4 above, nor is consistency required. The asset recognition standards apply to SEC financial reporting requirements,⁵ not the regulatory books of Limestone. The Commission has oversight and authority over Limestone's regulatory accounting records.

8. Please refer to Commission Rule 1220-04-14-.06 regarding the ratemaking principles the Commission may consider when determining the recoverability of regulatory, transaction and closing costs related to a utility acquisition. If the parties' intent is to record the value

⁵ Given the ownership structure of Limestone and Central States Water, specifically the fact that they are not a publicly held company, it is unclear whether their financial statements fall under SEC oversight.

of the legal and regulatory costs associated with this transaction into USOA Asset Account 183.002, do the parties contend that such recording is appropriate without consideration of Commission Rule 1220-04-14-.06 in this case? Please explain.

RESPONSE:

The Consumer Advocate does not contend that recording regulatory, transaction and closing costs that are recorded as a regulatory asset dictates accounting treatment in the Company's future rate case filing. Consistent with the Commission's order in contested TPUC Docket No. 19-00062, it has determined that such costs should be considered for recovery in the Company's initial rate case.⁶ Arguably, the Commission's rule 1220-04-14-06(3) requires a determination of the recoverability of regulatory, transaction, and closing costs at the time of the acquisition docket. In the absence of deferring such costs, combined with the delay in determining whether such costs are recoverable, would require a utility to expense such items at the time of the acquisition, only to request recovery of such historic expenses at some future date. A legal argument could be made that a previously expensed item cannot later be resurrected as a regulatory asset while maintaining compliance with prohibitions against retroactive rate making. The Commission's decision to permit the opportunity to request recovery of such costs in a future proceeding then drives the need to defer such costs on the books of the utility as an asset until such time as the Commission makes an ultimate ruling on the recoverability of such costs. In Docket No. 17-00108, the Commission authorized Tennessee Water Service to create regulatory asset accounts to defer operating losses and necessary operating expenses.⁷ The asset recording adopted in the Stipulation and Settlement Agreement, is simply a holding account until such time as the Commission determines whether such costs are recoverable from ratepayers.

If recovery of transaction-related costs is approved, the costs would be permanently considered a regulatory asset.

If recovery of transaction-related costs is denied, the costs would be written off as an expense at the date of the Commission's final order, reflecting a final determination by the Commission that such costs have no future value. In the absence of the Commission affirmatively identifying how transaction-related costs should be recorded on Limestone's regulatory books, coupled with the policy determination

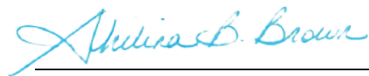
⁶ See *Order Approving Sale of Assets, Property, and Real Estate and Certificate of Public Convenience of Aqua Utilities Company, LLC Subject to Conditions and Requirements of the Tennessee Public Utility Commission*, TPUC Docket No. 19-00062 (Dec. 7, 2020).

⁷ See *Final Order, In Re Petition of Tennessee Water Service, Inc. for Approval of an Interim Emergency Wildfire Restoration Surcharge, Interim Emergency Water Service Availability Surcharge, Interim Emergency Make-whole Surcharge, and an Interim Emergency Operation Cost Passthrough Mechanism*, Docket No. 17-00108 (February 21, 2018).

that the question of recoverability should be deferred until a later date, the Commission should give the parties latitude in resolving the regulatory accounting associated with these costs on the Company's regulatory books in this docket. If the Commission believes such costs should be expensed on the books of the utility at the date of the acquisition, while simultaneously allowing the opportunity to recover such costs in the future, it must then reconcile its findings with the prohibition against retroactive ratemaking. Further, if the Commission rejects the accounting treatment set forth in the Stipulation and Settlement Agreement, the Consumer Advocate respectfully requests that the Commission identify specific accounts Limestone should use to record its Acquisition Premium and transaction related costs.

The Consumer Advocate suggests that if the Commission believes such transaction related costs should be recorded in Account 186, Miscellaneous Deferred Debits, rather than Account 183, Preliminary Survey and Investigation charges, that is certainly within its purview, however, there appears to be no meaningful distinction between the two accounts as it relates to future recoverability in rates.

RESPECTFULLY SUBMITTED,



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In re: Limestone/IRM

TPUC Docket No. 23-00037

Consumer Advocate's Responses to Staff's Data Request to All Parties

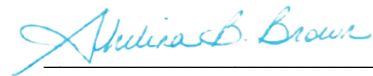
CERTIFICATE OF SERVICE

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

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On this the 22nd day of February 2024.



SHILINA B. BROWN
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