

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of	)	
Confluence Rivers Utility Operating	)	File No. WM-2020-0403
Company, Inc., to Acquire Certain Water	)	& SM-2020-0404
and Sewer Assets.	)	

**MOTION TO COMPEL**

The Office of the Public Counsel (OPC) files this Motion to Compel seeking satisfactory data request (DR) responses from Confluence Rivers Utility Operating Company, Inc. (Confluence Rivers) as follows:

1. On August 5, 2020, the OPC submitted DR 3116 and 3117 to Confluence Rivers. According to the computation of time given by the Public Service Commission’s (Commission) Rule 20 CSR 4240-2.900, answers to those DRs were due by August 25, 2020.

2. The OPC’s DRs read as follows:

3116. Please provide non-redacted copies of all parties’ pre-filed testimony filed in Docket No. 19-00062 before the Tennessee Public Utility Commission.

3117. Please provide the Aqua Utilities Appraisal Report provided in response to the Tennessee Consumer Advocate’s data requests 1-26 in Docket No. 19-00062 before the Tennessee Public Utility Commission.

These DRs seek responses regarding the testimony of Alex Bradley and David Dittmore from the Tennessee Attorney General’s Office regarding the proposed acquisition of Aqua Utilities, Inc. by Limestone Utility Operating Company, LLC (Limestone). Redacted versions of their testimony are attached as OPC-1.1 and OPC-1.2. The redacted portions relate to the value of an acquisition premium and the financial condition of CSWR, LLC (CSWR) including certain “losses” and “concerns.” OPC was unable to obtain non-redacted versions of this testimony by inquiring with the Tennessee Attorney General.

3. The Tennessee Attorney General has intervened in Limestone's request before the Tennessee Public Service Commission (Tennessee Commission). The water and sewer systems contemplated in the Tennessee application are similar in size and condition as the Terre Du Lac (TDL) systems contemplated in this docket. CSWR is the parent company of both Limestone and Confluence Rivers.

4. Confluence Rivers objected to these DRs on August 17, 2020, on the basis that the questions are not relevant to Confluence Rivers' proposed acquisition of the TDL water and sewer systems. Confluence Rivers' objection is attached herein as OPC-2.

5. Commission Rule 20 CSR 4240-2.900(2)(D) provides that objections to DRs are timely if made within ten days after issuance. Confluence Rivers did not timely object to OPC DR 3116 and 3117.

6. Nonetheless, counsel for Confluence Rivers indicated that answers to those DRs may be provided. Confluence Rivers supplied an additional response on August 25, 2020, claiming that it could not answer OPC DR 3116 and 3117 due to a Tennessee Public Service Commission protective order. Confluence River's August 25, 2020 response is attached as OPC-3. The referenced protective order is attached as OPC-4.

7. Pursuant to Commission Rule 20 CSR 4240-20.090(8), the OPC and Confluence River later conferred by telephone through counsel on August 27, 2020. OPC and Confluence Rivers later participated in a discovery conference with the regulatory law judge on August 31, 2020, in compliance with Commission Rules. The dispute remains unresolved.

8. Parties submit data requests in a Commission case as a means for discovery.<sup>1</sup> The same sanctions provided for failure to comply with discovery process in the rules of civil procedure

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<sup>1</sup> 20 CSR 4240-2.090(2).

apply before the Commission.<sup>2</sup> Such sanctions include entertaining a motion to compel, staying proceedings until a party follows a request for documents, or dismissing the proceeding.<sup>3</sup>

9. An objection to discovery based on relevance for grounds other than inadmissibility before the Commission is groundless “if the information sought *appears* reasonably calculated to lead to the discovery of admissible evidence.”<sup>4</sup> The OPC’s DRs appear, and in fact are, reasonably calculated to lead to the discovery admissible evidence.

10. OPC DR 3116 inquires into the Tennessee Attorney General’s evaluation of the financial condition of CSWR and its relation to Limestone. As the parent company of Confluence Rivers, CSWR’s financial situation vis-à-vis Limestone may expose admissible evidence as to the financial status of Confluence Rivers. The financial condition of an acquiring utility is relevant in any utility asset acquisition case to determine whether the acquiring utility has the financial capability to maintain the acquired assets and whether the acquisition is “detrimental to the public interest.”<sup>5</sup>

11. OPC DR 3117 asks for the Aqua Utilities Appraisal Report that is currently redacted in its entirety. An answer to this DR would reveal the identity of who appraised the Aqua Utilities’ systems, which may support or undermine the credibility of Confluence Rivers’ appraisal of the TDL systems. Having the entirety of the Aqua Utilities Appraisal Report may also support or undermine the credibility of the methodology for the TDL’s appraisal. The credibility of evidence is always relevant.

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<sup>2</sup> 20 CSR 4240-2.090(1).

<sup>3</sup> Mo. R. Civ. Pro. 61.01.

<sup>4</sup> Mo. R. Civ. Pro. 56.01 (emphasis added).

<sup>5</sup> *Envtl. Utils., LLC v. Pub. Serv. Comm’n*, 219 S.W. 256, 265 (Mo. App. W.D. 2007) (quoting *Fee Fee Trunk Sewer v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980)).

12. The appraisal methodology for both the Limestone and TDL systems is also relevant as to any acquisition premium or other incentive that this Commission may consider. An acquisition incentive may account for any difference in the purchase price over the depreciated original cost of the system. Confluence Rivers requested an acquisition incentive for its purchase of the TDL systems under 20 CSR 4240-10.085. Confluence Rivers must accordingly demonstrate that the acquisition is unlikely to occur but for the incentive.<sup>6</sup> Confluence Rivers' actions in other states and appraisal of systems therein, is relevant to the likelihood of whether Confluence Rivers would acquire the TDL systems but for an incentive.

13. The Commission should also note that Limestone is intending to submit evidence related to the Elm Hills Utility Operating Company (Elm Hills) and Indian Hills Utility Operating Company (Indian Hills) before the Tennessee Commission. CSWR owns both Elm Hills and Indian Hills, and both are in Missouri. If Limestone believes that those Missouri systems are relevant to its Tennessee acquisition, then the Aqua Utilities acquisition is relevant in Missouri. Evidence of Limestone's intent to submit evidence related to Missouri utility systems is attached as OPC-5.

14. The Tennessee Commission protective order does not bar Confluence Rivers from answering the OPC's DRs. The protective order reads that, "Nothing in this Order is intended to or shall restrict, limit, or alter any federal or state laws, regulations or rules." Missouri law affords parties with discovery privileges, and accordingly the protective order should not be read to mean that Tennessee law might quash Missouri law. Similarly, regardless of the Tennessee protective order's literal language, it would doubtless be unable to impede lawful investigations by federal

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<sup>6</sup> 20 CSR 4240-10.085(4)(I).

and local law enforcement officials. Likewise, this Commission should not interpret the protective order to bar OPC's discovery.

15. Furthermore, the Commission should understand the protective order as being a protection afforded to CSWR and its affiliates, rather than a burden imposed upon them. The Tennessee protective order is similar to the confidentiality protections and responsibilities before this Commission. The Tennessee protective order is meant to secure Limestone and CSWR from divulging trade secrets. It, just as with Missouri Commission confidentiality practice, is not meant to foreclose proper inquiries into whether the public interest is harmed by any particular acquisition.

**WHEREFORE**, the OPC requests that the Commission compel Confluence Rivers to provide the data requested in DR 3116 and 3117, or in the alternative consider such other relief as the Commission deems appropriate.

Respectfully,

OFFICE OF THE PUBLIC COUNSEL

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**Attorney for the Office of the Public  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 2nd Day of September, 2020, with notice of the same being sent to all counsel of record.

/s/ Caleb Hall

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

**IN RE:** )  
 )  
**JOINT APPLICATION OF AQUA** )  
**UTILITIES COMPANY, INC., AND** )  
**LIMESTONE WATER UTILITY** ) **DOCKET NO. 19-00062**  
**OPERATING COMPANY, LLC, FOR** )  
**AUTHORITY TO SELL OR TRANSFER** )  
**TITLE TO THE ASSETS, PROPERTY** )  
**AND REAL ESTATE OF A PUBLIC** )  
**UTILITY AND FOR A CERTIFICATE** )  
**OF PUBLIC CONVENIENCE AND** )  
**NECESSITY** )

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**DIRECT TESTIMONY**

**OF**

**DAVID N. DITTEMORE**

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**March 31, 2020**

1 **Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION**  
2 **FOR THE RECORD.**

3 **A1.** My name is David N. Dittmore. My business address is Office of the Tennessee  
4 Attorney General, War Memorial Building, 301 6<sup>th</sup> Ave. North, Nashville, TN 37243.  
5 I am a Financial Analyst employed by the Consumer Advocate Unit of the Tennessee  
6 Attorney General's Office (Consumer Advocate).

7 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**  
8 **PROFESSIONAL EXPERIENCE.**

9 **A2.** I received a Bachelor of Science Degree in Business Administration from the University  
10 of Central Missouri in 1982. I am a Certified Public Accountant licensed in the state of  
11 Oklahoma (#7562). I was previously employed by the Kansas Corporation Commission  
12 (KCC) in various capacities, including Managing Auditor, Chief Auditor, and Director  
13 of the Utilities Division. For approximately four years, I was self-employed as a Utility  
14 Regulatory Consultant representing primarily the KCC Staff in regulatory issues. I also  
15 participated in proceedings in Georgia and Vermont, evaluating issues involving  
16 electricity and telecommunications regulatory matters. Additionally, I performed a  
17 consulting engagement for Kansas Gas Service (KGS), my subsequent employer during  
18 this time frame. For eleven years I served as Manager and subsequently Director of  
19 Regulatory Affairs for KGS, the largest natural gas utility in Kansas, serving  
20 approximately 625,000 customers. KGS is a division of One Gas, a natural gas utility  
21 serving approximately two million customers in Kansas, Oklahoma, and Texas. I joined  
22 the Tennessee Attorney General's Office in September 2017 as a Financial Analyst.



1 Overall, I have thirty years' experience in the field of public utility regulation. I have  
2 presented testimony as an expert witness on many occasions. Attached as Exhibit  
3 DND-1 is a detailed overview of my background.

4 **Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**  
5 **TENNESSEE PUBLIC UTILITY COMMISSION (TPUC)?**

6 **A3.** Yes. I have submitted testimony in a number of TPUC Dockets, since joining the Attorney  
7 General's Office.

