

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 30, 2024

IN RE:)	
)	
JOINT APPLICATION OF LIMESTONE WATER)	DOCKET NO.
UTILITY OPERATING COMPANY, LLC AND)	23-00037
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)	

ORDER APPROVING REVISED STIPULATION AND SETTLEMENT AGREEMENT

This matter came before Vice Chairman John Hie, Commissioner Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, and Commissioner David Crowell of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the panel assigned to this docket, during a regularly scheduled Commission Conference held on August 12, 2024, for consideration of the *Revised Stipulation and Settlement Agreement* (“*Revised Settlement Agreement*”) filed on June 28, 2024, by Limestone Water Utility Operating Company, LLC (“Limestone”) and Integrated Resource Management, Inc., d/b/a IRM Utility, Inc., (“IRM”) (collectively the “Joint Applicants”) and the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”).

The *Revised Settlement Agreement* was intended to resolve the *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 (“Joint Application”) filed by Limestone and IRM on May 24, 2023.

In the *Joint Application*, Limestone and IRM sought Commission authority to transfer from IRM to Limestone via purchase acquisition, all assets, property, and real estate currently used to provide wastewater service to customers of Riverstone Estates Development in Decatur County, Tennessee. In addition, Limestone requested that the Commission grant a Certificate of Public Convenience and Necessity (“CCN”) to Limestone in accordance with Tenn. Code Ann. § 65-4-201. In summary, the hearing panel indicated revisions related to proposed accounting treatment for acquisition, regulatory, and legal costs were necessary for approval of a *Stipulation and Settlement Agreement (“Initial Settlement Agreement”)* filed by the Parties on February 14, 2024.

BACKGROUND AND JOINT APPLICATION

IRM is a public utility that provides wastewater service to a combination of 224 commercial and residential connections across the State of Tennessee via thirteen distinct and decentralized wastewater systems. IRM was originally granted its CCN to serve the Riverstone Estates Development in Commission Docket No. 09-00099, and at that time, IRM was approved to operate a wastewater system capable of serving a combination of up to 150 residential customers and a 70-seat restaurant/marina upon full build-out.¹ Riverstone Estates system serves 36 connections as of December 5, 2023.²

¹ *In re: Petition of Integrated Resource Management, Inc. d/b/a IRM Utility, Inc. to Amend its CCN to Serve an Area of Decatur County, Tennessee Known as Riverstone Estates*, Docket No. 09-00099, *Order Approving Petition To Amend Certificate Of Public Convenience And Necessity*, p. 3 (April 5, 2010).

² *Clarification of 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*, Revised Exhibit 13, Supplemental Ex. 31 (December 5, 2023).

Limestone is a Tennessee limited liability company currently providing service to approximately 455 water customers and 1,900 wastewater customers in Tennessee.³ Limestone Water Utility Holding Company, LLC (“LWUHC”) is the sole member of Limestone and Josiah Cox is the sole officer. Limestone and LWUHC are members of affiliated companies owning and operating water or wastewater systems in Missouri, Arizona, Arkansas, Kentucky, Florida, Louisiana, Texas, North Carolina, South Carolina, and Tennessee to approximately 133,000 customers.⁴ The *Joint Application* provides charts depicting the organizational details and the relationship of affiliate companies, as well as the number of customers served by each affiliate.⁵

One of Limestone’s affiliates, Central States Water Resources, Inc. (“CSWR”) provides technical, managerial, and financial services to Limestone and its other affiliates. Further, CSWR will manage Limestone and the system that is the subject of the *Joint Application* upon approval by the Commission.⁶ Specifically, CSWR employs engineers and other qualified personnel with experience in the design and operation of water and wastewater systems, supplementing with qualified, licensed local operators by contract who are responsible for day-to-day plant operations. Limestone provides the resumes of key CSWR personnel who provide managerial and technical expertise and experience to Limestone.⁷ Equity capital used to acquire IRM’s assets, to fund initial capital upgrades and improvements, and providing necessary working capital will be provided by CSWR.⁸

The *Joint Application* filed on May 24, 2023, requested authorization for IRM to sell and transfer to Limestone all assets, property, and real estate currently used to provide wastewater

³ *Joint Application*, pp. 4-5 (March 1, 2023).

⁴ *Id.* at 5.

⁵ *Id.* at Ex. 5, Ex. 6.

⁶ *Id.* at 5.

⁷ *Id.* at 7-8 and Ex. 12.

