

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF LIMESTONE WATER)	
UTILITY OPERATING COMPANY,)	DOCKET NO. 24-00044
LLC TO INCREASE CHARGES, FEES)	
AND RATES, AND FOR APPROVAL OF)	
A GENERAL RATE INCREASE AND)	
CONSOLIDATED RATES)	

**CONSUMER ADVOCATE’S MOTION FOR LEAVE TO ISSUE
MORE THAN FORTY DISCOVERY REQUESTS**

The Consumer Advocate Division of the Tennessee Office of the Attorney General (“Consumer Advocate”), pursuant to TPUC Rule 1220-1-2-.11(5)(a), hereby submits this Motion requesting permission to issue more than forty discovery requests to Limestone Water Utility Operating Company, LLC (“Limestone” or the “Company”). Pursuant to TPUC Rule 1220-1-2-.11(5)(a), the Consumer Advocate seeks leave of the Hearing Officer by motion and has filed a memorandum establishing good cause for service of the additional discovery requests and the discovery requests themselves. A copy of the proposed discovery is filed herewith.

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RESPECTFULLY SUBMITTED,



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TPUC Docket No. 24-00044

Motion for Leave to Issue More Than Forty Discovery Requests

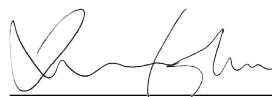
CERTIFICATE OF SERVICE

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

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This the 10th day of October, 2024



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Assistant Attorney General

IN RE:)
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PETITION OF LIMESTONE WATER)
UTILITY OPERATING COMPANY,)
LLC TO INCREASE CHARGES, FEES) **DOCKET NO. 24-00044**
AND RATES, AND FOR APPROVAL OF)
A GENERAL RATE INCREASE AND)
CONSOLIDATED RATES)

The Consumer Advocate Division of the Tennessee Office of the Attorney General (“Consumer Advocate”), pursuant to TPUC Rule 1220-01-02-.11(5)(a), hereby submits this Memorandum in Support of its Motion for Leave to Issue More Than Forty Discovery Requests (“Motion”) to Limestone Water Utility Operating Company, LLC (“Limestone” or the “Company”). For good cause, the Consumer Advocate would show as follows:

Section 1220-1-2-.11 of the Tennessee Public Utility Commission (“TPUC” or the “Commission”) Rules, titled ‘Discovery,’ states in part, “[a]ny party to a contested case may petition for discovery.... [D]iscovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.” The Uniform Administrative Procedures Act provides the implementing mechanism: “[t]he administrative judge or hearing officer, at the request of any

party, shall issue subpoenas, effect discovery, and issue protective orders, in accordance with the Tennessee Rules of Civil Procedure.”¹

Tenn. R. Civ. P. 26.02 allows for broad discovery. Specifically, the rule provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and electronically stored information, i.e. information that is stored in an electronic medium and is retrievable in perceivable form, and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(Emphasis added). Perhaps the most important underlying policy of discovery is “that discovery should enable parties and courts to seek truth so that disputes will be decided by facts, rather than by legal maneuvering.”² Discovery should allow both the court and the parties to “have an intelligent grasp of the issues to be litigated and knowledge of the facts underlying them.”³ Accordingly, “[a] party seeking discovery is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.”⁴

Under the Tennessee Rules of Civil Procedure, however, discovery may be limited in three narrow circumstances. Specifically, the Rules provide that:

The frequency or extent of use of the discovery methods set forth in subdivision 26.01 and this subdivision shall be limited by the court

¹ Tenn. Code Ann. § 4-5-311(a).

² *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999).

³ *Vythoulikas v. Vanderbilt Univ. Hosp.*, 693 S.W.2d 350, 356 (Tenn. Ct. App. 1985) (internal citations omitted), superseded on other grounds by statute, Tenn. R. Civ. P. 26.02(4)(B), as recognized in *West v. Schofield*, 460 S.W.3d 113, 125 (Tenn. 2015).