8 **Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

9 **A4.** The purpose of my testimony is to provide the Consumer Advocate recommendations in  
10 the present Docket.

11 **Q5. PLEASE IDENTIFY THE SCOPE OF CUSTOMERS AFFECTED BY THIS**  
12 **PROPOSED TRANSACTION.**

13 **A5.** Aqua provides service to 353 water customers, plus 66 irrigation customers along with 353  
14 wastewater customers for a total customer count of 772.<sup>1</sup>

15 **Q6. WHAT IS THE SCOPE OF OPERATIONS OF CENTRAL STATES WATER**  
16 **RESOURCES (CSWR) THE PARENT OF LIMESTONE?**

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<sup>1</sup> Limestone's Response to Consumer Advocate DR No. 1-23, Exhibit DR1-3, filed under seal. Although Exhibit DR1-23, the customers numbers were made public in Limestone's Responses to the Consumer Advocate's Second Discovery Request, specifically in question DR No. 2-2.

1 **A6.** CSWR, the parent of Limestone Water Utility Operating Company (Limestone), operates  
2 water and wastewater utility in the states of Missouri, Arkansas, Kentucky, Texas, and  
3 Louisiana.<sup>2</sup>

4 **Q7. WHAT CRITERIA DO YOU BELIEVE SHOULD BE CONSIDERED IN**  
5 **DETERMINING WHETHER A TRANSACTION OF THIS NATURE SHOULD BE**  
6 **DEEMED TO BE IN THE PUBLIC INTEREST?**

7 **A7.** The Commission in TPUC Docket No. 20-000025 has set forth proposed criteria by which  
8 it may evaluate whether an Acquisition Premium may be recovered from ratepayers.  
9 However, it does not specifically identify the criteria which should be used to determine  
10 whether the proposed transaction is in the public interest.

11 I believe the following criteria should be used in the evaluation of this transaction and  
12 similarly situation transactions:<sup>3</sup>

- 13 1. Does the prospective acquiring company have the capability to operate the utility?
- 14 2. Does the prospective acquiring entity have the financial stability to operate the  
15 utility and have the willingness to invest to make any necessary improvements?
- 16 3. Is the purchase price reasonable given the condition of the acquired utility, the rates  
17 charged to customers and the ability to absorb the disallowance of the Acquisition  
18 Premium?

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<sup>2</sup> Amended and Restated Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC, for Authority to Sell or Transfer Title to the Assets, Property, and Real Estate of a Public Utility and for a Certificate of Public Convenience and Necessity, Exhibit 5, TPUC Docket No. 19-00062 (December 13, 2019)

<sup>3</sup> The listing is specific to this transaction and similarly situated transactions. It does not represent the comprehensive list that should be applicable to larger transactions involving invest owned utilities.

1 4. Will the transaction result in increased rates for ratepayers solely attributable to the  
2 acquisition?

3 5. Given the unique circumstances of the transaction is it appropriate to allocate some  
4 portion of any Gain on the Sale to ratepayers?

5 **Q8. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

6 **A8.** The proposed transaction should be approved contingent upon the adoption of provisions  
7 I will address below. I believe there are ratepayer benefits as well as risks associated with  
8 this transaction which I will identify in my testimony.

9 **Q9. BEGIN BY IDENTIFYING THE CONDITIONS YOU BELIEVE ARE**  
10 **NECESSARY FOR THIS TRANSACTION TO MOVE FORWARD.**

11 **A9.** I recommend that the transaction be approved subject to the conditions identified below:

12 1. Capital Costs and Operating Expenses incurred associated with mapping the system  
13 should not be borne by ratepayers.

14 2. Aqua's Balance Sheet balances at the date of the acquisition, including its  
15 Contributions in Aid of Construction (CIAC) balance, shall be transferred as the  
16 beginning balances on the books of Limestone. (see testimony of Alex Bradley)

17 3. Limestone shall record any Service Connection Fees it receives as CIAC. (see  
18 testimony of Alex Bradley)

19 4. Copies of the most recent two years' accounting records of Aqua shall be transferred  
20 to Limestone.

1 5. Limestone shall be regulated on a Rate Base Rate of Return methodology. It's cost of  
2 debt should be no higher than debt costs for comparable firms. If actual debt costs are  
3 excessive, a hypothetical debt cost should be imputed.

4 6. The Acquisition Premium in this case is approximately [REDACTED] and is comprised  
5 of the write-up of Land to its appraised value. This Acquisition Premium should not  
6 be recovered from ratepayers.

7 7. Regulatory/Transaction costs should not be recoverable from ratepayers.

8 8. Limestone shall comply with the Commissions' affiliate transaction rules.

9 9. Limestone should bear any future costs associated with any existing title issues and the  
10 cost to remediate any currently existing (but unknown) environmental or easement  
11 issues.

12 10. The Commission should place a cap on prospective Limestone rate increases of  
13 \$10/month per customer per year. Limestone shall not seek an increase in rates until it  
14 has operated the system for one year.

15  
16 If Limestone is unwilling to abide by these conditions, the transaction is not in the  
17 public interest and should not be approved by the Commission.

18 **Q10. DOES THE BUYER HAVE THE ABILITY TO TERMINATE THE**  
19 **TRANSACTION IF IT BELIEVES THE REGULATORY AGENCY HAS**  
20 **IMPOSED CONDITIONS UPON THE TRANSACTION IT DOES NOT WITH TO**  
21 **ACCEPT?**

1 **A10.** Yes. Section 2.05 of the Purchase and Sale Agreement permits the Buyer wide discretion  
2 to terminate the Agreement if regulatory approvals are received that are not entirely  
3 satisfactory to the Buyer.

4 **Q11. DO YOU BELIEVE ADOPTION OF THE CONDITIONS IDENTIFIED ABOVE**  
5 **REPRESENT ROADBLOCKS TO CLOSING THE TRANSACTION?**

6 **A11.** No.

7 **ACQUISITION CRITERIA**

8 **Q12. PLEASE ADDRESS THE FIRST CRITERIA RELATED TO THE CAPABILITY**  
9 **OF THE ACQUIROR TO OPERATE THE UTILITY SYSTEM.**

10 **A12.** I generally believe the personnel identified in the testimony of Mr. Josiah Cox have the  
11 capability to operate the Aqua system.<sup>4</sup> There is one thing of note regarding the business  
12 model of Limestone's affiliate, Central States Water Resources (CSWR). CSWR relies  
13 upon contractors to perform Operating and Maintenance (O&M) functions, as well as  
14 billing and customer service tasks.<sup>5</sup> To our knowledge, no systemic quality of service  
15 issues have been identified by regulators in other states in which CSWR operates. The  
16 business model is somewhat unique, and I believe the Company should provide an update  
17 of its performance at the time of its next rate proceeding.

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<sup>4</sup> *Direct Testimony of Josiah M. Cox, Amended and Restated Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC, for Authority to Sell or Transfer Title to the Assets, Property, and Real Estate of a Public Utility and for a Certificate of Public Convenience and Necessity*, Exhibit 9, TPUC Docket No. 19-00062 (December 13, 2019).

<sup>5</sup> *Id.* at pp. 5-7.

1 **Q13. CONTINUE WITH A DISCUSSION OF WHETHER THE COMPANY HAS THE**  
2 **FINANCIAL STABILITY TO OPERATE THE UTILITY.**

3 **A13.** Our office obtained the forecasted financial statements of Limestone as well as the  
4 historical 2018 and 2019 financial statements of CSWR.<sup>6</sup> A review of the Balance Sheets  
5 would suggest Limestone and its parent CSWR has the financial capability to provide  
6 service. However, there are three issues of concern, discussed below, which should be  
7 addressed by the Applicant in rebuttal testimony.

8 First, CSWR incurred a 2019 [REDACTED].<sup>7</sup> A loss of this size is certainly  
9 material to an entity the size of CSWR. This [REDACTED]

10 [REDACTED]

11 [REDACTED]. I'm sure the major portion of the increased costs was due to  
12 the Company being in the ramp-up stage of operations and with the acquisition of  
13 additional systems, there should be economies of scale associated with these costs. It is  
14 important to note that these A&G costs have not been reviewed for reasonableness. The  
15 existence of affiliated transactions increases the need to carefully review such costs within  
16 a rate case setting. CSWR has a healthy mix of equity to debt; however, [REDACTED]

17 [REDACTED]

18 [REDACTED].<sup>8</sup> [REDACTED]

19 [REDACTED]

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<sup>6</sup> The 2019 financial statements of CSWR are for the twelve-month period ending December 31, 2019.

<sup>7</sup> Limestone's Response to Consumer Advocate Request No. 2-16, Consolidated Statement of Operations, filed under seal.

<sup>8</sup> [REDACTED]

1 Secondly, there is a Note to the 2018 Financial Statements<sup>9</sup> which is of concern and should  
2 be highlighted. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED].

9 [REDACTED]<sup>10</sup> [REDACTED]

10 [REDACTED]<sup>11</sup> [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED].

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<sup>9</sup> The Notes referenced here are to the 2018 Financial Statements. Limestone’s Response to Consumer Advocate Request No. 2-15, filed under seal. The Notes to the 2019 Financial Statements, a component of and incorporated within the definition of Financial Statements, were not provided as requested. Limestone’s Response to Consumer Advocate Request No. 2-18, filed under seal.

<sup>10</sup> Beginning several weeks prior to the preparation of this testimony, the financial and credit markets are feeling the impacts of the abrupt economic downturn brought on by COVID-19.

<sup>11</sup> Limestone’s Response to Consumer Advocate Request No. 1-40, filed under seal.

1           These issues should be addressed by the Applicant in its Rebuttal testimony in this Docket.

2   **REASONABLENESS OF THE PURCHASE PRICE**

3   **Q14. NOW TURN TO THE REASONABLENESS OF THE PURCHASE PRICE. DO**  
4   **YOU BELIEVE THE PURCHASE PRICE IS REASONABLE?**

5   **4.**   No. I believe the portion of the purchase price related to land is excessive. I would also  
6   note that it is reasonable to assume higher Operating and Maintenance costs will result  
7   from this transaction. I will discuss this second point later in my testimony.

8   **Q15. WHAT IS THE BASIS FOR YOUR OPINION THAT THE PAYMENT RELATED**  
9   **TO THE ACQUISITION OF LAND AND LAND RIGHTS IS EXCESSIVE?**

10   **A15.** To my knowledge, there is no other alternative use of the land other than in the operation  
11   of the utility. Since there is no alternative use for the property other than in the provision  
12   of utility service, there is no basis to acquire such property for an amount in excess of its  
13   book value. The proposal to write-up the value of land to its appraisal results in an  
14   Acquisition Premium, and a commensurate Gain on the Sale for the selling utility (Aqua)  
15   which if not addressed by the Commission will result in increased rates associated with the  
16   transaction merely by the transfer of legal ownership.

