

# BUTLER | SNOW

February 29, 2024

Electronically Filed in TPUC Docket Room  
on February 29, 2024 at 5:30 p.m.

**VIA ELECTRONIC FILING**

Hon. Herbert H. Hilliard, Chairman  
c/o Ectory Lawless, Docket Room Manager  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
[TPUC.DocketRoom@tn.gov](mailto:TPUC.DocketRoom@tn.gov)

**RE: *Joint Application of Limestone Water Utility Operating Company, LLC, and Cumberland Basin Wastewater Systems, LLC, for Approval of the Acquisition of and to Operate the Wastewater System of Cumberland Basin Wastewater Systems, LLC, and to Issue a Certificate of Public Convenience and Necessity, TPUC Docket No. 23-00077***

Dear Chairman Hilliard:

Attached for filing please find *Limestone Water Utility Operating Company, LLC's Responses to the Consumer Advocate's First Set of Discovery Requests* in the above-referenced docket.

Please note that Attachment DR 1-3 is being submitted **UNDER SEAL** as **CONFIDENTIAL** and **PROPRIETARY**. Both a public version and a nonpublic, **CONFIDENTIAL** version of Attachment DR 1-3 is attached.

As required, the original plus four (4) hard copies will be mailed to your office. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Sincerely,

BUTLER SNOW LLP



Katherine Barnes

clw

Attachments

cc: Russ Mitten, Limestone Water Utility Operating Company, LLC  
Tim Huddleston, Cumberland Basin Wastewater Systems, LLC  
David Woodsmall, Central States Water Resources  
Shilina B. Brown, Consumer Advocate Division  
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BUTLER SNOW LLP

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**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>JOINT APPLICATION OF LIMESTONE</b>	)	
<b>WATER UTILITY OPERATING</b>	)	
<b>COMPANY, LLC AND CUMBERLAND</b>	)	
<b>BASIN WASTEWATER SYSTEMS, LLC</b>	)	
<b>FOR APPROVAL OF THE</b>	)	<b>DOCKET NO. 23-00077</b>
<b>ACQUISITION OF AND TO OPERATE</b>	)	
<b>THE WASTEWATER SYSTEM OF</b>	)	
<b>CUMBERLAND BASIN WASTEWATER</b>	)	
<b>SYSTEMS, LLC, AND TO ISSUE A</b>	)	
<b>CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	

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**LIMESTONE WATER UTILITY OPERATING COMPANY, LLC’S RESPONSES TO  
CONSUMER ADVOCATE’S FIRST SET OF DISCOVERY REQUESTS**

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Limestone Water Utility Operating Company, LLC (“Limestone”), by and through counsel, hereby submits its Responses to the First Set of Discovery Requests propounded by the Consumer Advocate Division of the Attorney General’s Office (“Consumer Advocate”).

**GENERAL OBJECTIONS**

1. Limestone objects to all requests that seek information protected by the attorney-client privilege, the work-product doctrine and/or any other applicable privilege or restriction on disclosure.

2. Limestone objects to the definitions and instructions accompanying the requests to the extent the definitions and instructions contradict, are inconsistent with, or impose any obligations beyond those required by applicable provisions of the Tennessee Rules of Civil Procedure or the rules, regulations, or orders of the Tennessee Public Utility Commission (“TPUC”).

3. The specific responses set forth below are based on information now available to Limestone, and Limestone reserves the right at any time to revise, correct, add to or clarify the objections or responses and supplement the information produced.

4. Limestone objects to each request to the extent that it is unreasonably cumulative or duplicative, speculative, unduly burdensome, irrelevant or seeks information obtainable from some other source that is more convenient, less burdensome or less expensive.

5. Limestone objects to each request to the extent it seeks information outside Limestone's custody or control.

6. Limestone's decision, now or in the future, to provide information or documents notwithstanding the objectionable nature of any of the definitions or instructions, or the requests themselves, should not be construed as: (a) a stipulation that the material is relevant or admissible, (b) a waiver of Limestone's General Objections or the objections asserted in response to specific discovery requests, or (c) an agreement that requests for similar information will be treated in a similar manner.

7. Limestone objects to those requests that seek the identification of "any" or "all" documents or witnesses (or similar language) related to a particular subject matter on the grounds that they are overbroad and unduly burdensome and exceed the scope of permissible discovery.

8. Limestone objects to those requests that constitute a "fishing expedition," seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is not limited to this matter.