⁴ *State ex. rel. Flowers v. Tenn. Trucking Ass’n Self Ins. Grp. Tr.*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006) (internal citations omitted).

if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.⁵

The narrowness of these exceptions is supported by the fundamental principle of “*expressio unius est exclusio alterius*,” which translates as “the expression of one thing implies the exclusion of ... things not expressly mentioned.”⁶ Thus, a court may not limit discovery if the requests do not fall into one of these three categories.⁷

In the context of the exceptions noted above, the Commission's Rules require that a party obtain leave from the Commission before serving more than forty discovery requests.⁸ Leave is obtained by filing a motion and an accompanying “memorandum establishing good cause” for additional discovery.⁹ The Commission is granted the power to create such a rule under Tenn. Code Ann. § 4-5-311(c): “The agency may promulgate rules to further prevent abuse and oppression in discovery.” However, this ability is constrained by the requirement that the Commission comply with the Tennessee Rules of Civil Procedure, as directed by the Commission's own Rule 1220-01-02-.11, as well as Tenn. Code Ann. § 4-5-311(a). Consequently, it follows that “abuse or oppression in discovery” is defined as one of the three permissible reasons for limiting discovery as specifically described in Tenn. R. Civ. P. 26.02(1).

⁵ Tenn. R. Civ. P. 26.02(1).

⁶ See *Wells v. Tenn. Bd. of Regents*, 231 S.W.3d 912, 917 (Tenn. 2007) (applying the *expressio unius* principle to a state statute).

⁷ *Id.*

⁸ Tenn. Comp. R. & Regs Rule 1220-01-02-.11(5)(a) (April 2018).

⁹ *Id.*

Thus, when TPUC Rules are read in conjunction with the Tennessee Code Annotated and the Tennessee Rules of Civil Procedure, it becomes clear that a motion for additional discovery shall not be denied unless the additional discovery requests violate one of the three provisions contained in Tenn. R. Civ. P. 26.02(1).

II. THE CONSUMER ADVOCATE HAS GOOD CAUSE TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS

The Consumer Advocate's *Motion* is made with good cause, as required by TPUC Rule 1220-01-02-.11. This Memorandum demonstrates that the Consumer Advocate's discovery requests meet this standard.

As background, when the Consumer Advocate intervenes in a case, its aim is to present a complete case to the Commission. By "complete case," the Consumer Advocate means a case that not merely opposes selected parts of a company's petition, but one that presents a virtually parallel case that sets forth an alternative number for every number presented by the company.

By presenting a complete case, the Consumer Advocate believes it is not only representing consumers to the fullest extent possible, but also providing a useful framework for the Commission as it works to decide the case. It should be noted that the discovery process is the principal procedural vehicle available to the Consumer Advocate to gather evidence and conduct analysis prior to the hearing in this matter.

In the context of the current docket, Limestone is petitioning for the Commission's approval to increase rates in its first ever general rate case. Specifically, Limestone seeks adjustments that will result in a total annual revenue requirement for the water operations of \$649,455 and \$2,410,952 for the sewer operations.¹⁰ Also, the Company requests the Commission

¹⁰ *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*, p. 4, TPUC Docket No. 24-00044 (July 16, 2024).

to approve the revised tariff implementing the proposed rates to be effective thirty (30) days after the date of their filed Petition.¹¹ Therefore, substantial discovery by the Consumer Advocate is justified due to the requested implementation of a potentially substantial rate increase. Given the nine-month maximum within which this substantial rate increase request must be heard, the Consumer Advocate's requests are reasonable and meet the "good cause" standard alone.

The consequences of the denial of the additional discovery requested would include the inability of the Consumer Advocate to test the merits of Limestone's proposed rates, especially given that this is the Company's first rate case. Therefore, the Consumer Advocate would not have the ability to develop fully prepared positions on the myriad of issues presented in the Petition. Without the requested discovery – and without receiving discovery responses in the format requested – the Consumer Advocate will be severely constrained in representing the interests of households that constitute Limestone's consumers. Discovery and resulting pre-filed testimony present the only opportunities for consumers to receive due process with a representative and evidentiary voice regarding the proposed rate increase prior to the hearing. Moreover, discovery is necessary for the Consumer Advocate to take informed positions in representing consumers in any potential settlement negotiations.