17   The Company claims there is no Acquisition Premium in this case however their view of  
18   the definition of Acquisition Premium is not accurate. An Acquisition Premium is defined  
19   as the excess purchase price over net book value of net assets acquired. The fact that the  
20   land was reflected on the books at its cost, in this case zero, does not reflect some inherent  
21   accounting error on Aqua's books.



1 Further, it is not clear what easements Limestone is acquiring in this transaction, as  
2 discussed below. Easements are legal rights of the utility to access land in order to provide  
3 utility service.

4 **Q16. WHAT IS THE ESTIMATED AMOUNT OF THE ACQUISITION PREMIUM?**

5 **A16.** Exhibit DND-2 contains the Balance Sheet of Aqua. Exhibit DND-3 provides a very rough  
6 estimate of the Acquisition Premium based upon Aqua’s 2018 Balance Sheet balances.  
7 This amount translates to an approximate Acquisition Premium of [REDACTED]. The  
8 actual amount will vary based upon the actual balances of acquired assets and liabilities.

9 **Q17. HOW WAS THE PURCHASE PRICE DETERMINED?**

10 **A17.** The Limestone’s Response to Consumer Advocate Request No. 1-26 indicates that: [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED].

16 **Q18. HAVE YOU REVIEWED THE APPRAISAL PROVIDED WITHIN THIS**  
17 **DOCKET?**

18 **A18.** Yes.<sup>12</sup>

19 **Q19. DO YOU HAVE ANY COMMENTS REGARDING THE APPRAISAL?**

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<sup>12</sup> Limestone’s Response Consumer Advocate Request No. 1-26 and Exhibit “DR1-26 Aqua Utilities Appraisal Report.”.

1 **A19.** Yes. The value of land and utility easements [REDACTED]

2 [REDACTED]<sup>13</sup> The appraisal also contains the following

3 language:

4 [REDACTED]

5 [REDACTED]

6 [REDACTED].

7 The report continues: [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED].

17 **IMPACT OF TRANSACTION ON RATES**

18 **Q20. HAVE YOU EVALUATED THE LIKELY IMPACT OF THIS TRANSACTION ON**  
19 **THE OVERALL REVENUE REQUIREMENT OF THE UTILITY?**

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<sup>13</sup> *Id.*

1 **A20.** Yes. In my opinion, ratepayers will likely incur additional costs resulting from this  
2 transaction as discussed below.

3 **Q21. ARE THERE UNIQUE ASPECT IN THIS CASE THAT SHOULD BE**  
4 **CONSIDERED WHEN ESTIMATING THE IMPACT OF THIS TRANSACTION**  
5 **ON CUSTOMER RATES?**

6 **A21.** Yes. First, based upon its 2018 financial results, Aqua is underearning and it is reasonable  
7 to assume customer rates would increase in the absence of this proposed transaction.<sup>14</sup>  
8 Exhibit DND-3 sets forth the calculation indicating Aqua’s current revenue deficiency is  
9 estimated at \$82,950. In arriving at this estimated revenue deficiency for the composite  
10 water and wastewater operations of Aqua, I first identified the 2018 Aqua operating  
11 expenses relying upon information provided in their annual report. I then calculated a  
12 factor to project these expenses to 2021 levels assuming a 3% annual inflation rate and  
13 applied the factor to 2018 expense levels. The next step is to apply an Operating Margin  
14 to the estimated 2021 expenses to arrive at an overall Aqua 2021 revenue requirement.

15 Secondly, Limestone has identified the need for several capital projects that I believe are  
16 in the public interest and are appropriate. While it is important to consider customer  
17 impacts when setting rates, regardless of the nature of the cost increase, I do not believe  
18 the costs associated with these needed capital improvements should be attributed to this  
19 transaction. These are needed system improvements that customer should benefit from  
20 regardless of ownership.

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<sup>14</sup> The Financial Statements were obtained from the Tennessee Public Utility Commission via a Request for Information.

1 **Q22. BASED UPON INFORMATION PROVIDED BY THE COMPANY,<sup>15</sup> WHAT IS**  
2 **YOUR ESTIMATE OF THE RATE INCREASES FORECASTED BY**  
3 **LIMESTONE THAT ARE DIRECTLY ATTRIBUTED TO THIS ACQUISITION?**

4 **A22.** The estimated impact to customers exclusively as a result of this transaction is [REDACTED]  
5 as shown in Exhibit DND-6. Exhibit DND-4 estimates the existing Aqua revenue  
6 deficiency discussed above at \$82,950, while Exhibit DND-5 estimates the cost of new  
7 capital investment of [REDACTED].

8 **Q23. WHAT IS THE TOTAL ESTIMATED RATE INCREASE INCORPORATING**  
9 **THE IMPACT OF THIS ACQUISITION, IMPACT OF THE EXISTING AQUA**  
10 **DEFICIENCY AND THE RETURN ON PROSPECTIVE CAPITAL**  
11 **INVESTMENTS?**

12 **A23.** The Company indicates the total increase in customer bills under Limestone ownership of  
13 nearly [REDACTED].<sup>16</sup>

14 **Q24. ARE YOU CONCERNED WITH THIS POSSIBLE LEVEL OF INCREASE IN**  
15 **CUSTOMER RATES?**

16 **A24.** Yes.

17 **GAIN ON THE SALE**

18 **Q25. WHAT IS A GAIN ON THE SALE?**

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<sup>15</sup> Limestone's Response to Consumer Advocate Request DR No. 1-28, filed under seal.

<sup>16</sup> The average current tariff charge per month is [REDACTED]

[REDACTED] Limestone's Response to Consumer Advocate Request No.1-28, filed under seal.

1 **A25.** Gain on the Sale represents the portion of the acquisition payment in excess of net book  
2 value that accrues to the selling utility. The Gain on the Sale in this case is estimated to  
3 equal the Acquisition Premium of approximately [REDACTED].<sup>17</sup>

4 **Q26. DOES THE COMMISSION HAVE AUTHORITY OVER THE DISPOSITION OF**  
5 **THE AMOUNT OF THE GAIN ON THE SALE OF UTILITY ASSETS?**

6 **A26.** Yes.

7 **Q27. SHOULDN'T THE GAIN ON THE SALE AUTOMATICALLY ACCRUE TO THE**  
8 **BENEFIT OF THE OWNER OF THE ASSET?**

9 **A27.** No.

10 **Q28. WHAT IS THE RATIONALE FOR ATTRIBUTING A PORTION OF ALL OF THE**  
11 **GAIN ON THE SALE TO UTILITY RATEPAYERS?**

12 **A28.** Utility owners/shareholders are entitled to an opportunity to earn its authorized return  
13 through the ratemaking process. Utilities are granted the right to the provision of a  
14 monopoly service within a given service territory. This governmental permit to exclusively  
15 provide utility service is of great value to holder of the right. The utility owner is protected  
16 from competition for the services they offer. Utility shareholders do assume the level of  
17 risk that accrue to shareholders of competitive companies. Utility owners/shareholders are  
18 not entitled to additional enrichment once they transfer their Certificate of Convenience  
19 and Necessity (CCN) to a third party. Captive utility ratepayers provide a financial safety  
20 net for utility owners/shareholders and therefore should benefit from any Gain on the Sale

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<sup>17</sup> See Exhibit DND-3.

1 resulting from the transfer of the government provided monopoly franchise, in that the Gain  
2 on Sale represents excess profits beyond those required to provide the utility owner a  
3 reasonable opportunity to earn its authorized return.

4 **Q29. WHAT CRITERIA SHOULD BE EVALUATED IN DETERMINING WHETHER**  
5 **SOME PORTION OF THE GAIN ON THE SALE SHOULD BE ASSIGNED AS A**  
6 **BENEFIT TO UTILITY CUSTOMERS FOR A GIVEN TRANSACTION?**

7 **A29.** I believe the following factors should be considered when determining the portion of the  
8 Gain on the Sale should be assigned to ratepayers.

- 9 1. Will the related Acquisition Premium be recoverable from ratepayers?
- 10 2. Has the selling utility provided quality service to ratepayers?
- 11 3. Has the selling utility invested necessary capital into the system?
- 12 4. Will rates increase as a result of the proposed transaction?

13 **Q30. CAN YOU DISCUSS THE RATIONALE FOR RELYING UPON THESE**  
14 **CRITERIA IN ASSESSING WHETHER ATTRIBUTION OF GAIN ON THE SALE**  
15 **TO RATEPAYERS IS APPROPRIATE?**

16 **A30.** Yes. The recoverability of the Acquisition Premium should be considered in context with  
17 the appropriate regulatory treatment of the Gain on the Sale issue. Ratepayers deserve rates  
18 that are based upon original cost, not upon the purchase price of the acquiring utility.  
19 Setting rates on the purchase price encourages acquisition transactions which don't  
20 necessarily produce ratepayer benefits. Establishing rates based upon the purchase price

1 may result in excessive rates to ratepayers and excessive returns to utility  
2 owners/shareholders.

3 The Commission may be confronted with a transaction where an Acquisition Premium is  
4 paid by the prospective buyer to a seller with a poor operating performance (such as one  
5 with environmental violations). In this situation the Commission must balance ratepayer  
6 impacts of the recovery of the Acquisition Premium with the desire to have service  
7 provided by a (new) prudent operator willing to invest capital into a failing system.  
8 Without the opportunity to assign the Gain on the Sale to ratepayers, the imprudent operator  
9 could reap the benefits of the Gain on the Sale. If the Commission is compelled to approve  
10 a transaction with recovery of an Acquisition Premium due to the poor operating  
11 performance of the selling utility, the corresponding Gain on the Sale should be assigned  
12 to captive ratepayers.

13 The extent to which the utility/shareholders have invested capital into the system should  
14 be considered in evaluating the extent to which the Gain on the Sale should be assigned to  
15 ratepayers. Utilities that do not finance capital improvements, but instead rely on pre-  
16 funded ratepayer contributions should not then retain Gain on the Sale proceeds.

17 If the Commission determines that an Acquisition Premium recovery is appropriate, that  
18 the transaction will result in cost increases for ratepayers, then ratepayers should receive  
19 the benefit of the Gain on the Sale to offset the increased costs resulting from the  
20 transaction.