9. Limestone does not waive any previously submitted objections to the Consumer Advocate's discovery requests.

## **RESPONSES TO FIRST SET OF DISCOVERY REQUESTS**

- 1-1.** Refer to the Petition, Exhibit 7, Sales Agreement, p. 3, ¶ 4. Provide a narrative explanation on how the purchase price of \$100,000 for the assets of Cumberland Basin were negotiated and determined. Include with the response all analytical support/workpapers for the purchase price.

**RESPONSE:** When evaluating a system for possible acquisition, Central States Water Resources routinely consults publicly available documents (such as information available from health and environmental regulators) and conducts site visits to gauge for itself the plant configuration and the condition of equipment. However, a final purchase price is determined based on arms-length negotiations between the parties, with Central States Water Resources' objective being to pay the least amount a utility/seller will accept.

- 1-2.** Refer to the Petition, Exhibit 7, Sales Agreement, p. 3, ¶ 6.D. Provide an estimate of the surveyor and easement expenses. Additionally, state whether Limestone intends to recover these expenses from ratepayers in the future.

**RESPONSE:** Limestone estimates \$40,000 for surveyor and easement expenses. Limestone intends to capitalize these costs and attempt to seek recovery in a future rate case.

- 1-3.** Refer to the Petition, Exhibit 7, Sales Agreement, p. 8, ¶ 26. Since it appears that the law firm of Butler Snow is representing both parties in this matter, will legal costs and expenses be billed separately for Limestone and Cumberland Basin? Provide a statement detailing how legal costs and expenses are being recorded for each party and the legal costs and

expenses incurred to date for each party. This is a continuing request and should be supplemented accordingly.

**RESPONSE:** Limestone assumes that the continuing nature of this request is through closing. If the continuing nature of this request is intended otherwise by the Consumer Advocate, Limestone objects to this request to the extent it seeks attorneys' fees for a period beyond the approval and closing of the acquisition, and such an open-ended request would be unduly burdensome, overly broadly and irrelevant. Subject to and without waiving the foregoing objection, Limestone responds as follows: The legal fees of Butler Snow LLP on behalf of both parties will be separately tracked and separately billed to Limestone. Please see CONFIDENTIAL attachment labeled DR 1-3 Legal Fees for the fees incurred by Limestone. No fee invoices have yet been generated for Cumberland Basin.

- 1-4.** Explain the extent to which Limestone, including all of its affiliates, reviewed the accounting practices and records of Cumberland Basin as part of the due diligence performed prior to entering into the purchase agreement. Explain whether Limestone agrees with the accuracy of such historic accounting practices and records.

**RESPONSE:** Limestone requests accounting records from the selling utility prior to closing. It is Limestone's current understanding that records are not being kept in accordance with any specific accounting principles.

- 1-5.** Did CSWR and/or Limestone determine that Cumberland Basin's historic accounting practices and records provide sufficient information from which a determination was made

as to the prudence of acquiring the systems? If so, provide how CSWR and/or Limestone made such determination.

**RESPONSE:** Please see Limestone's response to DR 1-1 for the process of evaluating a system for possible acquisition.

**1-6.** In its due diligence, did CSWR and/or Limestone identify any accounting errors or deficiencies of Cumberland Basin? If so, identify and provide a full description of such deficiencies.

**RESPONSE:** No, however Limestone will continue to assess the accuracy of Cumberland's accounting records. But oftentimes it is impossible to identify accounting errors or deficiencies until after closing.

**1-7.** As in previous acquisition dockets, Limestone has committed to keeping separate accounting records for its systems. Confirm that Limestone intends to maintain separate accounting records for the Genesis Village and The Bluffs at Cumberland such that the assets, liabilities, revenues, and expenses incurred in operating the system will be separately identifiable from the financial results of other Limestone operating systems.

**RESPONSE:** Confirmed.

**1-8.** Refer to the Direct Testimony of Josiah Cox, p. 14, lines 19-23 and Exhibit 1. Mr. Cox referenced a system, however the Exhibit 1 maps reference two systems. Identify the system(s) referenced by Mr. Cox.

**RESPONSE:** The facilities included in the proposed acquisition are the Genesis Village Estates wastewater system (Exhibit 1 Map 1, currently 31 residential connections) and the Bluffs at Cumberland Cove Estates (Exhibit 1 Map 2, currently 7 residential connections, but designed to handle full buildout of 175 residential lots).