⁸ *Id.* at 9.

service to customers at Riverstone Estates in Decatur County, Tennessee. Additionally, Limestone requested the Commission to transfer IRM's CCN, or in the alternative issue Limestone a new CCN in accordance with Tenn. Code Ann. § 65-4-201 and Commission Rule 1220-4-13-17. IRM and CSWR entered into an *Agreement for Sale of Utility System* dated June 21, 2022 ("*Sale Agreement*").⁹ The *Sale Agreement* provides the specific terms for IRM to sell all assets used for the provision of wastewater services to the Riverstone Estates Development in Decatur County, Tennessee. The sale included wastewater service facilities and equipment, inventory, merchandise, supplies, real estate – inclusive of facilities and easements, or any other assets not described which are used or useful for providing wastewater service to the customers in Decatur County.¹⁰ The *Sale Agreement* also gives CSWR the authority to assign its rights to an affiliated entity; therefore, according to that provision, CSWR has executed an *Assignment of Rights*, transferring at closing all rights to Limestone.¹¹ The Riverstone Estates Community in Decatur County, Tennessee is the only one of IRM's systems subject to the proposed transaction.

The *Joint Application* included pre-filed direct testimony of Josiah Cox to provide information regarding the current condition of the Riverstone Estates wastewater system from Limestone's point of view. A Notice of Violation ("NOV") was issued by The Tennessee Department of Environment and Conservation ("TDEC") for the Riverstone Estates system on January 4, 2022.¹² The NOV cited several maintenance deficiencies. Specifically, it was noted that the influent drop pipe was broken, that there was excessive vegetation overgrowth around the perimeter of the lagoon, and that a thick layer of duckweed was noted on the lagoon, indicating

⁹ *Joint Application*, Exhibit 7 (May 24, 2023).

¹⁰ *Id.*

¹¹ *Joint Application*, Exhibit 8, Assignment of Rights, p. 1 (May 24, 2023).

¹² Josiah Cox, Pre-Filed Direct Testimony, pp. 15-17 (May 24, 2023).

the aeration was not very effective and potentially adversely affecting treatment.¹³ CSWR also conducted a third-party evaluation of the system and observed that there was no remote monitoring equipment present at the utility site. Additionally, CSWR observed that the existing flow measurement system was not functioning properly, and that the existing UV/filtration building was found to be cluttered with debris throughout and had no lighting to illuminate the building.¹⁴

To remedy these issues, Limestone acknowledged the need to address the deficiencies highlighted in the NOV, repair the influent piping, clear vegetation from the site, and make repairs to the treatment plant building among other tasks. Specifically, Limestone provided a capital budget of \$215,000 to be used across a three-year period to bring the Riverstone Estates system up to CSWR and Limestone's standards, as well as safety and health regulations.¹⁵

Limestone proposed to adopt the current rates of IRM, with any future changes subject to Commission approval, with the exception of the escrow and access fees as explained in the *Clarification of the Joint Petition* filed on December 5, 2023.¹⁶ As a result, the customers of Riverstone Estates would pay a lower monthly bill of \$47.98 per month after the acquisition and until Limestone has a modification of rate design ordered by the Commission.¹⁷

Following the intervention of the Consumer Advocate and discovery, Mr. Cox filed supplemental testimony on December 5, 2023. The main purpose of this supplemental testimony was to clarify that Limestone did not intend to charge an escrow fee for Riverstone Estates if the

¹³ *Id.* at 16-17.

¹⁴ *Id.* at 16.

¹⁵ *Joint Application*; Exhibit 24 – Riverstone Estates WWTP Report (May 24, 2023).

¹⁶ Josiah Cox, Pre-Filed Direct Testimony, p. 16 (May 24, 2023).

¹⁷ *Clarification of 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*, p. 2 (December 5, 2023).

proposed acquisition is approved by the Commission.¹⁸ The Company proposed to adopt IRM's existing rate structure except for charging the escrow fee.¹⁹

On December 13, 2023, Mr. Alex Bradley submitted pre-filed testimony on behalf of the Consumer Advocate. The Consumer Advocate made several recommendations it deemed necessary for the approval of the transaction and transfer of the CCN.²⁰ Mr. Cox submitted rebuttal testimony on May 24, 2023, agreeing to some of the Consumer Advocate's recommendations, while opposing others.²¹ On May 10, 2024, Limestone submitted the pre-filed testimony of Mr. Brent G. Thies, the Vice President and Corporate Controller of Limestone, to adopt the previously filed direct, rebuttal, and revised rebuttal testimony of Mr. Cox.²²

