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January 13, 2025

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Room on January 13, 2025 at 3:04 p.m.

Hon. David Jones, 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: *Petition of Limestone Water Utility Operating Company, LLC to Increase Charges, Fees and Rates and for Approval of a General Rate Increase and Consolidated Rates, TPUC Docket No. 24-00044***

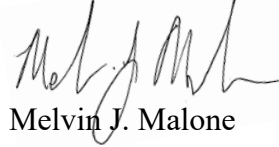
Dear Chairman Jones:

Attached for filing please find *Limestone Water Utility Operating Company, LLC's Rebuttal Testimony for (1) Dylan D'Ascendis; (2) Clare Donovan; (3) Mike Duncan; (4) Aaron Silas; (5) Brent Thies; and (6) Todd Thomas* in the above-captioned matter.

Hard copies will follow. Should you have any questions concerning this filing, or require additional information, please do not hesitate to contact me.

Very truly yours,

BUTLER SNOW LLP



Melvin J. Malone

clw

Attachments

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**STATE OF TENNESSEE**  
**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**IN RE:**

**LIMESTONE WATER UTILITY OPERATING COMPANY**

**DOCKET NO. 24-00044**

**REBUTTAL TESTIMONY**

**OF**

**BRENT THIES**

**ON**

**LAND & RIGHTS, TRANSACTION COSTS, FINANCIAL SECURITY ESCROW  
TERMINATION, RETENTION OF BILLING DETERMINANTS, RECORDING OF  
TAP FEES AND INSPECTION FEES, ATTRITION PERIOD REVENUE, INCOME TAX  
EXPENSE**

**FILED: January 13, 2025**

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forth in the Pre-filed Testimony of Consumer Advocate Witness Mr. William Novak. Finally, I will address the issue of income tax expense as expressed in the Pre-filed Testimony of Consumer Advocate Witness Mr. Alex Bradley.

## II. LAND & LAND RIGHTS

**Q. PLEASE DESCRIBE THE ISSUE WITH LAND & LAND RIGHTS.**

A. At pages 12-15 of his Pre-filed Testimony, Mr. Kaml asserts that Limestone Water inappropriately “increased the land and land rights” accounts from that reflected in the selling companies’ books.<sup>1</sup> Given this, Mr. Kaml claims that “[t]he proposal to writeup the value of the land is essentially an Acquisition Premium.”<sup>2</sup> As such, Mr. Kaml recommends that “the portion of the land value and land rights exceeding the booked cost at the time of purchase is excessive and should be removed from rate base.”<sup>3</sup>

**Q. DO YOU AGREE WITH MR. KAML'S ASSERTION THAT LIMESTONE WATER INAPPROPRIATELY INCREASED THE VALUE OF THE LAND AND LAND RIGHTS ACCOUNTS?**

A. No. Mr. Kaml's assertion seems to be based upon the notion that the land and land rights accounts should be a static figure. The Uniform System of Accounts, however, specifically provides for the continued recording of various costs to that account. Such costs include surveys, title costs, easements, and other land rights.

<sup>1</sup> *Pre-filed Testimony of Consumer Advocate Witness Clark Kaml*, p. 13, TPUC Docket No. 24-00044 Dec. 19, 2024) (hereinafter “*Kaml Pre-filed*”).

<sup>2</sup> *Id.* at 14.

<sup>3</sup> *Id.* at 15.

1 Specifically, Account 303 of the Uniform system of Accounts for Class A/B Water  
2 Companies states:<sup>4</sup>

3 This account shall include the cost of land and land rights used in  
4 connection with source of supply, pumping, water treatment plant,  
5 transmission and distribution, and general plant accounts (See  
6 Accounting Instruction 24). A sample of items to be included in this  
7 account are listed below:

8 11. Surveys in connection with the acquisition, but not amounts  
9 paid for topographical surveys and maps where such costs are  
10 attributable to structures or plant equipment erected or to be erected  
11 or installed on such land.

12 13. Title, examining, clearing, insuring and registering in  
13 connection with the acquisition and defending against claims related  
14 to the period prior to the acquisition.

15 In addition, Accounting Instruction 24, expressly referenced within Account  
16 303, provides for the recording of the cost of easements to Account 303. “The  
17 accounts for land and land rights include the cost of land owned in fee by the utility  
18 and rights, such as leaseholds, easements, water and water power rights, diversion  
19 rights, submersion rights, rights or way, and other like interests in land.”<sup>5</sup> Similar  
20 accounting instructions and definitions are included in the NARUC Uniform  
21 System of Accounts for Sewer related to account 353.

22 **Q. WHAT COSTS DID LIMESTONE WATER BOOK TO ACCOUNT 303**  
23 **(LAND AND LAND RIGHTS) THAT CAUSED THE AMOUNT IN THESE**  
24 **ACCOUNTS TO INCREASE?**

25 A. As referenced and supported above, consistent with the Uniform System of  
26 Accounts, Limestone Water has booked the costs of surveys, easements and other

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<sup>4</sup> The use of the Uniform Systems of Accounts for water and wastewater utilities is dictated by the Tennessee Commission at 1220-04-01-.11(1)(g) and (h).