In summary, the Consumer Advocate works diligently to put forth a complete case based on a factual record to adequately represent the interests of consumers. To enable the Consumer Advocate to put forth that case, the Consumer Advocate's requests do meet the "good cause" standard. The limitation of discovery to forty questions in this Docket would severely limit the Consumer Advocate's ability to analyze and present a complete case and would severely limit the Consumer Advocate's ability to provide that analysis and additional information that is vital to the

¹¹ *Id.* at p.8.

Commission for the protection of Tennessee consumers. Further, the Consumer Advocate respectfully notes that, in the event of a dispute over a specific discovery request, the Consumer Advocate is willing to make available the experts and/or consultants it employs to work informally with Limestone’s responding witnesses to resolve any such dispute, as it has in other dockets.

III. THE CONSUMER ADVOCATE’S DISCOVERY REQUESTS ARE NOT ABUSIVE OR OPPRESSIVE

After a party has established good cause under the Commission’s rules and Tennessee law, these additional discovery requests should only be denied if they are found to be abusive or oppressive.¹² As discussed above, the “abusive or oppressive” standard should be understood in terms of the Tennessee Rules of Civil Procedure – therefore, for discovery requests to be abusive or oppressive, they must violate one of the three situations specified in Tenn. R. Civ. Pro. 26.02.

In the event that requested data appears to have been produced in response to another question or may be more readily available from some other source, the Consumer Advocate is willing to discuss and work with Limestone to clarify, alter, amend, or (if necessary) withdraw a discovery request that is unreasonably cumulative or duplicative.

A. The Discovery Sought Is Not Unreasonably Cumulative or Duplicative

Under the first prong of Tenn. R. Civ. Pro. 26.02(1), the Commission may limit discovery if “the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive.” In this Docket, the Consumer Advocate has made reasonable efforts to ensure that its discovery is not cumulative or duplicative and has sought to obtain the information from other sources if possible.

B. The Consumer Advocate Has Not Had Ample Opportunity by Discovery to Obtain the Information Sought

¹² Tenn. Code Ann. § 4-5-311(c).

The Consumer Advocate has had no formal opportunity to conduct discovery in this Docket. As described above, a second circumstance under which a judge or hearing officer may limit discovery would only occur if “the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.”¹³ Limestone filed their Petition in this Docket on July 16, 2024. The Company did not file native excel documents referenced in Testimony of Aaron Silas, and the Petition was missing the responses to Minimal Filing Guidelines Nos. 31 and 34 until July 31, 2024.¹⁴ The Company also filed testimony and accompanying exhibits and workpapers for 7 different experts in this Docket. Therefore, due to the lack of full and complete information in the Petition as originally filed and continuing to date, the Consumer Advocate has a large amount of information to review and is still in the process of determining what information is required and not yet present in this Docket. This lack of completeness necessitates that the Consumer Advocate will have to ask more questions than usually allowed without leave of the Hearing Officer to have a full record of the Company’s request to be able to analyze. While the Consumer Advocate and the Company have met informally attempting to address some of these issues, the Company has still not provided much of the information, particularly historical, such that it would constitute a full or “ample” opportunity for the Consumer Advocate to have conducted discovery. Additionally, as this is the first set of formal discovery requests by the Consumer Advocate in the Company’s first ever rate case, it cannot be said that the Consumer Advocate has had “ample opportunity” for discovery in this action.

¹³ Tenn. R. Civ. Pro. 26.02(1).

¹⁴ See *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. (With Exhibit A-Proposed Protective Order) And (Collective Attachment 1-Minimum Filing Guidelines)*, TPUC Docket No. 24-00044 (July 16, 2024). The Company’s cover letter to this filing on page 2 states “the Minimum Filing Guideline Attachments to Response Nos. 031, 034, and 037 will be filed as soon as possible;” however, the attachment ultimately provided was labeled as Nos. 31 and 34.

