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September 24, 2024

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

Electronically Filed in TPUC Docket Room
on September 24, 2024 at 3:43 p.m.

**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 to Consumer Advocate's Statement Regarding Limestone's 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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BUTLER SNOW LLP

**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)	DOCKET NO. 24-00034
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)	

**RESPONSE TO CONSUMER ADVOCATE’S STATEMENT REGARDING
LIMESTONE’S 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 submits this *Response to the Consumer Advocate’s Statement Regarding Limestone’s Opposition to the Petition to Intervene Filed by Rhea County, Tennessee, and the North Utility District of Rhea County* (“Consumer Advocate’s Statement”), filed on September 23, 2024. The Consumer Advocate’s Statement disputes Limestone’s assertion in its *Response in Opposition to Petition to Intervene* that Petitioners Rhea County and North Utility District of Rhea County (“NUDRC”) do not have a legal right or interest that would be determined by this proceeding.¹ Limestone hereby respectfully files this Response addressing the Consumer Advocate’s Statement.

In its Statement, the Consumer Advocate argues that the requirement found in Rule 1220-04-13-.17(2)(b)1 to provide a letter from local governments and utilities that they do not provide

¹ Consumer Advocate’s Statement, TPUC Docket No. 24-00034, p. 1 (Sept. 23, 2024).

service “is clear evidence of a city or county’s interest in utility service within its boundaries.”² Setting aside the question of whether this requirement is “clear evidence” of a legal right or interest, Limestone maintains that the Consumer Advocate’s argument does not consider the relevant facts that render this requirement inapplicable under the circumstances.

Newport Resort was granted its CCN by the Tennessee Public Service Commission on August 31, 1992.³ See **Exhibit 3**, *Order in re: Petition of Ancil Newport and Wife, Glenna Newport an Elzo Newport and Wife, Maggie Newport d/b/a Newport Resort Water System for a Certificate of Convenience and Necessity*, Docket No. U-88-7581 (Aug. 31, 1992). By contrast, NUDRC was not formed until December 21, 1993.⁴ Therefore, the utility district was created after the Commission granted Newport Resort the exclusive authorization to serve the area. Newport Resort’s area and customers have never been in NUDRC’s territory and NUDRC has no CCN to serve Newport Resort’s territory or customers. Therefore, the Petitioners have no territory or franchise, i.e., legal right, upon which Limestone could infringe. In fact, the 1992 Commission’s Order itself acknowledges this fact: “This Commission finds that the company is clearly a public utility subject to the Commission’s jurisdiction. Its services meet an existing public demand that cannot be provided by any other utility.”⁵ In short, Newport Resort had authorization from the Commission to serve this area first. Therefore, the requirement to provide a letter from local governments and utilities that ensures a would-be transferee is not infringing on their territory or right to serve is inapplicable here.

The Consumer Advocate also states, “it should be obvious to all that Rhea County and [NUDRC] have a right and interest in representing or safeguarding their consumers of utility

² *Id.* at 2.

³ The Tennessee Public Utility Commission was formerly known as the Tennessee Public Service Commission.

⁴ See NUDRC’s “About Us” website, <https://nudrc.org/about-us>.

⁵ Ex. 3 at p. 2.

services.”⁶ Limestone does not dispute that the Petitioners have a right to participate in the process of obtaining and safeguarding utility service for consumers. However, the Consumer Advocate aligns that right with the rights of Newport Resort, when instead the Petitioners are aligned with Limestone. At the outset, Limestone, the Petitioners, and any other party, had the same rights and opportunities to approach Newport Resort and discuss transfer of its CCN. And, at the outset, that is exactly what Limestone did – it entered into an Agreement for Sale of Utility System with Newport Resort. The Petitioners did not. Limestone is not arguing in its *Response in Opposition to Petition to Intervene* that Rhea County and NUDRC did not have a right to ever be involved. Rather, Limestone is arguing that the Petitioners should not be allowed to intervene because (1) they do not have a legal right or interest given the facts and circumstances of this particular case, and (2) their intervention would disrupt the orderly proceeding of this matter because they waited to file their Petition until the eve of the hearing, after an Agreement for Sale of Utility System had been entered, and after a settlement had been reached, all of which they knew and discussed publicly.⁷