<sup>5</sup> Uniform system of Accounts for Class A/B Water Companies, Account 303, Accounting Instruction 24.

1 land rights. This causes the value in the account to increase but is not based on any  
2 inappropriate or “premium” markup as suggested by Mr. Kaml.

3 **Q. WHAT IS YOUR RECOMMENDATION?**

4 A. Given that the recording of costs for surveys, easements and other land rights is  
5 expressly provided for in account 303 for water and account 353 for sewer and the  
6 Uniform System of Accounts Accounting Instruction 24, the Commission should  
7 reject Mr. Kaml’s recommendation to exclude any portion of land value and land  
8 rights “exceeding the booked cost at the time of purchase.”<sup>6</sup>  
9

10 **III. TRANSACTION COSTS**

11 **Q. PLEASE DESCRIBE THE ISSUE ASSOCIATED WITH TRANSACTION**  
12 **COSTS?**

13 A. At pages 15-21, Mr. Kaml presents CAD’s position on the recovery of transaction  
14 costs. There, Mr. Kaml asserts that such costs “provide a benefit to the acquiring  
15 company, allowing it to estimate the amount of capital that will be required to  
16 operate and maintain the system, discover legal defects to the title, and understand  
17 the operational issues specific to the target issue.” He then explains that CAD “is  
18 not convinced that there are direct benefits to consumers that would justify allowing  
19 those expenses into rates.” As such, Mr. Kaml recommends that transaction costs  
20 be disallowed from the revenue requirement. Finally, Mr. Kaml claims that the  
21 Company should be precluded from seeking recovery of such costs because it “did

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<sup>6</sup> Kaml Pre-filed at 15.

1 not receive approval to receive acquisition cost recovery prior to proceeding with  
2 the acquisitions in this case.”

3 **Q. WHAT IS THE NATURE OF THE COSTS THAT HAVE BEEN**  
4 **GENERICALLY LABELED AS TRANSACTION COSTS?**

5 A. As reflected in my Direct Testimony, pages 20 – 23, these costs fall into four  
6 categories: (1) real estate related legal costs, (2) regulatory legal costs, (3) system  
7 mapping, and (4) engineering analysis.

8 **Q. DO YOU AGREE WITH MR. KAML’S STANDARD THAT THE**  
9 **RECOVERY OF TRANSACTION COSTS SHOULD BE BASED UPON**  
10 **WHETHER CONSUMERS RECEIVE A BENEFIT FROM THOSE COSTS?**

11 A. Yes. Commission Rule 1220-04-14-.06 addresses the recovery of regulatory,  
12 transaction and closing costs related to the acquisition of a utility. Subsection (1)  
13 states that the costs shall be reasonable and prudent. Subsection (2) then provides  
14 that “the Commission may in the exercise of its lawful discretion allocate the  
15 regulatory, transaction and closing costs between the acquiring utility’s  
16 owners/shareholders and its customers in recognition of the relative benefits of the  
17 acquisition to each and in consideration of the affordability of post-acquisition  
18 rates.”

19 **Q. DO YOU BELIEVE THAT THE TRANSACTION COSTS IN QUESTION**  
20 **WERE “REASONABLE AND PRUDENT”?**

21 A. Yes. In fact, while Mr. Kaml makes some irrelevant references to a North Carolina  
22 Utility Commission decision, he never claims that the costs are unreasonable or



1           imprudent. He never questions whether the costs were necessary to close the  
2           transaction or to receive regulatory approval for the acquisition.

3                       Regardless of Mr. Kaml's opinion, the costs were reasonable and prudent.  
4           The prudence of the costs is underscored and supported by the unquestioned need  
5           to undertake initial due diligence (i.e., costs for an engineering analysis and to clear  
6           title defects), but also to receive the necessary regulatory approvals mandated by  
7           Tennessee statutes (i.e., regulatory legal costs). Moreover, the nature of the costs  
8           at issue are very specialized. For instance, recognizing the need to receive  
9           regulatory approval of the transaction, Limestone Water interviewed several  
10          different attorneys. Ultimately, the specialized nature of the regulatory process in  
11          Tennessee dictated that the Company retain an attorney experienced in Commission  
12          process. Given all of this, I believe that the transaction costs are both reasonable  
13          and prudent.

14   **Q.   DO YOU BELIEVE THAT RATEPAYERS RECEIVED A BENEFIT FROM**  
15   **THE TRANSACTION COSTS?**

16   A.   Absolutely. Contrary to the generic assertions made by Mr. Kaml, each of the  
17          transaction costs led to benefits for ratepayers.<sup>7</sup> The un rebutted direct testimony  
18          submitted by the Company in this case leads to the undeniable conclusion that  
19          ratepayers have benefitted by the acquisition of the various systems by Limestone  
20          Water.