**C. The Discovery Sought Is Not Unduly Burdensome or Expensive,
Taking Into Account the Needs of the Case**

The discovery sought would not be unduly burdensome or expensive to Limestone after considering the needs and amount of review needed in this Docket. As discussed above, Limestone has petitioned the Commission to increase rates for the first time. Within this context – that is, “if the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake in the litigation” – discovery in this Docket should not be limited because the whole of the information lies within the control of the Company and should be available for analysis when seeking to establish and increase rates of consumers across the state for the first time.

Nevertheless, some brief analysis of each aspect of this potential limitation merits consideration. The first aspect relates to the “needs of the case.”¹⁵ Limestone’s initial filing is voluminous. This Docket requires substantial review and analysis by the Consumer Advocate of the potential amount of rate increase. In the course of this Docket, the Consumer Advocate will review thousands of pages of testimony, data, and other information filed by the Company. As noted above, after that review and analysis, the Consumer Advocate’s experts will then put together a complete alternative projection that not only challenges any unreasonable amounts and policies presented by the Company, but also presents its position on what the correct figures and policies should be. In light of the Consumer Advocate’s role in this matter, its pending discovery requests are certainly reasonable in relation to “the needs of the case.” The Consumer Advocate’s requests are also reasonable given the informal attempts to “complete” the case for Limestone thus far. Much of the information integral to being able to analyze the merits of the Petition is contained in Excel format. Such a format general requires formulae to be intact such that both the

¹⁵ *Id.*

Commission Staff and the Consumer Advocate can determine how well or variable the Petition's requests conform to the Company's Cost Allocation Manual ("CAM") and other approved methodologies. Limestone thus far has provided a substantial amount of this information "hard-coded" within the Excel sheets provided, meaning that neither the Consumer Advocate nor Commission Staff will be able to determine the methods behind how those numbers came to be and if they are in accordance with the Company's CAM. Thus the needs of this particular case are currently requiring the Consumer Advocate to extricate that information through asking more questions than it has in other past general rate cases.

The second aspect requires that discovery requests be evaluated in light of the "amount in controversy."¹⁶ In this Docket, Limestone is requesting a rate increase in base rates of approximately \$649,455 for its water operations; and similarly, for its sewer operations, Limestone is seeking a total annual revenue requirement of \$2,410,952. Considering this request, it is crucial the information provided through discovery illustrates a comprehensive picture to ensure just and reasonable rates.

The third aspect requires that discovery requests must be considered with regard to any "limitations on the parties' resources." As a subsidiary of Central States Water Resources, ("CSWR"), which it touts on its public facing website that CSWR is the 11th largest water and wastewater utility company, and the single largest operator of wastewater plants in the United States, it may take time and effort for Limestone to respond to the Consumer Advocate's requests going through the appropriate corporate-parent channels of review; however, these discovery requests should amount to a normal part of doing business for a company backed by such a large parent company with vast resources. Additionally, as much of the financial and operational

¹⁶ Tenn. R. Civ. Pro. 26.02(1).

information is held by the Company alone, the Consumer Advocate has no other alternative resource to seek such information. This asymmetry of information in this particular discovery process should lean in favor of allowing additional discovery requests beyond the forty maximum otherwise set by the Commission's rules because the Consumer Advocate, as well as Commission Staff, has no other avenue available to retrieve this information fundamental to assessing the plain assertions of the Petition.

The final aspect requires that we consider "the importance of the issues at stake in the litigation." Taking into consideration the novelty of this base rate case for the Company and its consumers, the Commission should consider specially that the issues in this case will impact future base rate cases, acquisition premiums issues, and any alternative regulatory methods petitions sought by the Company moving forward. Thus, the importance of the issues in this Docket carry special weight considering the future regulation of the Company's territories.

CONCLUSION

For all of the foregoing reasons, the Consumer Advocate respectfully requests that the Commission grant its *Motion for Leave to Issue More Than Forty Discovery Requests*.

RESPECTFULLY SUBMITTED,



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TPUC Docket No. 24-00044

CA's Memorandum in Support of Motion for Leave

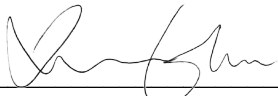
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail, with
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This the 10th day of October, 2024



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