21 **Q32. DOES THE COMMISSION HAVE A PRECEDENT FOR ASSIGNING THE GAIN**  
22 **ON THE SALE OF ASSETS TO RATEPAYERS?**

1 **A32.** Yes. On at least two occasions the Commission has assigned the Gain on the Sale of utility  
2 assets to ratepayers.<sup>18</sup> Thus, there is Commission precedent for such treatment within the  
3 ratemaking process.

4 **Q33. WHAT IS YOUR RECOMMENDATION REGARDING THE REGULATORY**  
5 **TREATMENT OF THE GAIN ON THE SALE FOR THIS TRANSACTION?**

6 **A33.** I recommend that the Commission not assign the Gain on the Sale in this case to ratepayers,  
7 contingent upon a finding that ratepayers will not incur costs associated with the  
8 Acquisition Premium. I believe that Aqua has provided an acceptable level of service to  
9 its customers; it has invested funds into the system; and it has no environmental Notice of  
10 Violations of which I am aware. As I discuss later in my testimony, I do not believe  
11 recovery of the Acquisition Premium is appropriate in this case. One factor weighing in  
12 favor of assignment of the Gain on the Sale to customers is the likelihood that rates will  
13 increase as a result of this transaction, as discussed earlier in my testimony.

14 **Q34. DO YOU HAVE A CONTINGENT RECOMMENDATION IN THE EVENT THE**  
15 **COMMISSION EITHER APPROVES RECOVERY OF THE ACQUISITION**  
16 **PREMIUM IN THIS CASE, OR DEFERS SUCH A DECISION UNTIL A**  
17 **SUBSEQUENT PROCEEDING?**

18 **A34.** Yes. If the Commission determines recovery of an Acquisition Premium is appropriate, or  
19 if it defers a decision on this issue until a future proceeding, then I recommend Aqua issue  
20 a pro-rata credit to ratepayers of the final Gain on the Sale, once the actual number is

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<sup>18</sup> *Order on Remand, In re A+ Communications, Inc.*, TPUC Docket No. 92-1398 (May 18, 1994) and *Order, In re Kingsport Power Company*, TPUC Docket No. U-84-7308 (November 15, 1984).



1 finalized. In this event, the Commission should require the parties to submit information  
2 showing the calculation of the Gain on the Sale on the part of Aqua, and the underlying  
3 calculation of the distribution of the Gain, on a per customer basis. This credit should come  
4 in the form of a bill credit and be issued at such time as the transaction closes.

5 **Q35. IF THE COMMISSION DEFERS A DECISION ON THE APPROPRIATE**  
6 **TREATMENT OF THE ACQUISITION PREMIUM FOR A FUTURE DOCKET,**  
7 **WHY WOULD IT BE APPROPRIATE TO DISTRIBUTE THE GAIN ON THE**  
8 **SALE TO RATEPAYERS AT THIS TIME?**

9 **A35.** Once the transaction closes and the Certificate of Convenience and Necessity passes to  
10 Limestone, the Commission will no longer have oversight over Aqua and will not have the  
11 ability to require Aqua's distribution of the Gain on the Sale to ratepayers. The  
12 Commission could leave open the option of requiring Limestone to flow back the Gain on  
13 the Sale to ratepayers; however, that would likely require a reconfiguration of the Purchase  
14 Price of the existing transaction and cause financial uncertainty for Limestone.

15 **CONDITIONS ON TRANSACTION APPROVAL**

16 **Q36. NOW RETURN TO THE ACQUISITION CONDITIONS IDENTIFIED EARLIER**  
17 **IN YOUR TESTIMONY. PROVIDE THE RATIONALE FOR EXCLUSION OF**  
18 **COSTS ASSOCIATED WITH MAPPING FROM FUTURE RATE CASE**  
19 **DETERMINATIONS.**

1 **A36.** The lack of maps and documentation of the system is a deficiency of the seller and should  
2 not result in incremental future costs for ratepayers.<sup>19</sup> Under the Limestone proposal, they  
3 are indifferent to this deficiency since they plan on recovering those costs from ratepayers.

4 **Q37. DISCUSS THE NEXT TWO ACQUISITION CONDITIONS REQUIRED TO**  
5 **APPROVE THE TRANSACTION.**

6 **A37.** The next two requirements relate to the transfer of Contributions in Aid of Construction  
7 (CIAC) and the appropriate recording of developer contributions on the books of  
8 Limestone and are supported by Mr. Bradley.

9 **Q38. PLEASE DISCUSS THE FOURTH ACQUISITION CONDITION RELATED TO**  
10 **THE TRANSFER OF ACCOUNTING RECORDS TO LIMESTONE.**

11 **A38.** The Commission should require that two-years of Aqua's Accounting records, including  
12 plant records, billing data, general ledger information be copied and supplied to Limestone.  
13 This legacy accounting information of Aqua is needed to ensure the appropriate asset and  
14 liability balances of Limestone, to provide some continuity of accounting results and to  
15 provide some context for future ratemaking reviews.

16 **Q39. IDENTIFY AND DISCUSS THE FIFTH ACQUISITION CONDITION.**

17 **A39.** It appears Limestone's would like to be regulated under a Rate Base rate of return  
18 approach.<sup>20</sup> I welcome this approach for Limestone and its apparent willingness to invest  
19 in infrastructure. I believe that other similarly situated Tennessee entities are reluctant or

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<sup>19</sup> Limestone's Response to Consumer Advocate No. Request 2-1(a)-(b). Limestone provided estimates for GIS and Surveying costs of \$16,000 and \$15,000 for Smoke Testing costs. For the sake of discussion, I lump both of these items together and refer to them as mapping costs.

<sup>20</sup> Limestone's Response to Consumer Advocate Request No. 1-45, filed under seal.

1 completely unwilling to invest in infrastructure to the detriment of their customers. I  
2 recommend the Commission clarify that Limestone shall make future rate request filings  
3 based upon the Rate Base rate of return model.

4 **Q40. PLEASE TURN TO THE SIXTH CONDITION AND PROVIDE THE RATIONALE**  
5 **FOR THE REQUIREMENT THAT LIMESTONE SHALL NOT RECOVER THE**  
6 **ACQUISITION PREMIUM FROM RATEPAYERS.**

7 **A40.** The proposed transaction is anticipated to result in significant cost increases for ratepayers  
8 as discussed above.<sup>21</sup> Therefore, it is not justified to also incorporate an Acquisition  
9 Premium cost within the ratemaking calculation. There are no cost savings associated with  
10 the transaction to offset the incremental cost of the Acquisition Premium. While there may  
11 be operational enhancements planned by Limestone that will enhance its quality of service,  
12 I do not believe the ‘minor deficiencies’ rise to the level significant operating deficiencies  
13 of Aqua.<sup>22</sup> Accordingly, the Commission should not feel compelled to ignore the customer  
14 impact of additional costs, including recovery of an Acquisition Premium, as a result of  
15 significant operating deficiencies. The record does not indicate that Aqua is providing a  
16 sub-standard level of service.

17 Further, there are several deficiencies identified in the Appraisal report, referenced earlier  
18 in my testimony.

19 **Q41. DO YOU AGREE WITH THE COMPANY’S ASSERTION THAT THERE IS NO**  
20 **ACQUISITION PREMIUM ASSOCIATED WITH THIS TRANSACTION<sup>23</sup>?**

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<sup>21</sup> Exhibit DND-6.

<sup>22</sup> Limestone’s Response to Consumer Advocate Request No. 1-48, filed under seal.

<sup>23</sup> Limestone’s Response to Consumer Advocate Request No. 1-29, filed under seal.

1 **A41.** No. As discussed earlier, there is an Acquisition Premium associated with this transaction.

2 **Q42. PLEASE TURN TO THE SEVENTH ACQUISITION CONDITION.**

3 **A42.** The Commission should assign the costs associated with this transaction, including  
4 attendant regulatory costs, to Aqua/Limestone. The absorption of these costs between the  
5 two parties to the transaction is consistent with the recommendation that the Gain on the  
6 Sale be retained by Aqua.<sup>24</sup> Further, the likelihood of significant cost increases as a result  
7 of this transaction dictate as a matter of fairness that ratepayers not be further burdened  
8 with recovery of costs associated with the transaction.

9 **Q43. NOW ADDRESS THE EIGHTH CONDITION RELATED TO THE PRICING OF**  
10 **AFFILIATE TRANSACTIONS.**

11 **A43.** A review of CSWR Notes to the Financial Statement indicates that [REDACTED]  
12 [REDACTED]. The Commission should specify to Limestone that it needs to  
13 comply with the Commissions' affiliate rules, specifically TPUC Rule 1220-04-13-.16.

14 **Q44. EXPLAIN THE NINTH ACQUISITION CONDITION YOU ARE SUPPORTING.**

15 **A44.** Limestone's Response to Consumer Advocate Request No. 2-12 indicates that it has not  
16 obtained a survey, title report, soils report nor Environmental Opinion. Limestone should  
17 bear any future costs associated with any existing title issues and any currently existing  
18 (but unknown) environmental or easement issues. Further, these items are part of the  
19 Acquisition costs and for reasons explained earlier in my testimony should not be recovered  
20 from ratepayers.

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<sup>24</sup> Subject to the qualification that ratepayers do not incur the costs associated with the Acquisition Premium.

1 **Q45. NOW TURN TO THE TENTH ACQUISITION CONDITION AND PROVIDE**  
2 **YOUR SUPPORT FOR LIMITATIONS OR PHASE INS OF RATE INCREASES.**

3 **A45.** The forecasted rate increases under Limestone’s ownership approximate [REDACTED]  
4 [REDACTED]<sup>25</sup> This is a significant increase and in my view is not reasonable to impose  
5 on customers without an extended phase-in approach. I believe rates should increase no  
6 more than \$10/month per year. This level of increase to ratepayers is very significant and  
7 should be considered the maximum increase incurred by ratepayers associated with this  
8 transaction.

9 **Q46. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A46.** Yes, but I reserve the right to amend my testimony if new information becomes available.

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<sup>25</sup> See the response to Consumer Advocate request 1-28, specifically the estimated overall increase in tariff rate per customer.

IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE

IN RE: )

JOINT APPLICATION OF AQUA )  
UTILITIES COMPANY, INC., AND )  
LIMESTONE WATER UTILITY )  
OPERATING COMPANY, LLC, FOR )  
AUTHORITY TO SELL OR TRANSFER )  
TITLE TO THE ASSETS, PROPERTY )  
AND REAL ESTATE OF A PUBLIC )  
UTILITY AND FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND )  
NECESSITY )

DOCKET NO. 19-00062

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AFFIDAVIT

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I, David D. Dittemore behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.