The Consumer Advocate also asserts that Limestone’s claim of potential tortious interference with a contract is “troubling” and has a “chilling” effect on parties’ participation. If NUDRC had not been formed after Newport Resort was granted its CCN, and if Newport Resort did not have the exclusive right under law to transfer its CCN, and if this case were operating under different facts and circumstances, the Consumer Advocate may be right. However, the Petitioners had the right and opportunity to approach Newport Resort regarding sale of the system and they chose not to timely exercise it. Limestone did, resulting in its Agreement for Sale of Utility System

⁶ Consumer Advocate’s Statement, TPUC Docket No. 24-00034, p. 2 (Sept. 23, 2024).

⁷ See Exhibits 1 and 2 to Limestone’s Response in Opposition to Intervene, TPUC Docket No. 24-00034 (Sept. 5, 2024).

with Newport Resort. Therefore, Limestone’s contention of possible tortious interference with a contract is extremely relevant given this unique set of facts.

It is important to note that denying an intervention on the basis that no legal right has been demonstrated or that such intervention would disrupt the orderly proceeding of the case is not new to the Commission. For example, and most recently, in TPUC Docket No. 21-00053, the Commission denied intervention by Superior Wastewater Systems, Inc., in a proceeding to transfer Cartwright Creek, LLC’s CCN and current certificated territory to Limestone.⁸ The Commission found that Superior’s CCN to serve an adjacent area, or plans to expand its certificated area, did not demonstrate a legal right to intervene.⁹

Similarly, in TPUC Docket No. 06-00193, a case involving the Electric Power Board of Chattanooga (“EPB”), the Commission found that a would-be intervenor could not establish a legal interest enough to “withstand opposition to the petition,” and the Commission denied the petition after “balancing the requests to intervene against the harm or prejudice to EPB in the added delay to consideration of EPB’s Application by granting the intervention.”¹⁰

Finally, in its Statement, the Consumer Advocate cites a case involving the Laurel Hills utility as authority for its assertion that the Petitioners have a legal right to intervene.¹¹ However, in TRA Docket No. 12-00077, also involving Laurel Hills, the Tennessee Regulatory Authority (“TRA”) upheld a decision by the Hearing Officer denying the Consumer’s Advocate’s petition to intervene. The TRA found that a proceeding that merely “implicates the interests of consumers,”

⁸ Order Denying the Petition to Intervene filed by Superior Wastewater Systems, Inc., TPUC Docket No. 21-00053 (Dec. 20, 2022).

⁹ *Id.* at 4-5.

¹⁰ Order in re: Application of Electric Power Board of Chattanooga for Expanded Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services, TRA Docket No. 06-00193, pp. 7-8 (Aug. 23, 2007).

¹¹ See Consumer Advocate’s Statement, p. 2. The Consumer Advocate cites TPUC Docket No. 12-00130, but Limestone believes this may be a typographical error and the Consumer Advocate is instead referring to Docket No. 12-00030.

similar to the Consumer Advocate's contention in this case, did not establish a legal interest enough that the Consumer Advocate should be allowed to intervene.¹² Given this, and the status of that proceeding, the TRA was "not persuaded...that the Consumer Advocate's participation in this case will not impair justice and prompt conduct of the proceedings."¹³

In the cases cited above where the Commission found a legal right did not exist for intervention, the Commission also found that intervention would delay and disrupt the orderly conduct of the proceedings. In the instant case, Limestone, Newport Resort, and the Consumer Advocate have already reached a settlement agreement. Limestone and Newport Resort have signed the agreement and it is currently with the Attorney General's Office for execution. Considering the status and posture of the proceeding, intervention by Rhea County and NUDRC would surely disrupt prompt and orderly proceedings and resolution of this matter.