**1-9.** Refer to the Petition, Exhibit 21, Proposed Sheet #1-7 and Exhibit 31, Pre-Post Acq Rates. Limestone's Proposed Sheet #1-7 for The Bluffs at Cumberland Cove contains a line for an escrow account charge; however, Exhibit 31 does not contain the escrow charge. Cumberland Basin's Tariff for The Bluffs at Cumberland Cove states that "\$7.03 of the residential rate will be placed in the Company's escrow account." Does Limestone intend to continue placing \$7.03 of the residential rate into a separate escrow account, as laid out in IRM's tariff, after closing?

**RESPONSE:** Limestone does not believe that after closing it needs to escrow additional amounts to provide capital necessary to reinvest in the system. As such, Limestone proposes to exclude the escrow charge for the residential rate upon closing.

**1-10.** Refer to the Petition, Exhibit 21, Proposed Sheet #1-7 and Exhibit 31, Pre-Post Acq Rates. Limestone's Proposed Sheet #1-7 for Genesis Village Estates contains a line item for an escrow account charge; however, Exhibit 31 does not contain the escrow charge. Cumberland Basin's Tariff for Genesis Village Estates states that "\$14.94 of the residential rate will be placed in the Company's escrow account." Does Limestone intend to continue placing \$14.94 of the residential rate into a separate escrow account, as laid out in IRM's tariff, after closing?

**RESPONSE:** Limestone does not believe that after closing it needs to escrow additional amounts to provide capital necessary to reinvest in the system. As such, Limestone proposes to exclude the escrow charge for the residential rate upon closing.

**1-11.** Refer to the Petition, Exhibit 9, Direct Testimony of Josiah Cox, p. 13. Specifically, refer to his discussion about the use of third-party contractors to provide Operating and Maintenance (“O&M”) services on behalf of Limestone and provide the following:

- (a) Identify the entity(ies) providing third-party O&M services to Limestone’s existing systems;
- (b) Provide the annualized cost of such services based upon the current contract in effect; and
- (c) Provide the estimated annual incremental O&M cost accruing to Limestone as a result of this acquisition.

**RESPONSE:**

- (a) Clearwater Solutions is the only O&M firm currently operating Limestone’s systems in Tennessee.
- (b) The annualized cost of such services based upon the current contract in effect is \$612,600.
- (c) The estimated annual incremental O&M cost accruing to Limestone as a result of this acquisition, based on the 2023 budget, is between \$36,000 and \$55,000.

**1-12.** Provide an analysis estimating the incremental impact to CSWR overhead costs allocated to Limestone from this acquisition.



**RESPONSE:** CSWR updates allocation factors quarterly and they are dependent on operating cost, plant in service, and connection counts at that time in all of the jurisdictions.

**1-13.** Refer to Petition, Exhibit 30, Pro Forma Entries. Provide an update to this exhibit identifying the proposed journal entries by system (The Bluffs at Cumberland Cove and Genesis Village Estates).

**RESPONSE:** See DR 1-13 Cumberland Basin Estimated Acq Accounting.

**1-14.** Refer to Exhibit CA-1, a TDEC Site Inspection of the Bluffs at Cumberland Cove conducted in 2017 and Exhibit CA-2, the State Operating Permit permit for the Bluffs at Cumberland Cove. The report does not indicate a lack of compliance with the permit because there is no fencing. Also, the State Operating Permit does not include a provision for fencing within the general requirements. Provide an explanation of the Company's basis that the system requires fencing around the drip field.

**RESPONSE:** These requirements do not come from the specific site permits but rather the design criteria for wastewater treatment facilities. Per "DWR-NPDES-SOP-G-01-WW Design Criteria Chapter 01-110117: Design Criteria for Review of Sewage Works Construction Plans and Documents" page 1-17, "A fence should surround all wastewater treatment plants. The Division recommends a fence of metal fabric that is at least six feet high and of a type that is difficult to climb and topped with at least two strands of barbed wire. The exceptions to this type of fencing are lagoons and land application systems. Such treatment plants can use livestock fence, if a sufficient number of signs are attached which contain a

warning against trespassing and indicate that the fenced area is used for treating wastewater.”

While the document caveats that it is intended as a guidance document and doesn’t constitute enforceable requirements, it is the internal standard used by the TDEC in review of facility design, and the standard put forth related to fencing is intended to provide a bare minimum measure to protect the health and safety of customers and members of the public. While this would only be written up by an inspector at their own discretion likely as a recommended remedial effort rather than a specific violation of the permit requirements or other regulation, an inspector could choose to highlight the issue at any point in the future at their discretion. Furthermore, as a measure of protecting public health and safety it is the Department’s recommended best practice as described above for fencing to be installed. For document reference please see the attachment "DR 1-15 - DWR-NPDES\_SOP-G-01-Design-Criteria-for-Review-of-Sewage-Works-Construction-Plans-and-Documents-ch-1-110117.pdf."