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<sup>7</sup> See *Consumer Advocate's Response to Limestone Water's DR 1-13*, TPUC Docket No. 24-00044 (Jan. 6, 2025). Mr. Kaml appears to recognize that transactions costs "have the potential to provide ratepayer benefits." Despite this concession, Mr. Kaml makes no effort to determine whether ratepayers have benefitted from the acquisition or the resulting transaction costs.

1                   Specifically, the Direct Testimony of Limestone Water Witness Todd  
2                   Thomas describes the pre-acquisition condition of these systems. Without fail, the  
3                   systems were out of compliance and failing to provide safe and adequate service.  
4                   Moreover, as demonstrated by the fact that the Commission had to implement  
5                   financial security escrows for Cartwright Creek and DSH, the previous owners  
6                   lacked any financial ability to remedy this non-compliance.

7                   After the acquisition, however, this has all changed. Limestone Water  
8                   began, as reflected in Mr. Thomas' Direct Testimony, to provide professional O&M  
9                   services. Moreover, the Company used its financial resources to invest in the  
10                  replacement of blowers, pumps, and other failed equipment. As reflected in the  
11                  Pre-filed Direct Testimony of Limestone Water Witness Mr. Jacob Freeman, the  
12                  Company applied its professional engineering staff to analyze long-term solutions  
13                  to process shortcomings. Finally, Limestone Water Witness Mr. Mike Duncan  
14                  describes the compliance professionals that were dedicated to ensuring that timely  
15                  testing and sampling occurred at the sites and that the systems maintained  
16                  compliance with state environmental standards.<sup>8</sup>

17                  The benefits received by customers were not limited to operational benefits.  
18                  For example, Mr. Silas testifies regarding the immediate benefits that customers  
19                  received in the nature of 24x7 customer service. Now, customers could be assured  
20                  that utility issues would be resolved in a timely manner. Finally, Mr. Silas testifies

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<sup>8</sup> *Pre-filed Direct Testimony of Limestone Water Witness Mike Duncan*, pp. 19-27, TPUC Docket No. 24-00044 (July 16, 2024) (hereinafter "*Duncan Direct*").

1 to the corporate communication efforts so that customers were regularly updated  
2 on improvements being made to their water and wastewater facilities.<sup>9</sup>

3 Such benefits could not have occurred without the acquisition by Limestone  
4 Water and, relative to this issue, that acquisition could not have occurred absent the  
5 transaction costs in question. Recognizing the multitude of customer benefits, I  
6 believe that the Company should be permitted to recover its reasonable and prudent  
7 transaction costs.

8 **Q. HOW WOULD YOU ASSESS THE RELATIVE BENEFITS RECEIVED BY**  
9 **CUSTOMERS AND SHAREHOLDERS?**

10 A. As reflected in Limestone’s acquisition dockets before the Commission, when it  
11 acquires a new system, Limestone Water adopts the currently approved rates of that  
12 system.<sup>10</sup> Recognizing that in many instances, rates had been in effect for years  
13 and possibly decades, the adopted rates did not cover operating costs at the time of  
14 the acquisition.<sup>11</sup> Moreover, upon acquisition, and as also reflected in the direct  
15 testimony submitted in support of the Petition, Limestone Water immediately  
16 replaces inoperable blowers and pumps.<sup>12</sup> As a result, power costs immediately  
17 increase. Furthermore, the Company immediately begins to dispense disinfection  
18 chemicals in the water and wastewater. As a result, the adopted rates become even  
19 more deficient. Finally, the Company begins to invest capital to address operational  
20 deficiencies. Given this, it is not surprising that the Company has incurred

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<sup>9</sup> *Pre-filed Direct Testimony of Limestone Water Witness Aaron Silas*, pp. 5-14, TPUC Docket No. 24-00044 (July 16, 2024) (hereinafter “*Silas Direct*”).

<sup>10</sup> *Duncan Direct* at 13.

<sup>11</sup> *See Id.* at 9-13.

<sup>12</sup> *Id.* at 12.

1 significant operating losses associated with the acquisition and rehabilitation of  
2 these systems.<sup>13</sup> These losses continue during the pendency of this case and are  
3 now incurring carrying costs for the Company. Thus, while customers have  
4 received the entirety of the benefits to date, the shareholders have received zero  
5 benefits. Given that customers have received the entirety of the benefits to date,  
6 and consistent with the direction provided by 1220-04-14-.06(2), I recommend that  
7 the Commission authorize the recovery of 100% of transaction costs.

8 **Q. WOULD LIMESTONE WATER BE SUBJECT TO EXTERNAL**  
9 **CRITICISM IF IT FOREGOES CERTAIN CUSTOMARY AND**  
10 **ESSENTIAL TRANSACTION COSTS?**

11 A. If an acquiring utility intentionally foregoes certain standard and essential  
12 transaction costs, the acquiring utility may very well be subjected to external  
13 criticism in the event that its failure to conduct adequate due diligence results in  
14 some foreseen direct or indirect harm to its customers.