CONCLUSION

Given the unique facts and circumstances of this case, including the fact that Newport Resort had authorization under a CCN to serve its area and customers before NUDRC was created, and therefore Rhea County and NUDRC have no legal interest upon which Limestone could infringe, the Petitioners' Petition to Intervene should be denied. Furthermore, the parties to this case have reached a settlement agreement, of which the Petitioners were aware

¹² Order Denying Appeal and Affirming Hearing Officer's Order Denying Consumer Advocate's Petition to Intervene, TRA Docket No. 12-00077, pp. 4-5 (Sept. 25, 2015).

¹³ *Id.* at 12.

for months before filing for intervention; therefore, balancing the request to intervene against the Petitioners' disruption of the orderly conduct of these proceedings, the Petition to Intervene should be denied.

Respectfully submitted,



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EXHIBIT 3

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
AUGUST 31, 1992

FILE COPY

IN RE: PETITION OF ANCIL NEWPORT AND WIFE, GLENNA NEWPORT AND
ELZO NEWPORT AND WIFE, MAGGIE NEWPORT D/B/A NEWPORT
RESORT WATER SYSTEM FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY

DO NOT REMOVE

DOCKET NO. U-88-7581

O R D E R

This matter is before the Tennessee Public Service Commission upon the petition of the Ancil & Elzo Newport d/b/a Newport Resort Water System ("Company"). This order is a result of several years of negotiations with the Company and attempts to certify the Company as a public utility pursuant to T.C.A. § 65-4-201.

After negotiations with the Staff, the Company, which is already operating, filed a petition on May 15, 1992, requesting that the Commission grant a certificate of convenience and necessity and approve the following rates:

Minimum Gallons

2000	\$12.00
Next 3000	\$ 7.00 per 1000 gallons
Next 5000	\$ 3.25 per 1000 gallons
Next 10,000 and over	\$ 3.00 per 1000 gallons

In order to expedite the certification of this company, the Staff has agreed to adopt the rates proposed by the Company on an interim basis. Those rates are the same as the rates charged by the nearest utility, Watts Bar Utility District. The Commission

finds that, given the limited financial information presently available, the rates appear reasonable and should be charged on an interim basis. The Company has agreed to charge those rates and, within 30 days, to submit a more detailed tariff along with appropriate rules and regulations. At that time the Staff will review the Company's proposed rates and the Commission will conduct a rate case pursuant to T.C.A. § 65-5-203.

This Commission finds that the company is clearly a public utility subject to the Commission's jurisdiction. Its services meet an existing public demand that cannot be provided by any other utility. The interim rates proposed by the Company, which are the same as those charged by the nearest water company, appear reasonable until the Staff is able to complete a thorough investigation of the company's true revenue requirements.

IT IS THEREFORE ORDERED:

1. That Ancil & Elzo Newport d/b/a Newport Resort Water System is hereby granted a certificate of convenience and necessity to serve the customers of Newport Resort.

2. That Ancil & Elzo Newport d/b/a Newport Water System shall file proposed rates, rules and regulations within 30 days from the date of this order.

3. That Ancil & Elzo Newport d/b/a Newport Resort Water System shall charge the rates set forth in this order until such time as the Commission shall make a final determination of whether the rates proposed in (2) above are just and reasonable.

4. That Ancil & Elzo Newport d/b/a Newport Resort Water System is otherwise subject to all applicable Commission rules and regulations governing public utilities.

5. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order; and

6. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.


CHAIRMAN


COMMISSIONER


COMMISSIONER

ATTEST


EXECUTIVE DIRECTOR

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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Rhea County Attorney and Attorney for NUDRC

This the 24th day of September 2024.



Katherine Barnes