David N. Dittemore  
DAVID N. DITTEMORE?

Sworn to and subscribed before me  
this 31<sup>st</sup> day of MARCH, 2020.

Alex Bradley  
NOTARY PUBLIC



My commission expires: 3-07-23

David Dittmore

Experience

**Areas of Specialization**

Approximately thirty-years experience in evaluating and preparing regulatory analysis, including revenue requirements, mergers and acquisitions, utility accounting and finance issues and public policy aspects of utility regulation. Presented testimony on behalf of my employers and clients in natural gas, electric, telecommunication and transportation matters covering a variety of issues.

Tennessee Attorney General's Office; **Financial Analyst September, 2017 – Current**

Responsible for evaluation of utility proposals on behalf of the Attorney General's office including water, wastewater and natural gas utility filings. Prepare analysis and expert witness testimony documenting findings and recommendations.

Kansas Gas Service; **Director Regulatory Affairs 2014 – 2017; Manager Regulatory Affairs, 2007 - 2014**

Responsible for directing the regulatory activity of Kansas Gas Service (KGS), a division of ONE Gas, serving approximately 625,000 customers throughout central and eastern Kansas. In this capacity I have formulated strategic regulatory objectives for KGS, formulated strategic legislative options for KGS and led a Kansas inter-utility task force to discuss those options, participated in ONE Gas financial planning meetings, hired and trained new employees and provided recommendations on operational procedures designed to reduce regulatory risk. Responsible for the overall management and processing of base rate cases (2012 and 2016). I also played an active role, including leading negotiations on behalf of ONE Gas in its Separation application from its former parent, ONEOK, before the Kansas Corporation Commission. I have monitored regulatory earnings, and continually determine potential ratemaking outcomes in the event of a rate case filing. I ensure that all required regulatory filings, including surcharges are submitted on a timely and accurate basis. I also am responsible for monitoring all electric utility rate filings to evaluate competitive impacts from rate design proposals.

Strategic Regulatory Solutions; 2003 -2007

**Principal;** Serving clients regarding revenue requirement and regulatory policy issues in the natural gas, electric and telecommunication sectors

Williams Energy Marketing and Trading; 2000-2003

**Manager Regulatory Affairs;** Monitored and researched a variety of state and federal electric regulatory issues. Participated in due diligence efforts in targeting investor owned electric utilities for full requirement power contracts. Researched key state and federal rules to identify potential advantages/disadvantages of entering a given market.

MCI WorldCom; 1999 - 2000

**Manager, Wholesale Billing Resolution;** Manage a group of professionals responsible for resolving Wholesale Billing Disputes greater than \$50K. During my tenure, completed disputes increased by over 100%, rising to \$150M per year.

Kansas Corporation Commission; 1984- 1999

**Utilities Division Director** - 1997 - 1999; Responsible for managing employees with the goal of providing timely, quality recommendations to the Commission covering all aspects of natural gas, telecommunications and electric utility regulation; respond to legislative inquiries as requested; sponsor expert witness testimony before the Commission on selected key regulatory issues; provide testimony before the Kansas legislature on behalf of the KCC regarding proposed utility legislation; manage a budget in excess of \$2 Million; recruit professional staff; monitor trends, current issues and new legislation in all three major industries; address personnel issues as necessary to ensure that the goals of the agency are being met; negotiate and reach agreement where possible with utility personnel on major issues pending before the Commission including mergers and acquisitions; consult with attorneys on a daily basis to ensure that Utilities Division objectives are being met.

**Asst. Division Director** - 1996 - 1997; Perform duties as assigned by Division Director.

**Chief of Accounting** 1990 - 1995; Responsible for the direct supervision of 9 employees within the accounting section; areas of responsibility included providing expert witness testimony on a variety of revenue requirement topics; hired and provided hands-on training for new employees; coordinated and managed consulting contracts on major staff projects such as merger requests and rate increase proposals;

**Managing Regulatory Auditor, Senior Auditor, Regulatory Auditor** 1984 - 1990; Performed audits and analysis as directed; provided expert witness testimony on numerous occasions before the KCC; trained and directed less experienced auditors on-site during regulatory reviews.

Amoco Production Company 1982 - 1984

**Accountant** Responsible for revenue reporting and royalty payments for natural gas liquids at several large processing plants.

### Education

- B.S.B.A. (Accounting) Central Missouri State University
- Passed CPA exam; (Oklahoma certificate # 7562) – Not a license to practice



**Limestone/Aqua Acquisition  
Docket 19-00062**

**Aqua 2018 Balance Sheet**

**Exhibit DND-2**

**Balance Sheet**

**ASSETS**

Utility Plant in Service (101-105)	\$ 2,917,599
Accum. Depreciation and Amortization (108)	\$ 1,193,564
<b>Net Plant In Service</b>	<b>\$ 1,724,035</b>
Cash	\$ 32,285
Customer Accounts Receivable (141)	\$ 33,020
Perpaid F&E Tax	\$ 3,449
CWIP	\$ 2,224
<b>Current Assets</b>	<b>\$ 1,795,013</b>

**LIABILITIES AND CAPITALIZATION**

**Deferred Debits:**

Common Stock Issued (201)	\$ 1,000
Preferred Stock Issued (204)	\$ -
Other Paid-In Capital (211)	\$ -
Retained Earnings (215)	\$ (705,957)
Capital (Proprietary & Partnership-218)	\$ 2,188,423
<b>Total Capital</b>	<b>\$ 1,483,466</b>

Long-term Debt (224)	\$ 9,000
Short-term Debt (231)	\$ -
Notes Payable (232)	\$ -
Customer Deposits (235)	\$ -
Accrued Taxes (236)	\$ -
Accum. Depreciation and Amortization (108)	\$ -
Sales tax payable	\$ 581
Accrued Management Fees	\$ 33,050
Current Earnings	\$ (26,574)
Other Liabilities (Please Specify)	\$ -
Advances for Construction	\$ -
Contributions in Aid of Const.-Net (271-2)	\$ 295,490
<b>Total Liabilities</b>	<b>\$ 311,547</b>

<b>Total Capitalization and Liabilities</b>	<b>\$ 1,795,013</b>
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Source: Aqua 2018 Annual Report

**Limestone/Aqau Acquisition**  
**Docket 19-00062**

**Calculation of Estimated Acquisition Premium**

**Exhibit DND-3**

<u>Item</u>	<u>Amount</u>	
Purchase Price	\$ 2,000,000	Cox Testimony
Less: Assets Acquired:		Aqua Balance Sheet
Net Plant in Service	\$ 1,724,035	
Plus Liabilities Acquired:		
CIAC	\$ 295,490	
Estimated Acquisition Premium	\$ 571,455	

**Limestone/Aqua Acquisition  
Docket 19-00062**

**Estimated Aqua Revenue Requirement Deficiency**

**Exhibit DND-4**

**Income Statement**

	<b>Water</b>	<b>Sewer</b>	<b>Total</b>
Residential Revenue	126,042	93,126	219,168
Commercial Revenue	-	-	-
Tap Fees	7,125	7,125	14,250
Other Revenue	1,589	1,688	3,277
<b>Total Operating Revenues</b>	<b>134,756</b>	<b>101,939</b>	<b>236,695</b>
Salaries & Wages - Employees	-	-	-
Salaries & Wages - Officers, Directors, & Stockholders	18,000	18,000	36,000
Employee Pensions & Benefits	-	-	-
Purchased Water	36,365	-	36,365
Purchased Power	-	18,871	18,871
Contractual Services	39,373	34,464	73,837
Miscellaneous Expenses	3,485	2,946	6,431
<b>Total Operations and Maintenance Expense</b>	<b>97,223</b>	<b>74,281</b>	<b>171,504</b>
Depreciation Expense	31,311	48,510	79,821
Taxes other than Income	11,943	-	11,943
<b>Total Operating Expense</b>	<b>140,477</b>	<b>122,791</b>	<b>263,268</b>
<b>Net Operating Income</b>	<b>(5,721)</b>	<b>(20,852)</b>	<b>(26,573)</b>

Source: Aqua 2018 Annual Report

<b>Estimated Current Aqua Revenue Deficiency</b>	
Operating Expenses	263,268
Escalation Factor to 2021 @ 3% per Year	<u>1.093</u>
Estimated Escalated 2021 Operating Expenses	287,680
Divided By: Reciprocal Operating Ratio (1- 6.5%)	<u>90.0%</u>
Required Revenue	319,645
Total Operating Revenue	<u>236,695</u>
Revenue Requirement Deficiency - Aqua 2021	82,950

<b>Composite Revenue Per Customer</b>	<b>Current</b>	<b>With Increase</b>
Revenue	236,695	319,645
Customers (Per Response to Consumer Advocate Request 1-9)	<u>772</u>	<u>772</u>
Revenue Per Customer	\$ 306.60	\$ 414.05
Monthly Revenue Per Customer	\$ 25.55	\$ 34.50

**Limestone/Aqua Acquisition  
Docket 19-00062**

**Revenue Requirement Associated with Limestone Capital Expenditures**

**Exhibit DND-5**

Item	Amount	
Anticipated Capital Expenditures	\$ 150,000	Response to Consumer Advocate Request 1-39
Revenue Requirement Factor		
Depreciation	2.87%	Staff Schedules -
Assumed Rate of Return	<u>10.00%</u>	2.02 Docket 15-
Total Carrying Rate	<u>12.87%</u>	
Revenue Requirement	\$ 19,305	

**Limestone/Aqua Acquisition  
Docket 19-00062**

**Estimated Increase in Costs  
Associated with Limestone Acquisition**

**Exhibit DND-6**

Assumed Yr 3 Tariff Rate (Monthly)	[REDACTED]	*	
Assumed Customers			772
Months			<u>12</u>
Total Customer Months	9,264		
Assumed Revenue from Existing Aqua Customers	[REDACTED]		
2018 Aqua Revenue	\$ 236,695		Exhibit DND-4
Increase in Rates	[REDACTED]		
Less:			
Existing Aqua Revenue Deficiency	\$ (82,950)		
Return/Depreciation on New Assets	[REDACTED]		
Estimated Rate Increase Attributed to Limestone Acquisition	[REDACTED]		

\* Per Response to Consumer Advocate Exhibit 1-28b  
Includes assumed acquisition of Cartwright Creek, Shiloh Falls and DSH Utilities.