The parties came to a settlement and filed the *Initial Settlement Agreement* on February 14, 2023. In summary, the settlement would provide for the approval of the transaction and the transfer of the CCN. At the hearing on the *Initial Settlement Agreement* on May 20, 2024, the panel found that the Parties' proposed terms and conditions for the transfer of the CCN and approval of the sale to be reasonable.²³ The panel also found that Limestone has the requisite managerial, technical, and financial capabilities to operate the Riverstone Estates wastewater system in Decatur County now owned and operated by IRM. However, the panel found that the interim accounting provision regarding any future proposed acquisition adjustment set forth in the last sentence of paragraph 8 of the agreement, as well as the interim accounting provision regarding any potential recovery of legal and regulatory costs set forth in the first sentence of paragraph 9, were not

¹⁸ *Id.* at Josiah Cox, Pre-Filed Supplemental Direct Testimony, p. 2 (December 5, 2023).

¹⁹ *Id.*

²⁰ *Order Requiring Revisions to the Proposed Stipulation and Settlement Agreement*, pp. 5-7 (August 6, 2024).

²¹ *Id.* at 7-8.

²² Brent G. Thies, Pre-Filed Direct Testimony, p. 3 (May 10, 2024).

²³ *Order Requiring Revisions to the Proposed Stipulation and Settlement Agreement*, p. 15 (August 6, 2024).

consistent with the Commission's orders issued in Limestone's prior utility acquisition cases and do not satisfy appropriate asset recognition principles for ratemaking purposes.

The panel voted to approve the *Initial Settlement Agreement* conditioned upon the removal of the interim accounting provisions set forth in the last sentence of paragraph 8 and the first sentence of paragraph 9.²⁴ Consistent with the terms of paragraph 31 of the *Initial Settlement Agreement*, the parties were required to notify the Administrative Judge within fifteen business days from the panel's decision after the hearing on May 20, 2024, as to whether they elect to modify the *Initial Settlement Agreement* accordingly or whether they elect to terminate the agreement.²⁵

THE REVISED SETTLEMENT AGREEMENT

On June 3, 2024, the parties notified the panel and the Administrative Judge that they agreed to modify the *Initial Settlement Agreement*.²⁶ The *Revised Settlement Agreement* was filed on June 28, 2024. It set forth terms and conditions, which if approved by the Commission, would resolve the contested issues in this docket and effectuate the sale and transfer of the Riverstone Estates system to Limestone. The *Revised Settlement Agreement* encompasses the same primary terms of the *Initial Settlement Agreement* the parties filed on February 14, 2024. Regarding Limestone's initial base rate case involving Riverstone Estates, the Parties agreed to two significant conditions. First, Limestone would be allowed to present evidence and argument concerning an acquisition adjustment related to the purchase of IRM's assets in a future rate case.²⁷ The Consumer Advocate or other interested parties would have the opportunity to oppose such values or present their own evidence and argument concerning the value of such assets.

²⁴ *Id.* at 17.

²⁵ *Id.*

²⁶ *Letter to Chairman Hilliard* (June 3, 2024).

²⁷ *Revised Settlement Agreement*, pp. 3-5 (June 28, 2024).

The *Revised Settlement Agreement* had four distinct modifications that make it different from the initial settlement filed on February 14, 2024. As requested by the panel, the last sentence of paragraph 8 was struck, deleting the requirement that any future proposed acquisition adjustment should be set aside in account 114.00 (Utility Plant Acquisition Adjustment). The first sentence of paragraph 9 was struck, deleting the requirement that the legal and regulatory costs associated with this transaction should be set aside in Account 183.002 (PSI – Legal). The following two new sentences were added to the beginning of paragraph 9 of the *Revised Settlement Agreement*:

The Company shall establish distinct and separate subaccounts within Account 121 – Nonutility Property to record Acquisition Premium costs, regulatory legal costs associated with this regulatory proceeding, and non-legal transaction costs associated with this transaction. The recordings in the three distinct subaccounts shall not be mingled with similar costs from other transactions.²⁸

The *Revised Settlement Agreement* also included additional revisions beyond that which was required by the panel on May 20, 2024. The following sentence was deleted from paragraph 13 from the initial settlement filed February 14, 2024:

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.²⁹

In a letter to the Director of Utilities sent on July 22, 2024, Limestone explained that the language in paragraph 13 limiting Limestone's right to seek recovery of legal expenses paid to local counsel was removed because during negotiation of the *Revised Settlement Agreement* Limestone discovered the language was inadvertently included in the originally submitted agreement. Limestone had agreed to that language in prior settlement agreements in other dockets

²⁸ *Id.* at 4.