15 **Q. DO YOU AGREE WITH MR. KAML'S ASSERTION THAT THE**  
16 **COMPANY SHOULD BE PRECLUDED FROM SEEKING RECOVERY**  
17 **OF TRANSACTION COSTS BECAUSE IT DID NOT PREVIOUSLY SEEK**  
18 **PRE-APPROVAL FOR RECOVERY OF SUCH COSTS?**<sup>14</sup>

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<sup>13</sup> In his Pre-filed Direct Testimony, Mr. Duncan quantifies these operating losses as \$2.6 million. *Duncan Direct*, p. 4, n. 3.

<sup>14</sup> Noticeably, when asked to provide all instances of which he is aware in which a utility sought pre-approval of transaction costs, Mr. Kaml simply stated that a company could "seek pre-approval." "Mr. Kaml did not address whether TPUC had given such pre-approval in other dockets." *Consumer Advocate's Response to Limestone Water's DR 1-16*, TPUC Docket No. 24-00044 (Jan. 6, 2025). Clearly then, it is punitive to suggest that Limestone Water should have sought such pre-approval when even Mr. Kaml is unaware of instances in which that has ever actually occurred.

1 A. No. Commission Rule 1220-04-14-.06 that addresses the recovery of transaction  
2 costs does not dictate the timing for seeking recovery of such costs. In fact, given  
3 that the rule discusses a comparison of benefits received by ratepayers vis-à-vis  
4 shareholders, it certainly implies that the request for recovery must occur after the  
5 transaction. That is to say, since a determination of benefits associated with an  
6 acquisition is largely speculative until the transaction has occurred, the  
7 consideration of relative benefits must also take place after the transaction.

8 **Q. WHAT IS YOUR RECOMMENDATION WITH REGARDS TO THE**  
9 **RECOVERY OF TRANSACTION COSTS?**

10 A. As described above, and as supported by Limestone Water's Pre-filed Direct  
11 Testimony accompanying the Petition, the acquisition of the distressed water and  
12 wastewater systems led to immediate benefits for customers. These acquisitions  
13 could not have occurred absent the transaction costs in question. Given the  
14 multitude of benefits for customers, it is appropriate that the Company be allowed  
15 to recover these reasonable and prudent transaction costs.

16

17 **IV. FINANCIAL SECURITY ESCROW TERMINATION**

18 **Q. PLEASE DESCRIBE THE FINANCIAL SECURITY ESCROW**  
19 **TERMINATION.**

20 A. I initially described this issue at pages 30-39 of my Direct Testimony. There I  
21 pointed out that, as a result of the Cartwright Creek and DSH transactions, the  
22 Company continues to charge customers of those systems to maintain the financial  
23 security of the systems. As initially envisioned, that money is maintained in a  
24 separate escrow until such time as it is needed for capital improvements at the

1 system. At that time, the Commission would authorize the expenditure of the  
2 money out of the escrow. As of May 31, 2024, the combined escrow balance was  
3 approximately \$654,000.

4 Given the radically different financial position of Limestone Water as  
5 compared to the previous owners of Cartwright Creek and DSH, the Company  
6 seeks to terminate the collection of the financial security escrow charge.  
7 Additionally, the Company proposes to retain such funds and treat the amounts as  
8 CIAC and used as an offset to rate base.

9 **Q. DID CAD AGREE WITH YOUR PROPOSAL?**

10 A. Not entirely. At pages 24-28 of his Pre-filed Testimony, Mr. Kaml sets forth  
11 CAD's position regarding the termination of the financial security escrow. Initially,  
12 CAD seems to agree to the request to discontinue collection of the financial security  
13 escrow charge. After pointing out that the termination of the charge would provide  
14 an immediate economic benefit to the impacted customers,<sup>15</sup> Mr. Kaml concludes  
15 that "[t]here may be a reason to terminate the escrow payments."<sup>16</sup>

16 That said, however, CAD disagrees with how to handle the current balance  
17 in the Cartwright Creek and DSH Financial Security escrow accounts. The  
18 Company's approach would be to release the funds for use in planned capital  
19 improvements. In the future, upon completion of assets constructed using the  
20 released funds, the Company would recognize Contributions in Aid of Construction

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<sup>15</sup> *Kaml Pre-filed* at 26 ("DSH customers would have a reduction in their monthly bills by \$10.24 per month. Cartwright Creek customers would see a reduction equal to the tap fees and the Capital Improvement Surcharge.")

<sup>16</sup> *Id.* at 28.

1 (CIAC) as an offset to rate base. This is consistent with the regulatory approach  
2 for non-investor supplied sources of capital.

