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VIA ELECTRONIC FILING

Hon. David Jones, Chairman
c/o Ectory Lawless, Docket Room Manager
Tennessee Public Utility Commission
502 Deaderick Street, 4th Floor
Nashville, TN 37243
TPUC.DocketRoom@tn.gov

**RE: *Joint Application of Limestone Water Utility Operating Company, LLC, and
Bridget J. Willhite, as Administrator CTA of the Estate of Glenna Newport, for
Approval of the Acquisition of and to Operate the Newport Resort Water System,
and to Transfer or Issue a Certificate of Public Convenience and Necessity, TPUC
Docket No. 24-00034***

Dear Chairman Jones:

Attached for filing please find *Limestone Water Utility Operating Company, LLC's Response in Opposition to Petition to Intervene Filed by Rhea County, Tennessee, and North Utility District of Rhea County* in the above-referenced docket.

As required, the original plus four (4) hard copies will follow. 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

Attachment

cc: Russ Mitten, Limestone Water Utility Operating Company, LLC
 David Woodsmall, Central States Water Resources
 Bridget J. Willhite, Esq.
 Carol Ann Barron, Esq.
 Shilina B. Brown, Consumer Advocate Division
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**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)
)
JOINT APPLICATION OF LIMESTONE)
WATER UTILITY OPERATING)
COMPANY, LLC, AND BRIDGET J.)
WILLHITE, AS ADMINISTRATOR CTA)
OF THE ESTATE OF GLENNA)
NEWPORT, FOR APPROVAL OF THE)
ACQUISITION OF AND TO OPERATE)
THE NEWPORT RESORT WATER)
SYSTEM, AND TO TRANSFER OR)
ISSUE A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY)

DOCKET NO. 24-00034

**RESPONSE IN OPPOSITION TO PETITION TO INTERVENE FILED BY RHEA
COUNTY, TENNESSEE, AND NORTH UTILITY DISTRICT OF RHEA COUNTY**

Limestone Water Utility Operating Company, LLC (“Limestone”) hereby respectfully submits its Motion in Opposition to the Petition to Intervene filed jointly by Rhea County, Tennessee (“County”), and the North Utility District of Rhea County (“NUDRC”) (collectively, “Petitioners”). For the reasons set forth below, Limestone respectfully requests that the Tennessee Public Utility Commission (“Commission” or “TPUC”) deny the Petition to Intervene.

I. FACTS

On May 8, 2024, Limestone and Newport Resort Water System (“Newport Resort”) filed their Joint Application for Approval of the Acquisition of and to Operate the Newport Resort Water System, and to Transfer or Issue a Certificate of Public Convenience and Necessity (“Joint Application”).¹ Bridget J. Willhite, Administrator CTA of the Estate of Glenna Newport, filed on

¹ See Joint Application of Limestone Water Utility Operating Company, LLC, and Bridget J. Willhite, as Administrator CTA of the Estate of Glenna Newport, for Approval of the Acquisition of and to Operate the Newport

behalf of Newport Resort. Included in the Joint Application was an Agreement for Sale of Utility System (“Sale Agreement”) entered into by Limestone and Newport Resort on October 25, 2022, and amended on September 14, 2023.² Limestone and Newport Resort entered into this Sale Agreement pursuant to an Order of the Chancery Court for Rhea County, Probate Division, Docket Number 19-PR-2725, dated May 12, 2022, requiring the Estate Administrator to sell Newport Resort to public or private utility.³

On May 23, 2024, a few days after the Joint Application was filed, the Consumer Advocate Division of the Attorney General’s Office (“Consumer Advocate”) moved for intervention, which was granted by the Commission. The parties conducted extensive discovery that culminated in a pending settlement in principle and draft Settlement Agreement which, as of the date of this filing, is with the Attorney General’s Office for execution. It was signed by both Limestone and Newport Resort on August 27, 2024, prior to the Petitioners’ Petition to Intervene. Also prior to the Petition, on August 26, 2024, the undersigned counsel filed a letter with the Commission, pursuant to the Administrative Judge’s order for a status update,⁴ reaffirming that the parties had reached a settlement.⁵