²⁹ *Initial Settlement Agreement*, p. 5 (February 14, 2024).

wherein Limestone’s local counsel represented both Limestone and the seller. However, in the present docket, the seller, IRM, was represented by its own independent counsel.³⁰

HEARING ON THE MERITS

A Hearing on the *Revised Settlement Agreement* was held before the panel of Commissioners during the regularly scheduled Commission Conference on August 12, 2024, as noticed by the Commission on August 1, 2024. Participating in the Hearing were the following parties and their respective counsel:

Limestone – Katherine Barnes, Esq., Butler Snow, LLP, 150 3rd Avenue South, Suite 1600, Nashville, Tennessee 37201.

IRM – Charles B. Welch, Jr., Phelps Dunbar LLP, 414 Union Street, Ste. 1105, Nashville, Tennessee 37219.

Consumer Advocate – Shilina B. Brown, Esq., Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202.

Mr. Brent G. Thies provided testimony telephonically in support of the *Revised Settlement Agreement*. During the Hearing, the public was given an opportunity to offer comment, but no member of the public sought to comment.

STANDARD OF REVIEW

The Commission has “general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.”³¹ The Tennessee Supreme Court has interpreted the supervisory and regulatory powers of the Commission as “practically plenary authority over the utilities within its jurisdiction.” *BellSouth Adver. & Publ’g Corp. v Tenn. Reg. Auth.*, 79 S.W.3d 506, 512-513 (Tenn. 2002).

³⁰ *Letter to David Foster* (July 22, 2024).

³¹ Tenn. Code Ann. § 65-4-104(a) (2022).

In performing its duties regarding issues before the Commission in the current docket, several statutory provisions must be considered. First, Tenn. Code Ann. § 65-4-113(a) provides:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the commission, to any individual, partnership, corporation, or other entity without first obtaining the approval of the commission.³²

When considering a transfer of authority to provide utility services, the Commission must consider all relevant factors, “including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer.” Upon a finding that the transfer furthers the public interest, the Commission shall approve the transfer.³³ After the Commission approves the transfer, the transferee is granted full authority to provide the transferred utility services while the transferor no longer has authority to provide transferred services.³⁴

In addition, the Commission must consider whether to grant Limestone a CCN to provide wastewater services. 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;

³² Tenn. Code Ann. § 65-4-113(a) (2022).

³³ Tenn. Code Ann. § 65-4-113(b) (2022).

³⁴ Tenn. Code Ann. § 65-4-113(c) (2022).

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.³⁵

In addition, 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.³⁶

The rule further establishes minimum information filing guidelines for applications for new or amended CCNs.³⁷

FINDINGS AND CONCLUSIONS

The panel found the Parties’ *Revised Stipulation and Settlement Agreement* outlining the terms and conditions for the transfer of a Certificate of Public Convenience and Necessity, and the sale and transfer of authority to provide wastewater utility services for Riverstone Estates in Decatur County, from Integrated Resources Management, Inc., to Limestone Water Utility Operating Company, LLC, to be reasonable and generally consistent with the Commission’s decision in this matter on May 20, 2024. The panel voted unanimously to approve the *Revised Stipulation and Settlement Agreement*.

³⁵ Tenn. Code Ann. § 65-4-109 (2022).

³⁶ Tenn. Comp. R. & Regs. 1220-04-13-.17.

³⁷ *Id.*

IT IS THEREFORE ORDERED THAT:

1. The *Revised Stipulation and Settlement Agreement* executed and submitted by the Consumer Advocate Division of the Office of the Tennessee Attorney General, Limestone Water Utility Operating Company, LLC, and Integrated Resource Management, Inc. on June 28, 2024, is APPROVED.

2. 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.

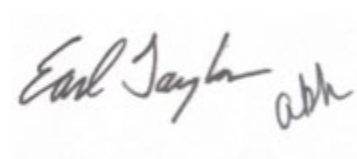
3. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Vice Chairman John Hie,
Commissioner Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner Clay R. Good, and,
Commissioner David Crowell concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" with a stylized flourish or initials "abh" to the right.

Earl R. Taylor, Executive Director