3 **Q. DO YOU AGREE WITH CAD’S PROPOSAL FOR THE TREATMENT OF**  
4 **EXISTING FUNDS?**

5 A. While I don’t agree with the proposal, I am not greatly offended by the proposal.  
6 First, if the Commission does require Limestone Water to retain the escrow balance,  
7 I would request that the Company be alleviated from the regulatory hardship of  
8 seeking Commission approval before being allowed to spend those funds on  
9 projects. 1220-04-13-.07(7) provides that “[t]he utility must first receive  
10 authorization from the Commission via approved petition or, in emergency  
11 situations, authorization in writing from the Chairman of the Commission upon  
12 written request by a representative of the utility to use such funds.” The Company  
13 does not object to continuing to submit quarterly reporting of the remaining escrow  
14 balance and the nature of any disbursements made during the reporting quarter,<sup>17</sup> it  
15 simply seeks to avoid the time and cost of preparing, filing, and processing of  
16 seeking advance regulatory approval. To be sure, the Company understands that  
17 there are circumstances in which this rule provides necessary safeguards to  
18 consumers. So, Limestone Water is not seeking to do away with the rule; rather,  
19 the Company is only asking for reasonable flexibility when the circumstances for  
20 which the rule exists are not present.

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<sup>17</sup> See *Stipulation and Settlement Agreement*, para. 4, TPUC Docket No. 21-00053 (Oct. 12, 2021) (approved by the Commission on January 24, 2022) (“Limestone will report quarterly, in the manner prescribed in the Commission’s 08/25/20 Order in Docket No. 19-00097, regarding quarter-end balances in each escrow account and any disbursements made during the reporting quarter.”)

1           Second, CAD recommended the funds be used in the service area where  
2           they were historically collected. “With regard to existing funds, they should be used  
3           in the service areas where the funds were collected.”<sup>18</sup> The CAD recommendation  
4           to utilize the existing escrow balances within the applicable service area would be  
5           rendered meaningless by a Commission decision approving the Company’s request  
6           to consolidate rates on a state-wide basis. Specifically, if rates are consolidated, it  
7           is irrelevant whether escrow balances are spent on projects within X system or Y  
8           system. The Company continues to believe that consolidation is in the public  
9           interest and is an effective rate mitigation tool. Therefore, while it does not object  
10          to CAD’s proposal to utilize funds in specific systems, the Company continues to  
11          pursue its consolidation request.

12  
13                           **V.       RETENTION OF BILLING DETERMINANTS**

14   **Q.       PLEASE EXPLAIN THE ISSUE WITH REGARDS TO THE RETENTION**  
15   **OF BILLING DETERMINANTS.**

16   A.       At pages 8-10 of his Pre-filed Testimony, Mr. Novak criticizes the Company for its  
17           failure to “obtain the historical billing records for any of the utility properties that  
18           it now holds.”<sup>19</sup> Specifically, Mr. Novak asserts that the Company violated the  
19           Commission’s requirement in several acquisition dockets to acquire from the seller  
20           complete copies of “accounting records.”<sup>20</sup> Mr. Novak then uses his criticism to

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<sup>18</sup> *Kaml Pre-filed* at 27.

<sup>19</sup> *Novak Pre-filed*, p. 8, TPUC Docket No. 24-00044 (Dec. 19, 2024) (“*Novak Pre-filed*”).

<sup>20</sup> *Id.*



1 recommend that the Commission summarily dismiss the Company's rate case and  
2 that the Company be precluded from filing a rate case for four years.<sup>21</sup>

3 **Q. DO YOU AGREE WITH MR. NOVAK'S CRITICISM?**

4 A. No. I believe Mr. Novak's criticisms are unfounded for at least two reasons: First,  
5 the excerpt from the Stipulation and Settlement Agreement reached in Docket No.  
6 21-00053 that is quoted at page 8 of Mr. Novak's testimony obligates the seller of  
7 the system to transfer to Limestone at closing "complete copies of . . . accounting  
8 records for the two years immediately preceding the date of the acquisition." The  
9 same language was used in each stipulation. So, in each case (except the Aqua  
10 Utilities transaction (Docket No. 19-00062) the obligation to produce complete  
11 records was imposed on the seller – not on Limestone Water. In each transaction  
12 the seller was a party to the stipulation and therefore agreed to be bound by its  
13 terms. Second, billing determinants are not considered to be part of a utility's  
14 "accounting records," which means it is doubtful the stipulation obligated the seller  
15 to provide such information to Limestone Water at closing.

16 Moreover, in numerous instances, Limestone Water has attempted, without  
17 success, to obtain from the sellers various records post-closing and in many of those  
18 instances such records are either not produced, are not available or simply never  
19 really existed in any substantively usable manner going forward. It is not that  
20 Limestone Water is somehow affirmatively withholding billing determinants. As  
21 is often the case when acquiring small and challenged water and wastewater  
22 systems, the Company just does not have the information.

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<sup>21</sup> *Id.* at 10.

1 **VI. TAP FEES AND INSPECTION FEES**

2 **Q. HOW DID LIMESTONE WATER RECORD TAP FEES AND INSPECTION**  
3 **FEES?**

4 A. As reflected at page 26 of my Direct Testimony, non-refundable money or physical  
5 property that is received from third parties is treated as a Contribution in Aid of  
6 Construction (“CIAC”). I specifically noted that an example of CIAC are “tap fees  
7 that a customer pays to connect to the system.”<sup>22</sup> Since CIAC is not considered to  
8 be investor supplied capital, it is treated as an offset to rate base.