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

**IN RE:** )  
 )  
**JOINT APPLICATION OF AQUA** )  
**UTILITIES COMPANY, INC., AND** )  
**LIMESTONE WATER UTILITY** ) **DOCKET NO. 19-00062**  
**OPERATING COMPANY, LLC, FOR** )  
**AUTHORITY TO SELL OR TRANSFER** )  
**TITLE TO THE ASSETS, PROPERTY** )  
**AND REAL ESTATE OF A PUBLIC** )  
**UTILITY AND FOR A CERTIFICATE** )  
**OF PUBLIC CONVENIENCE AND** )  
**NECESSITY** )

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**DIRECT TESTIMONY**

**OF**

**ALEX BRADLEY**

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**March 31, 2020**

1 **Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND OCCUPATION**  
2 **FOR THE RECORD.**

3 **A1.** My name is Alex Bradley. My business address is Office of the Tennessee Attorney  
4 General, War Memorial Building, 301 6<sup>th</sup> Ave. North, Nashville, TN 37243. I am an  
5 Accounting & Tariff Specialist employed by the Consumer Advocate Unit in the  
6 Financial Division of the Tennessee Attorney General’s Office.

7 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**  
8 **PROFESSIONAL EXPERIENCE.**

9 **A2.** I received a Bachelor of Science in Business Administration with a major in  
10 Accounting along with a Bachelor of Arts with a major in Political Science from  
11 Auburn University in 2012. I have been employed by the Consumer Advocate Unit in  
12 the Financial Division of the Tennessee Attorney General’s Office (Consumer  
13 Advocate) since 2013. My duties include reviewing utility regulatory filings and  
14 preparing analysis used to support Consumer Advocate testimony and exhibits. I have  
15 completed multiple regulatory trainings sponsored by both the National Association of  
16 Regulatory Utility Commissions (NARUC) and Michigan State University.

17 **Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**  
18 **TENNESSEE PUBLIC UTILITY COMMISSION (TPUC)?**

19 **A3.** Yes. I have previously testified in TPUC Docket Nos. 17-00108, 18-00009, 18-00107,  
20 19-00010, 19-00034, 19-00042, 19-00043, and 19-00057.

21 **Q4. ON WHOSE BEHALF ARE YOU TESTIFYING?**

22 **A4.** I am testifying on behalf of the Consumer Advocate Unit in the Financial Division  
23 of the Tennessee Attorney General’s Office.

1 **Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 **A5.** The purpose of my testimony is to provide an overview of Contributions in Aid of  
3 Construction (CIAC) and to support two recommendations; 1) Ensure the appropriate  
4 balance of Contributions in Aid of Construction is transferred to the books and records  
5 of Limestone Water Utility Operating Company (Limestone), the acquiring company  
6 and 2) Requiring Limestone to record funds received from Service Connection as  
7 Contributions in Aid of Construction rather than revenue, given Limestone’s revenue  
8 requirement will be determined on a Rate Base rate of return basis.

9

10 **Q6. PROVIDE A BRIEF BACKGROUND OF WHAT CIAC IS AND HOW IT**  
11 **EFFECTS THE RATESETTING FORMULA.**

12 **A6.** CIAC represents non-investor supplied funds that were provided to the Company to  
13 construct the water and wastewater systems. Since these funds are not provided by the  
14 Utility, the appropriate ratemaking treatment is for them to serve as deduction to Rate  
15 Base. Additionally, CIAC is amortized at a rate of 2.5% yearly as a contra expense to  
16 Depreciation Expense to offset the Depreciation Expense of non-investor supplied  
17 plant.

18 **Q7. WHAT WAS AQUA’S LAST APPROVED RATE CASE?**

19 **A7.** Aqua Utility Company’s (Aqua) last general rate case was TPUC Docket No. 15-  
20 00044, which established rates for the attrition period ending May 31, 2016.<sup>1</sup>

21 **Q8. WHAT WAS THE CIAC BALANCE ESTABLISHED IN TPUC DOCKET NO.**  
22 **15-00044?**

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<sup>1</sup> *Joint Petition of Aqua Utilities Company and TRA Staff (as a Party) to Increase Rates and Charges*, p.2, ¶4, TPUC Docket No. 15-00044 (April 9, 2015).



1 **A8.** Aqua would have had \$322,438 in CIAC for the 12 months ending May 31, 2016.<sup>2</sup>

2 **Q9. WHAT WAS THE CIAC BALANCE SHOWN WITHIN THE PROPOSED**  
3 **TRANSACTION?**

4 **A9.** Originally, Limestone showed [REDACTED] in CIAC being transferred as part of the proposed  
5 sale; however, in response to Consumer Advocate DR 1-59 Limestone stated that  
6 [REDACTED] in CIAC would be transferred to the books of Limestone from Aqua.

7 **Q10. IN YOUR OPINION, DOES THIS ALIGN WITH WHAT THE CURRENT**  
8 **CIAC BALANCE WOULD BE?**

9 **A11.** Yes, if you were to take the CIAC balance of \$322,438 established in Aqua's last rate  
10 case and reduced it for accumulated amortizations for the period of time elapsed since  
11 the balance of [REDACTED] is within the range of reasonableness.

12 **Q12. WHY IS THE RECOGNITION OF THE CIAC BALANCE IMPORTANT FOR**  
13 **THIS PROCEEDING?**

14 **A12.** If the transaction is approved Limestone intends to shift the utility from an operating  
15 margin method of recovery to a rate base rate of return regulatory method of recovery.<sup>3</sup>

16 **Q13. BRIEFLY DESCRIBE AND CONTRAST THE RATE BASE METHOD AND**  
17 **OPERATING MARGIN METHOD OF REGULATORY RECOVERY.**

18 **A13.** Mr. Shirley summarized the differences concisely and simply as follows:

19 In Tennessee, a "Fair Profit" for regulated water and wastewater  
20 companies may be determined under two methods - the "Rate Base  
21 Method" and the "Operating Margin Method." Under the Rate Base  
22 Method, a Fair Profit is deemed to be a reasonable rate of return on  
23 the owners' investment in the utility system (e.g., net utility plant  
24 that is used and useful in providing utility service.) Under the

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<sup>2</sup> Pre-filed Direct Testimony of Joe Shirley, TRA Staff Exhibit Schedule 2, ln. 8, TPUC Docket No. 15-00044 (April 10, 2015).

<sup>3</sup> *Limestone Water Utility Operating Company's Response to the Consumer Advocate's First Discovery Request*, DR No. 1-45, TPUC Docket No. 19-000062, (February 14, 2020).

1 Operating Margin Method, a Fair Profit is deemed to be a reasonable  
2 return on operating expenses requiring a return factor (e.g.,  
3 operation and maintenance expenses, purchased power and water,  
4 depreciation and certain taxes.)<sup>4</sup>  
5

6 **Q14. BRIEFLY DESCRIBE HOW CIAC FACTORS INTO THE RATE BASE AND**  
7 **OPERATING MARGIN METHODS OF REGULATORY RECOVERY.**

8 **A14.** Within the Rate Base Method, CIAC serves as a deduction to utility plant in service  
9 which reduces the revenue requirement by reducing the return on utility plant in  
10 service. This is appropriate as CIAC funds are those provided by a third-party and by  
11 definition are not provided by owner/shareholders. Therefore, this source of cost-free  
12 capital must be recognized in the Rate Base rate of return model. Additionally, as  
13 stated above, the amortization of CIAC serves as a contra expense to Depreciation  
14 Expense which reduces the Depreciation Expense recovered within the revenue  
15 requirement.

16 Within the Operating Margin Method, CIAC only serves as a contra expense to  
17 Depreciation Expense, which similarly to the Rate Base Method reduces the  
18 Depreciation Expense recovered within the revenue requirement.

19 **Q15. ARE THEIR PREVIOUS COMMISSION ORDERS REGARDING CIAC FOR**  
20 **AQUA?**

21 **A15.** Yes, In TPUC Docket No. 06-000187, the Commission ordered that “[t]he Service  
22 Connection Charges shall be booked as Revenue at the tariff rate and added Utility  
23 Plant in Service at actual cost.”<sup>5</sup>

---

<sup>4</sup> Pre-Filed Direct Testimony of Joe Shirley, p. 2, ll. 15-22, TPUC Docket No. 15-00044.

<sup>5</sup> *Final Order Approving Rate Increase and Rate Design*, p. 19, TPUC Docket No. 06-00187 (November 27, 2007).

1       **Q16. DO YOU BELIEVE THIS TREATMENT SHOULD BE CONTINUED IF THE**  
2               **TRANSACTION IS APPROVED?**

3       **A16.** No, I do not. Limestone intends to shift the Utility to the Rate Base Method. Under  
4               this method of regulatory recovery, accurate representation of utility plant funded by  
5               those other than the Utility should be recorded as CIAC.

6       **Q15. DO YOU HAVE A RECOMMENDATION FOR THE COMMISSION**  
7               **REGARDING CIAC FOR THIS PROCEEDING?**

8       **A15.** Yes, I would recommend that the Commission codify an amount of [REDACTED] be placed  
9               on the books of Limestone as CIAC. I would also recommend that the Commission  
10              clarify that the CIAC balance is to be amortized at an annual rate of 2.5%. I also  
11              recommend the Commission require the Company record Service Connection Fees as  
12              CIAC rather than to revenue.<sup>6</sup>

13       **Q16. DOES THIS CONCLUDE YOUR TESTIMONY?**

14       **A16.** Yes.

---

<sup>6</sup> *Id.*

IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE

IN RE: )

JOINT APPLICATION OF AQUA )  
UTILITIES COMPANY, INC., AND )  
LIMESTONE WATER UTILITY )  
OPERATING COMPANY, LLC, FOR )  
AUTHORITY TO SELL OR TRANSFER )  
TITLE TO THE ASSETS, PROPERTY )  
AND REAL ESTATE OF A PUBLIC )  
UTILITY AND FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND )  
NECESSITY )

DOCKET NO. 19-00062

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AFFIDAVIT

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I, Alex Bradley, on behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.

Alex Bradley

ALEX BRADLEY

Sworn to and subscribed before me  
this 3<sup>rd</sup> day of March, 2020.