- 1-15.** Refer to Petition, Exhibit 24, Anticipated Capital Budget. Specifically, refer to the Company’s \$100,000 budget for fencing for the Bluffs at Cumberland Cove and provide responses to the following:
- (a) How did the Company arrive at a \$100,000 budget for this project?
  - (b) Does the Company intend to externally bid this project?
  - (c) If the Company has already received bids for this project, provide copies of the bids.

**RESPONSE:**

(a) The provided capital estimate is a third-party's preliminary estimate of probable cost for the projects recommended by a third-party engineering partner with engineering experience in the state of Tennessee. This does not represent a final cost, a quote, or a set budget for the project. Following closing on the system, improvement plans will be finalized with engineering designs and permitting where appropriate, a bid set will be prepared, and bids solicited with the company selecting the lowest qualified, responsive, and responsible bidder to complete improvement projects at the site. Plans have not been finalized and no bidding has occurred to date.

(b) Please refer to the response to 1-15(a).

(c) Please refer to the response to 1-15(a).

**1-16.** Refer to Exhibit 9, Direct Testimony of Josiah Cox, p. 14, lines 19-23, and Exhibit 22, Customer by Class. Mr. Cox states that Cumberland Basin's two systems serve approximately 95 customers. However, Exhibit 22 only lists 38 customers (7 for The Bluffs at Cumberland Cove and 31 for Genesis Village Estates). Reconcile the difference in customer counts between these two exhibits.

**RESPONSE:** Limestone estimates serving on average 2.5 customers per residential connection, which will account for the difference between the two exhibits.

**1-17.** Provide an estimate of the cost of service for the customers located in The Bluffs at Cumberland Cove on a standalone basis.

**RESPONSE:** The estimated annual cost of service for customers located in the Bluffs at Cumberland to Limestone as a result of this acquisition is approximately \$8,000.

**1-18.** Provide an estimate of the cost of service for the customers located in Genesis Village Estates on a standalone basis.

**RESPONSE:** The estimated annual cost of service for customers located in the Genesis Village Estates to Limestone as a result of this acquisition is approximately \$37,000.

**1-19.** Refer to the Direct Testimony of Josiah Cox. Specifically, refer to p. 14, lines 12-18. On November 28, 2007, the Commission approved the Certificate of Convenience and Necessity (“CCN”) for the Cumberland Basin Wastewater System to provide service to a proposed “175 single family home and one commercial establishment” in a development called the Bluffs at Cumberland Cove.<sup>1</sup> To date, this development provides service to only 7 customers.<sup>2</sup> In discovery responses in 2016, Cumberland Basin explained that the original developer of the Bluffs at Cumberland Cove defaulted resulting in a sale “on the Court House Steps.”<sup>3</sup> Provide support for the Company’s assertion that the Bluffs is a “growing” community. Provide the growth that has occurred at the Bluffs at Cumberland Cove since the granting of a CCN in 2007.

**RESPONSE:** Cumberland Basin has informed Limestone the growth that has occurred at the Bluffs at Cumberland Cove since the granting of a CCN in 2007 is as follows:

2007-2014 - 0 occupied residence

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<sup>1</sup> *Order Approving Application for a Certificate of Public Convenience and Necessity and Tariff*, pp. 2-4, TRA Docket No. 07-00079 (November 28, 2007).

<sup>2</sup> *Petition*, Exhibit 22.

<sup>3</sup> Cumberland Basin Wastewater Systems, LLC Response to Staff’s Data Request, DR #1, TRA Docket No. 16-00069 (September 16, 2016).

2015 1 occupied resident  
2016 2 occupied residences  
2018 3 occupied residences  
2019 4 occupied residences  
2020 4 occupied residences  
2021 4 occupied residences  
2022 4 occupied residences  
2023 10 occupied Residences and 9 residences under construction; Development  
Sold to New Developers in 2023.  
2024 Currently 10 occupied Residences and 12 residences under construction.

**PUBLIC VERSION**  
**ATTACHMENT DR 1-3**

**Legal Fees**

CERTIFICATE OF SERVICE

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

Shilina B. Brown, Esq.  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Consumer Advocate Division  
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This the 29<sup>th</sup> day of February 2024.

  
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Katherine Barnes