9 **Q. DID CAD AGREE THAT TAP FEES AND INSPECTION FEES SHOULD**  
10 **BE TREATED AS CIAC?**

11 A. No. At pages 11-13 of his Pre-filed Testimony, CAD Witness Novak argued that  
12 tap fees and inspection fees should be treated as revenues and not as CIAC. “The  
13 Commission has a long history of requiring utilities to record these types of receipts  
14 as revenues. . . . I recommend that the Commission should continue to treat  
15 Inspection Fees and Tap Fees as Revenues.”<sup>23</sup>

16 **Q. WHAT IS THE EFFECT OF MR. NOVAK’S RECOMMENDATION ON**  
17 **REVENUE REQUIREMENT?**

18 A. Mr. Novak’s recommendation will affect the revenue requirement in two ways.  
19 First, because Mr. Novak’s recommendation increases revenues, it has the effect of  
20 decreasing the calculated revenue deficiency. Second, since CIAC will be  
21 decreased, rate base and the authorized return will increase. This has the effect of

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<sup>22</sup> *Pre-filed Direct Testimony Limestone Water Witness Brent Thies*, p. 26, TPUC Docket No. 24-00044 (July 16, 2024) (hereinafter “*Thies Direct*”).

<sup>23</sup> *Novak Pre-filed* at 11 and 13.

1 increasing the revenue deficiency. The two impacts are not equal in magnitude –  
2 the impact from increasing revenues greatly exceeds the impact associated from  
3 increasing rate base. As a result, the overall impact of Mr. Novak’s  
4 recommendation is to reduce the revenue deficiency.

5 **Q. DO YOU AGREE THAT THE COMMISSION HAS “A LONG HISTORY**  
6 **OF REQUIRING UTILITIES TO RECORD THESE TYPES OF RECEIPTS**  
7 **AS REVENUES”?**

8 A. Not entirely. In a 2019 Cartwright Creek case, the Commission expressly noted  
9 that “traditional approach” is to classify and report these “fees in its books and  
10 records as Contributions in Aid of Construction (“CIAC”) in accordance with the  
11 Uniform System of Accounts (“USOA”), rather than operating revenue.”<sup>24</sup>

12 **Q. PLEASE EXPLAIN.**

13 A. Subsequent to its last rate case, Cartwright Creek filed a request to increase its tap  
14 fee for new customers from \$5,000 to \$10,000. The increased tap fees were  
15 designed to finance the rehabilitation of wastewater facilities to help alleviate  
16 environmental violations at the Grassland facility.

17 In its testimony, CAD agreed to the request under the condition that future  
18 tap fees be treated as a regulatory liability – CIAC.

19 The Consumer Advocate submitted the testimony of Alex Bradley,  
20 Accounting & Tariff Specialist. Mr. Bradley's testimony is a general  
21 concurrence with the Company with regard to the need for increased  
22 tap fees. . . . Mr. Bradley further states that, departing from positions  
23 taken in previous cases treating tap fees as revenues, the accounting  
24 treatment for future tap fee receipts should: (1) be recorded "into a  
25 distinct escrow account to ensure the purpose of the funding is  
26 specifically identified and utilized for its intended purpose;" and, (2)  
27 **commencing from the date of the order in this docket, be recorded**

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<sup>24</sup> *Order Approving Increase of Tap Fee*, p. 9, TPUC Docket No. 19-00034 (Aug. 19, 2019).

1 as a regulatory liability in order to reflect ratepayer funding of the  
2 needed capital improvements. Such accounting treatment is  
3 necessary to protect ratepayers from double recovery of the revenue  
4 requirement under either the operating margin or rate-of-return  
5 approach to rate setting. Therefore, Mr. Bradley recommends  
6 recognition of the tap fees as a regulatory liability, to be amortized  
7 over the expected life of the underlying capital improvements, and  
8 used as an offset to the revenue requirement in the Company's next  
9 rate case.<sup>25</sup>

10  
11 Ultimately, the Commission adopted CAD's recommendation that such receipts be  
12 treated as CIAC.

13 The accounting method adopted in the 2009 Rate Case Order was  
14 reasonable at that time due to the size and more static nature of the  
15 Company, making tap fees insignificant to ratemaking calculations  
16 at that time. However, since 2009, Company revenues have more  
17 than tripled and the number of customers has significantly increased  
18 and is projected to continue increasing in future months, making tap  
19 fees much more material to ratemaking calculations today.  
20 Therefore, the panel found that Cartwright Creek should alter the  
21 accounting method to the more traditional approach with regard to  
22 tap fees, specifically classifying and reporting the fees in its books  
23 and records as Contributions in Aid of Construction ("CIAC") in  
24 accordance with the Uniform System of Accounts ("USOA"), rather  
25 than operating revenue. Utilizing this method will allow ratemaking  
26 calculations to offset capital additions funded by customer tap fees  
27 and their associated depreciation and return factors, in order to  
28 ensure the Company does not receive cost recovery for investments  
29 not funded by the Company.<sup>26</sup>

30 **Q. WHAT IS YOUR RECOMMENDATION?**

31 A. Recognizing that the Commission expressly ordered the Company to book all tap  
32 fees as Contributions in Aid of Construction and given that this is the "traditional"  
33 approach dictated by the Uniform System of Accounts, I recommend that the  
34 Commission reject Mr. Novak's position.