Throughout the months between the May 8, 2024 Joint Application filing and the August 28, 2024 Petition to Intervene, the County and NUDRC held several meetings during which Newport Resort was discussed, and during which they informed the Newport Resort customers of the sale. For example, during both the June and July NUDRC Board meetings, “Newport Resort Water System” was a topic on the agendas. *See Exhibit 1*, NUDRC Board Meeting Agenda, June

Resort Water System, and to Transfer of Issue a Certificate of Public Convenience and Necessity (“Joint Application”), TPUC Docket No. 24-00034 (May 8, 2024).

² *Id.*, Exhibits (“Ex.”) 10 and 10A.

³ *Id.*, Ex. 28, Agreed Order as to Division and Sale of Certain Assets (May 12, 2022).

⁴ *See* Notice of Filing, TPUC Docket No. 24-00034, dated Aug. 20, 2024.

⁵ *See* Letter to Monica Smith-Ashford, Administrative Judge, from Katherine Barnes, Butler Snow LLP, re: Response to Notice of Filing, TPUC Docket No. 24-00034 (Aug. 26, 2024).

20, 2024, and **Exhibit 2**, NUDRC Board Meeting Agenda, July 18, 2024. The Newport Resort customers were well aware of the sale, as evidenced by an email from Mr. Howard Pick to the Commission in which he stated, “It is my understanding that the [Newport Resort] is being purchased by Limestone Water.”⁶ The Rhea County Executive also filed a letter with the Commission, to which he attached a July 24, 2024 letter from NUDRC to the Estate Administrator,⁷ giving further proof that they were fully aware of the sale and this proceeding well before they filed their Petition to Intervene.

II. LAW AND ARGUMENT

Tennessee Code Annotated section 4-5-310 provides that a party may intervene in an ongoing case *only* if that party demonstrates that its “legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding” *and* that “the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.” Tenn. Code Ann. § 4-5-310(a). The Petitioners cannot demonstrate either element in this matter.

Nowhere in their Petition did the County and NUDRC demonstrate a legal right or interest that would be determined by this proceeding. Limestone, on the other hand, has lawfully entered into an Agreement for Sale of Utility System to provide service to Newport Resort. In fact, if the County and NUDRC were to disturb the contract fulfillment process between Limestone and Newport Resort, it could amount to tortious interference with a contract. Tortious interference with a contract “generally occur[s] when a person, without a privilege to do so, induces or otherwise purposely causes a third person not to enter into or...not to perform a contract with another.”⁸ In Tennessee, the elements to support such a claim include, but are not limited to, the existence of a

⁶ See Email from Howard Pick to the Commission, TPUC Docket No. 24-00034 (July 22, 2024).

⁷ See Public Comment by Rhea County Executive Jim Vincent re: Newport Resort Water System (Aug.12, 2024).

⁸ *US Herbs, LLC v. Riverside Partners, LLC*, 711 Fed. Appx. 321, 328 (6th Cir. Oct. 8, 2017).

legal contract, that the interfering party had knowledge of the contract, and that the interfering party intended to induce its breach.⁹

The Commission has consistently found that Limestone has the technical, financial, and managerial expertise to provide service to numerous public utilities throughout Tennessee.¹⁰ In multiple dockets, TPUC has held that Limestone has the financial resources and personnel experience to provide water and wastewater service to thousands of connections across the state. Especially in light of the County's and NUDRC's claim that the Newport Resort customers "have had many days without potable water or any water to their homes," and that Newport Resort is "antiquated" and "in need of maintenance or repairs and replacement,"¹¹ Limestone is the appropriate provider for Newport Resort, with the adequate know-how and resources.

In their Petition, Petitioners claim that there was "virtually no advance notice to the water customers,"¹² of the transaction between Limestone and Newport Resort." However, this is simply not the case. Starting in May 2022, two years prior to the Joint Application filing, the County,

⁹ *United Biologics, LLC v. Amerigroup Tennessee, Inc.*, 2024 WL 770640, at*11 (E.D. Tenn. Jan. 18, 2024) (citing *TSC Indus., Inc. v. Tomlin*, 743 S.W.2d 169, 173 (Tenn. Ct. App. 1987)).