Tiffany H Blackman  
NOTARY PUBLIC



My commission expires: March 22, 2023

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**

PROFESSIONAL CORPORATION

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JENNIFER L. HERNANDEZ  
JESSE W. CRAIG

August 17, 2020

**VIA ELECTRONIC MAIL**

Mr. Caleb Hall  
The Office of Public Counsel  
[caleb.hall@opc.mo.gov](mailto:caleb.hall@opc.mo.gov)  
[opcservice@opc.mo.gov](mailto:opcservice@opc.mo.gov)

***RE: Case Nos. WM-2020-0403 and SM-2020-0404; OPC DRs 3116-3117  
Missouri Public Service Commission***

Dear Caleb,

We have received Data Requests (DRs) from the Office of Public Counsel (OPC) related to the above-referenced case. In accordance with Commission Rule 20 CSR 4240-2.090(2), this letter should be considered an objection to DRs 3116 and 3117 on behalf of Confluence Rivers Utility Operating Company, Inc., (Confluence Rivers) for the following reasons:

The responsive information is not relevant to the subject proceeding, not proportional to the needs of the case considering the totality of the circumstances, nor reasonably calculated to lead to the discovery of admissible evidence as to this case as it concerns an entity not regulated by the Missouri Public Service Commission and a proceeding taking place in another state, concerning properties located in another state.

If you have any questions, please contact me.

Sincerely,

**BRYDON, SWEARENGEN & ENGLAND P.C.**

By:



Dean L. Cooper

Case No. WM-2020-0403

In the Matter of the Application of Confluence Rivers Utility Operating Company, Inc., to Acquire Certain Water and Sewer Assets

Response by Confluence Rivers to OPC Murray DR 3116 - 3117

August 25, 2020

**DR 3116:** Please provide non-redacted copies of all parties' pre-filed testimony filed in Docket No. 19-00062 before the Tennessee Public Utility Commission

**RESPONSE:** Subject to the previous objection, the documents requested in this DR were filed subject to a *Protective Order* issued September 25, 2019, by the Tennessee Public Service Commission in its Docket No. 19-00062, concerning Limestone Water Utility Operating Company and Aqua Utilities Company, LLC. Section 6 of that order limits disclosure of protected information to expressly identified parties and persons. Because the Office of the Public Counsel does not fall within the scope of any of the parties or persons identified in the TPUC's order, the unredacted copies requested in this DR cannot be provided.

**DR 3117:** Please provide the Aqua Utilities Appraisal Report provided in response to the Tennessee Consumer Advocate's data requests 1-26 in Docket No. 19-00062 before the Tennessee Public Utility Commission

**RESPONSE:** Subject to the previous objection, the document requested in this DR was provided subject to a *Protective Order* issued September 25, 2019, by the Tennessee Public Service Commission in its Docket No. 19-00062 concerning Limestone Water Utility Operating Company and Aqua Utilities Company, LLC. Section 6 of that order limits disclosure of protected information to expressly identified parties and persons. Because the Office of the Public Counsel does not fall within the scope of any of the parties or persons identified in the TPUC's order, the document requested in this DR cannot be provided.

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

**September 25, 2019**

<b>IN RE:</b>	)	
	)	
<b>JOINT APPLICATION OF AQUA</b>	)	
<b>UTILITIES COMPANY, INC., AND</b>	)	<b>DOCKET NO.</b>
<b>LIMESTONE WATER UTILITY</b>	)	<b>19-00062</b>
<b>OPERATING COMPANY, LLC, FOR</b>	)	
<b>AUTHORITY TO SELL OR</b>	)	
<b>TRANSFER TITLE TO THE ASSETS,</b>	)	
<b>PROPERTY AND REAL ESTATE OF</b>	)	
<b>A PUBLIC UTILITY AND FOR A</b>	)	
<b>CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	

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**PROTECTIVE ORDER**

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To expedite the flow of filings, exhibits and other information, and to facilitate the prompt resolution of disputes as to the confidentiality of information, to adequately protect information entitled to be kept confidential and to ensure that protection is afforded only to information so entitled, the Tennessee Public Utility Commission (TPUC) hereby orders that:

1. For the purpose of this Protective Order (Order):
  - (A) Proprietary or confidential information, hereinafter referred to as “Confidential Information”, shall mean documents, testimony, material, or information in whatever form which the Producing Party, in good faith, and based on reasonable inquiry, deems to contain trade secrets, confidential research, development or other sensitive information protected by state or federal law, regulation or rule, and which has been specifically designated by the Producing Party.
  - (B) A “Producing Party” is defined as the Party creating the Confidential Information as well as the Party having actual physical possession of information produced pursuant to this Order.

2. All summaries, notes, extracts, compilations or other direct or indirect reproduction from, or of, any CONFIDENTIAL INFORMATION, shall be entitled to protection under this Order.

3. Documents or other information containing CONFIDENTIAL INFORMATION shall be segregated from non-confidential information and clearly and conspicuously marked as “CONFIDENTIAL” by the Producing Party. The information must be produced in a way that will clearly and conspicuously identify to others on each page of the information that it contains CONFIDENTIAL INFORMATION and it shall be provided in a segregated, completely separate manner from non-confidential information provided.<sup>1</sup> Any information so designated shall be handled in accordance with this Order. The provisions of any information containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 17 of this Order, or as otherwise permitted by the Rules of Evidence, state or federal law, regulation or rule.

4. Any individual, Party, or non-Party subject to this Order, including Producing Parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging his/her/its obligations under this Order.

5. Parties or non-Parties subject to this Order shall include Aqua Utilities Company, Inc, Limestone Water Utility Operating Company, LLC, and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (Attorney General). If other Parties are permitted to intervene, they will be allowed access to CONFIDENTIAL

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<sup>1</sup> If Confidential Information is not clearly and conspicuously marked CONFIDENTIAL, not marked CONFIDENTIAL at all, or is not segregated from non-confidential information, the Producing Party is required to provide substitute information clearly and conspicuously marked “CONFIDENTIAL” and/or provide segregated CONFIDENTIAL INFORMATION from non-confidential information within a reasonable time of notification from a Person of such failure to mark or segregate.



INFORMATION only to the extent and under the conditions permitted by a separate order consistent with this Order.

6. Subject to the exceptions noted in this Order, CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (A) Counsel of Record for the Parties in this Proceeding, associates, and support staff actively engaged in assisting outside counsel of record in this Docket and any appeals therefrom;
- (B) In-house Counsel for the Parties;
- (C) Officers, directors, commissioners, or employees of the Parties, including employees of the Attorney General and the State of Tennessee; provided that such persons shall be subject to the provisions of this Order, and shall not disclose such information further except as otherwise permitted under the terms of this Order;
- (D) TPUC Commissioners and members of the staff of the TPUC; and
- (E) Outside consultants and expert witnesses employed or retained by the Parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this Docket, provided that to the extent that any Party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness who is expected to testify on that Party's behalf, to the extent possible, the Party shall give seven days written notice to the Producing Party of intention to disclose Confidential Information. During such notice period, the Producing Party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the TPUC, the Hearing Officer, the Administrative Law Judge or court rules on the motion. Any such motion shall be filed within three days after service of the Notice. Pre-hearing conferences may be called to confer with the Parties on the Motions to limit disclosure of CONFIDENTIAL INFORMATION. All service shall be by the fastest method of hand delivery, facsimile or email. All filings by email in this Docket shall be followed up by delivering a hard copy of the filing to the Docket Manager of the TPUC.

Notwithstanding anything else to the contrary, under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to, or discussed with, any person associated

with the marketing of goods or services in known competition with the goods or services of the Producing Party.

7. Prior to disclosure of the CONFIDENTIAL INFORMATION to any of the authorized persons, the Counsel representing the Party who is to receive the Confidential Information shall notify the person of this Order and notify the person where it can be found on the TPUC's website or provide a copy of the Order to the recipient, Commissioner, staff member, employee or officer, who shall be bound by the terms of this Order.

8. Prior to disclosure of CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or retained by a Party, Counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an affidavit in the form attached as Exhibit A to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the information labeled CONFIDENTIAL constitutes a violation of this Order. The Affidavit attached as Exhibit A shall be signed in the presence of and be notarized by a notary public. Counsel of Record for each Party shall provide the Producing Party a copy of each such Affidavit for retained experts expected to be called as a witness at the hearing of this Proceeding and shall keep the Affidavits executed by all other experts or consultants retained by that Party, whether or not expected to be called as a witness, on file (electronically or in paper) in their respective offices.

9. No person authorized under this Order to receive access to documents, information, or testimony designated as Confidential Information shall be granted access until such person has complied with the requirements set forth in this Order.

10. In no event shall the TPUC, Attorney General, the State of Tennessee or any other Party to this Order, be liable for any claims, injury, or damages resulting from the disclosure of information while not clearly and conspicuously marked CONFIDENTIAL or not so labeled as CONFIDENTIAL at all, or not segregated from non-confidential information. The Party or non-Party who has produced the information shall notify the Recipient of the inadvertence in providing the CONFIDENTIAL INFORMATION in writing within five days of discovery of such inadvertence and the CONFIDENTIAL nature of the information and within a reasonable time provide substitute information clearly and conspicuously marked CONFIDENTIAL and segregated from non-confidential information.

11. An inadvertent failure to label a document as “CONFIDENTIAL” shall not constitute a waiver of confidentiality. The Party who has produced the document shall notify the Recipient of the document in writing of such inadvertent failure to label the document as CONFIDENTIAL. Upon such notice, pending resolution of a motion described below, Recipients will treat the subject document as CONFIDENTIAL INFORMATION. The Party, by written motion or by oral motion at a Pre-Hearing Conference or at the Hearing on the merits, may request designation of the information as CONFIDENTIAL, and Recipients shall then be governed by the order on the motion. An inadvertent failure to label information as CONFIDENTIAL, or to segregate it from non-confidential information shall not, in any way, affect the TPUC’s determination as to whether the information is entitled to CONFIDENTIAL status under this Order. The TPUC, the Hearing Officer, or Administrative Law Judge may, at his or her discretion, either before or during the Pre-Hearing Conference or Hearing on the merits of the Docket allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

12. Any filings made in this Proceeding that contain, quote, paraphrase, compile or otherwise disclose information covered by the terms of this Order, shall be filed with the TPUC in sealed envelopes labeled CONFIDENTIAL. The Filing Party shall also include with the filing a public version of the papers with any CONFIDENTIAL INFORMATION redacted. Only the redacted public version may be placed in TPUC's public file and/or posted on the TPUC website. In TPUC's files, each sealed envelope shall be labeled to reflect the style and docket number of this Proceeding and to identify the subject matter of the content of the sealed envelope. Further, the envelopes at the TPUC shall be maintained in a locked filing cabinet or may be converted to electronic format at the election of TPUC. The envelopes shall not be opened, or their contents reviewed by anyone except upon order by the Hearing Officer, Administrative Law Judge, or the Commission after due notice to Counsel of Record. Notwithstanding the foregoing, the Commissioners and the staff of the TPUC may review any filings containing CONFIDENTIAL INFORMATION and labeled CONFIDENTIAL without obtaining an order of the TPUC, Hearing Officer, or Administrative Law Judge, provided the Commissioners and staff maintain the confidentiality of the filing in accordance with the terms of this Order.