35  

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<sup>25</sup> *Id.* at 5-6 (emphasis added).

<sup>26</sup> *Id.* at 9-10.

1 **VII. ATTRITION PERIOD REVENUES**

2 **Q. PLEASE DESCRIBE THE ISSUE WITH REGARDS TO ATTRITION**  
3 **PERIOD REVENUES.**

4 A. At pages 17-19 of his Pre-filed Direct Testimony, CAD witness Novak “prepared  
5 separate attrition period forecasts for Limestone’s Service Revenues and Other  
6 Revenues.”<sup>27</sup> Specifically, Mr. Novak calculated attrition period billing  
7 determinants by “applying a historic growth rate to the test period bills and water  
8 usage[.]”<sup>28</sup> Mr. Novak then multiplied the attrition period billing determinants by  
9 the current tariff charge to arrive at attrition period service revenues.<sup>29</sup> While using  
10 a different methodology, Mr. Novak also recommended an increased amount of  
11 revenues associated with other revenues including forfeited discounts, non-  
12 sufficient fund feeds, inspection fees, and tap fees.<sup>30</sup>

13 **Q. WHAT IS THE EFFECT OF MR. NOVAK’S INCREASED LEVEL OF**  
14 **REVENUES?**

15 A. As mentioned previously with regard to Mr. Novak’s request to reclassify tap fees  
16 and inspection fees from CIAC to revenues, an increased level of revenues has the  
17 effect of decreasing the overall revenue deficiency.

18 **Q. DO YOU AGREE WITH MR. NOVAK’S PROPOSAL TO INCREASE**  
19 **REVENUES TO ACCOUNT FOR GROWTH ASSOCIATED WITH THE**  
20 **ATTRITION PERIOD?**

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<sup>27</sup> *Novak Pre-filed* at 17.

<sup>28</sup> *Id.* at p18.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

1 A. No. As mentioned in my Direct Testimony, the Company proposed a test period  
2 consisting of the 12-month period ended April 30, 2024.<sup>31</sup> Thus, while the  
3 Company had the option to pursue a forecasted test year that would have projected  
4 investment, expenses and revenues, the test year consisted entirely of historical  
5 data.<sup>32</sup>

6 Mr. Novak's request to forecast revenues for an attrition period are  
7 problematic for two reasons. First, in the Pre-filed Testimony of Consumer  
8 Advocate Witness Mr. Bradley, CAD expressly agreed with the Company's use of  
9 a historic test year. "The Company has proposed a twelve-month historic Adjusted  
10 Test Period ending April 30, 2024. *It is my opinion that this period proposal is*  
11 *acceptable and should be adopted by the Commission.*"<sup>33</sup> Second, while Mr.  
12 Novak projected revenues for an attrition period, CAD did not project investment  
13 and expenses. Thus, CAD's outcome-driven proposal is entirely one-sided.  
14 Specifically, by projecting revenues, CAD sought to capture all attrition period  
15 changes that could result in a reduction to the revenue requirement and revenue  
16 deficiency. Noticeably, CAD failed to project other financial impacts that would  
17 cause the revenue requirement and revenue deficiency to increase – specifically  
18 investment and operating expenses. As such, the CAD's outcome-driven proposal

---

<sup>31</sup> *Thies Direct* at 5.

<sup>32</sup> The Company proposed a fully historic test period for three reasons. First, the Company believes that the historic test year is representative of the conditions during the period in which rates will be in effect. Second, the use of a historic test year was designed to make this case easier for the parties to administer as it avoids debate over the forecast of investment, expenses, and revenues. Third, a historic test year allowed customers of systems acquired during the attrition period to receive the benefit of service improvements prior to incurring a rate increase. *Id.* at 6-7.

<sup>33</sup> *Pre-filed Testimony of Consumer Advocate Witness Alex Bradley*, p. 3, TPUC Docket No. 24-00044 (Dec. 19, 2024) (emphasis added) (hereinafter "*Bradley Pre-filed*").

1 intentionally ignored the most basic part of ratemaking – the use of the matching  
2 principle.

3 **Q. WHY IS THE MATCHING PRINCIPLE IMPORTANT TO THE**  
4 **RATEMAKING PROCESS?**

5 A. The purpose of a rate case is to take a snapshot of the utility's financial situation.  
6 This financial snapshot is done by matching all aspects of the financial condition  
7 (investment, revenues, and expenses) as of a common point in time. Here, CAD's  
8 revenue proposal violates that matching principle by projecting an inflated level of  
9 future revenues while simultaneously using investment and expenses from a prior  
10 period.