¹⁰ The Commission previously granted Limestone CCNs to provide services in Tennessee. 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); Order Approving Settlement Agreement and Transfer of Systems, and Granting Certificate of Convenience and Necessity, TPUC Docket No. 21-00053 (Jan. 24, 2022) (acquisition of wastewater system previously owned by Cartwright Creek, LLC); Order Approving Settlement Agreement and Transfer of Systems and Granting Certificate of Convenience and Necessity, TPUC Docket No. 21-00055 (Dec. 2, 2022) (acquisition of water and wastewater system previously owned by Shiloh Falls Utilities, Inc.); Order Approving Settlement Agreement and Transfer of System, and Granting Certificate of Convenience and Necessity, TPUC Docket No. 21-00060 (Dec. 2, 2022) (acquisition of wastewater system previously owned by Chapel Woods Home Owners Association); Order Approving Petition for Reconsideration of Commission Order Approving Settlement Agreement and Transfer of Systems, Granting Certificate of Convenience and Necessity, and Disallowing Continuation of Candlewood Lakes POA's Water Availability Fee, TPUC Docket No. 21-00059 (May 1, 2023) (acquisition of system previously owned by Candlewood Lakes POA); Order Approving Petition to Amend Certificate of Convenience and Necessity and Waive Commission Rule, TPUC Docket No. 22-00059 (Dec. 19, 2023) (expansion of CCN to serve the Laurel Creek subdivision); Order Approving Settlement Agreement and Transfer of System, and Granting Certificate of Convenience and Necessity, TPUC Docket No. 23-00016 (Dec. 26, 2023) (acquisition of wastewater system previously owned by DSH & Associates, LLC); and Order Amending Certificate of Public Convenience and Necessity, TPUC Docket No. 23-00036 (Jan. 26, 2024) (expansion of CCN to serve the Nash Ridge subdivision).

¹¹ Petition to Intervene, ¶ 3.

¹² *Id.*, ¶ 4.

NUDRC, and all customers of Newport Resort had notice that Newport Resort must be sold pursuant to court order.¹³ Even though the County and NUDRC could have engaged in the purchase of Newport Resort at that time, there is no evidence in the record to show that they did. Likewise, after the Joint Application was filed in May 2024, particularly in June and July 2024, all the evidence supports that the County, NUDRC, and Newport Resort's customers knew of the transaction, and yet, they declined to intervene in this matter at that time. The County and NUDRC instead chose to file their Petition *after* a settlement had been reached.

The Petitioners should not be allowed to intervene in this matter because they will disrupt the orderly and prompt conduct of this proceeding. Instead of the Petitioners filing for intervention when they became aware of the case, and even going so far as to offer to buy Newport Resort themselves and interfere with an existing contract, they waited until Limestone, Newport Resort, and the Consumer Advocate had conducted and completed extensive discovery, undertaken considerable negotiations, and reached a settlement. This matter is primed to be heard during the next Commission Conference. To allow intervention at this stage would result in delays, confusion, perhaps additional discovery, and will most certainly disturb the pending Settlement Agreement. Therefore, the Petition to Intervene should be denied and the named parties to the matter allowed to continue towards an orderly and prompt resolution of this matter.

III. CONCLUSION

The Petitioners have not shown that any legal interest that would be determined by this proceeding and have instead shown that they are interfering with an existing contract between Limestone and Newport Resort. Moreover, the Petitioners had ample notice and opportunity to timely intervene in this matter. However, they chose to delay until the named parties had already

¹³ See Joint Application, Ex. 28, Agreed Order as to Division and Sale of Certain Sale Assets (May 12, 2022).

resolved the matter and begun the process of executing a Settlement Agreement. Intervention at this stage in the proceeding will obstruct the orderly and prompt proceeding of this matter. Therefore, Limestone respectfully requests that the Petition to Intervene be denied.

Respectfully submitted,



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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:

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This the 5th day of September 2024.



Katherine Barnes