11 The problem is that Mr. Novak projects revenues associated with increased  
12 usage and an increased number of customers without including the costs needed to  
13 serve the increased usage and customers. For instance, Mr. Novak ignores the  
14 increased chemical expense needed to provide the increased usage. Mr. Novak  
15 ignores the increased power expense needed to run the pumps and blowers  
16 necessary to serve the increased usage. Mr. Novak ignores the increased  
17 maintenance expense needed to serve the heightened number of customers. Mr.  
18 Novak ignores the increased investment needed to install pipes necessary to serve  
19 the new customers. Given this, Mr. Novak's proposal is entirely one-sided. It  
20 projects a higher level of revenues, which deflates the revenue deficiency, while  
21 ignoring all other components that would lead to a higher revenue deficiency.

1   **Q.     WHAT IS YOUR RECOMMENDATION?**

2   A.     While Company witness Donovan will provide additional arguments in response to  
3           Mr. Novak's calculation of attrition period revenues, I recommend that the  
4           Commission summarily dismiss his projected attrition period as it violates the  
5           matching period and is contrary to the test period expressly agreed to by CAD.

6

7                                   **VIII. INCOME TAX EXPENSE**

8   **Q.     PLEASE DESCRIBE THE ISSUE WITH REGARD TO INCOME TAX**  
9       **EXPENSE.**

10  A.     As evidenced in the Petition and supporting documentation, it is undisputed that,  
11           during the test year, Limestone Water lost money. This is a result of not only the  
12           deflated rates adopted by the Company when it acquired systems, but also the need  
13           to immediately start incurring expenses to operate systems. Both Limestone Water  
14           and CAD reflect this loss in their revenue requirement calculations.

15                 Unlike the Company, however, CAD assumed that this operating loss  
16           generated a negative state (-\$27,974) and federal (-\$84,504) income tax paid.<sup>34</sup>  
17           This negative state and federal income tax had the practical effect of artificially  
18           increasing operating income by a combined amount of \$112,478. Recognizing that  
19           the revenue deficiency and resulting revenue requirement are dependent on the test  
20           year operating income, this has the effect of artificially decreasing the revenue  
21           requirement by \$112,478. The Company is therefore paying twice for its historic

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<sup>34</sup> *Bradley Pre-filed*, Schedule AB-1.1 and 1.2, column O, lines 41 and 42.



1 operating loss and is by default prevented from an opportunity to earn a fair and  
2 reasonable return on its investments.

3 **Q. WHY IS CAD'S TEST YEAR INCOME TAX CALCULATION**  
4 **PROBLEMATIC?**

5 A. Implicit in CAD's calculation is the notion that not only did Limestone Water not  
6 have to pay income tax during the test year, but that Limestone Water actually  
7 received a payment back from the state and federal taxing bodies in the amount of  
8 \$112,478. It is well understood that the taxing entities do not share in the losses of  
9 a business. Rather, if a business loses money, regardless of the amount of the loss,  
10 the tax paid will simply be \$0. By assuming a credit back from the taxing entities  
11 of \$112,478, CAD has inflated the resulting operating income and, yet again,  
12 deflated the calculated revenue deficiency.

13 **Q. WHAT IS YOUR RECOMMENDATION?**

14 A. I recommend that the Commission increase CAD's recommended revenue  
15 requirement by \$112,478 to reflect the erroneous calculation of a negative test year  
16 state and federal income tax.

17 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

18 A. Yes.

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

**PETITION OF LIMESTONE WATER )  
UTILITY OPERATING COMPANY, )  
LLC, TO INCREASE CHARGES, FEES )  
AND RATES AND FOR APPROVAL )  
OF A GENERAL RATE INCREASE )  
AND CONSOLIDATED RATES )**

**DOCKET NO. 24-00044**

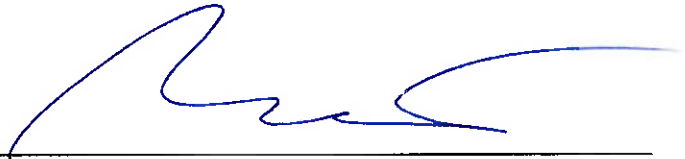
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**VERIFICATION**

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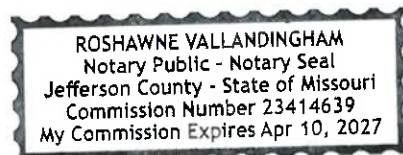
**STATE OF MISSOURI )  
 )  
COUNTY OF ST. LOUIS )**

I, BRENT THIES, being duly sworn, state that I am authorized to testify on behalf of Limestone Water Utility Operating Company, LLC in the above-referenced docket, that if present before the Commission and duly sworn, my testimony would be as set forth in my pre-filed testimony in this matter, and that my testimony herein is true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
BRENT THIES

Sworn to and subscribed before me  
this 7<sup>th</sup> day of January, 2025.

  
\_\_\_\_\_  
Notary Public



My Commission Expires: 04-10-2027

CERTIFICATE OF SERVICE

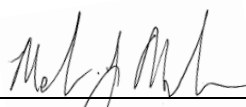
I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 13<sup>th</sup> day of January 2025.

  
\_\_\_\_\_  
Melvin J. Malone