13. Information designated as CONFIDENTIAL INFORMATION and labeled CONFIDENTIAL, in accordance with this Order, may be disclosed in testimony at the Hearing on the merits of this Proceeding and offered into evidence in any hearing related to this Proceeding subject to the applicable rules of evidence and to such future orders as the Hearing Officer, Administrative Law Judge, or the Commission may enter. To the extent possible, any Party intending to use documents, information, or testimony designated as CONFIDENTIAL INFORMATION shall inform the Producing Party and the TPUC, Hearing Officer, or Administrative Law Judge, prior to the Hearing on the merits of the case, of the proposed use,

and shall advise the Hearing Officer, Administrative Law Judge, or the Commission, and the Producing Party before use of such CONFIDENTIAL INFORMATION during witness examinations so that appropriate measures can be taken by the Hearing Officer, Administrative Law Judge, or the Commission to protect the CONFIDENTIAL nature of the information.

14. Except for filings made with the TPUC, all information covered by the terms of this Order that are disclosed to the Requesting Party shall be maintained in electronic records or paper files labeled “CONFIDENTIAL” at the offices of the requesting Party’s counsel of record.

15. Nothing herein shall be construed as preventing any Party from continuing to use and disclose any information labeled CONFIDENTIAL:

- (A) That is in the public domain;
- (B) That subsequently becomes part of the public domain through no act of such Party, or violation of this Order;
- (C) That is disclosed to it by a third Party, where said disclosure does not itself violate any contractual or legal obligation or terms of this Order;
- (D) That is independently developed by a Party;
- (E) That is known or used by it prior to this Proceeding; or
- (F) If disclosure is otherwise required by state or federal law or by court order.

The burden of establishing the existence of (A) through (F) shall be upon the Party attempting to use or disclose such information marked CONFIDENTIAL.

16. Nothing in this Order shall prevent any Party from asserting any objection to discovery.

17. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information produced for use in this action as CONFIDENTIAL INFORMATION pursuant to the terms of this Order.

18. To the extent permitted by state and federal laws and regulations, any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

19. Upon an order becoming final in this Docket and conclusion of any appeals resulting from such an order, except as to the Attorney General, all the filings, exhibits and other information designated CONFIDENTIAL INFORMATION, and all copies thereof, shall be returned to Counsel of the Producing Party within fifteen business days of a written request from the Producing Party, or counsel in possession of such information shall certify to the best of his/her/its knowledge to counsel of the Producing Party that all the filings, exhibits and other information designated as CONFIDENTIAL INFORMATION and all copies thereof have been destroyed. If requested to return any CONFIDENTIAL INFORMATION, the Attorney General may elect to retain the CONFIDENTIAL INFORMATION provided it continues to comply with the terms of this Order. Further, the TPUC shall retain copies of information designated as CONFIDENTIAL or as may be necessary to maintain a complete record of this Docket intact.

20. After termination of this Proceeding and related appeals, the provisions of this Order relating to the confidential nature of CONFIDENTIAL INFORMATION shall continue to be binding, upon Parties hereto and their officers, employers, employees, agents, and/or others for five years unless this Order is vacated or modified or otherwise ordered by the TPUC.

21. Nothing herein shall prevent a Party or individual from seeking further protection for particular information or prevent entry of a subsequent order, upon an appropriate showing, requiring that any information designated as CONFIDENTIAL shall receive protection other than that provided in this Order.

22. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL INFORMATION shall receive protection other than that provided herein.

23. The Attorney General and its staff have authority to enter into non-disclosure agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

24. The Attorney General and its staff agree to keep CONFIDENTIAL INFORMATION in a secure location (which may be held electronically) and will not permit them to be seen by any person who is not an employee of the TPUC, the Attorney General, State of Tennessee, or other person who has signed confirming he/she will comply with this Order.

25. The Attorney General and its staff may make copies of CONFIDENTIAL INFORMATION and any portion thereof. To the extent permitted by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Order to the extent factual assertions are derived from the supporting information.

26. To the extent permitted by state law, the Attorney General's Office may provide timely notice of any public records request, so the Producing Party may take any action it deems appropriate. The Attorney General may, consistent with the discharge of its duties, handle materials received pursuant to this Order in accordance with Tenn. Code Ann. § 10-7-504(a)(5)(C) or any other law, regulation or rule.

27. The obligation of the Attorney General and its staff under this Order are further subject to the state's Public Records Act and other open records statutes. Nothing in this Order is intended to violate or alter the state's Public Records Act or Freedom of Information Act (FOIA). In the event that the Attorney General or member of its staff is served with a subpoena,

public records request, FOIA request, or other request that calls for the production of CONFIDENTIAL INFORMATION labeled as CONFIDENTIAL by the Producing Party, the Attorney General will, to the extent permitted by state or federal law, regulation or rule, any orders of a court, or other body issuing the subpoena or request, notify the Producing Party by notifying its Counsel of the existence of the subpoena, public records request, FOIA request, or other request. Further, the Attorney General will notify the Producing Party at least five business days before responding to any such request to the extent permitted by state law and orders of a court, as long as the Attorney General or its staff is able to respond to the request within a reasonable time. The Attorney General or its staff may elect to wait to produce such CONFIDENTIAL INFORMATION as allowed by state or federal law in order to provide the Producing Party an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of CONFIDENTIAL INFORMATION marked as CONFIDENTIAL by the Producing Party that is subject to such request.

28. The designation of any information in accordance with this Order as constituting CONFIDENTIAL INFORMATION and the Attorney General or its staff's treatment of such information as CONFIDENTIAL in compliance with this Order is not an admission of an agreement by the State of Tennessee, the Attorney General, or its staff that the information constitutes or contains CONFIDENTIAL INFORMATION protected by state or federal law and shall not be deemed to be either a waiver of the State's right to challenge such designation or an acceptance of such designation. The Producing Party agrees to designate information provided to the Attorney General as CONFIDENTIAL INFORMATION only if it has a good faith basis for the claim at law. The Producing Party will, upon request of the Attorney General or its staff, provide a written explanation of the details, including statutory authority that support its



CONFIDENTIAL INFORMATION claim within five days of a written request. The Producing Party also specifically agrees that it will not designate any information as CONFIDENTIAL INFORMATION or label such information as CONFIDENTIAL if the information:

- (A) Has been distributed to the public, consumers or others; or
- (B) Is not maintained by the Producing Party as CONFIDENTIAL INFORMATION.

29. Nothing in this Order shall prevent the Attorney General from using the CONFIDENTIAL INFORMATION received for investigative purposes in the discharge of the duties of the Office of the Attorney General. Additionally, nothing in this Order shall prevent the Attorney General from informing state officials and third parties of the fact of an investigation, as needed, to conduct the investigation. Without limiting the scope of this Paragraph, nothing in the Order shall prevent the Attorney General from contacting consumers whose names were provided by the Producing Party or from discussing with any consumer any information that he or she allegedly received from the Producing Party or confirming that a consumer actually received the information.

30. CONFIDENTIAL INFORMATION is subject to this Order which is entered pursuant to Rule 26 of the Tennessee Rules of Civil Procedure and to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann. § 10-7-503(a)(2)(A) “. . . unless otherwise provided by state law.”

31. All information designated as CONFIDENTIAL INFORMATION and produced in accordance with this Order may be disclosed in testimony or offered into evidence at any TPUC or court hearing, trial, motion or proceeding of this Docket or appeals thereof in a related Docket or proceeding, subject to the provisions of this Order, the applicable rules of evidence, and any order the TPUC may enter to protect the confidentiality of information offered at any


hearing or other proceeding. The Party who produced the information designated CONFIDENTIAL INFORMATION agrees to stipulate to the authentication of such information in any such proceeding. If any Party identified information in the CONFIDENTIAL INFORMATION that indicates that unlawful conduct (civil or criminal) has occurred or may occur, nothing in the Order shall prevent such Party from reporting such alleged conduct to the appropriate law enforcement or regulatory agency.

32. Nothing in this Order is intended to or shall restrict, limit, or alter any federal or state laws, regulations or rules.

33. Any person who has signed an Affidavit in the form attached as Exhibit A to this Order or is otherwise bound by the terms of this Order shall continue to be bound by this Order and/or Affidavit even if no longer engaged by the TPUC or any of the Intervenors.

34. This Order shall be construed subject to the laws of the State of Tennessee, conflicts of law notwithstanding.

35. No person subject to this Order shall be required to appear outside any venue in the State of Tennessee regarding this Order or any alleged violations of this Order.

  
Monica Smith-Ashford, Hearing Officer

This 25<sup>th</sup> day of September, 2019.

# **EXHIBIT A**

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

<p><b>IN RE:</b></p> <p><b>JOINT APPLICATION OF AQUA UTILITIES COMPANY, INC., AND LIMESTONE WATER UTILITY OPERATING COMPANY, LLC, FOR AUTHORITY TO SELL OR TRANSFER TITLE TO THE ASSETS, PROPERTY AND REAL ESTATE OF A PUBLIC UTILITY AND FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>DOCKET NO.</b> <b>19-00062</b></p>
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**AGREEMENT TO COMPLY WITH PROTECTIVE ORDER**

I have reviewed the Protective Order entered in the above captioned Docket and agree to abide and be bound by its terms. I understand that unauthorized disclosure of information deemed Confidential Information under the Protective Order will be a violation of the Protective Order.

<b>DATE</b>	<b>NAME</b>

**STATE OF** \_\_\_\_\_ )

**COUNTY OF** \_\_\_\_\_ )

Personally appeared before me, \_\_\_\_\_, a Notary Public, \_\_\_\_\_ with whom I am personally acquainted, who acknowledged that he or she executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**NOTARY PUBLIC**

My Commission Expires: \_\_\_\_\_

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 1, 2020

IN RE: )  
)  
JOINT APPLICATION OF AQUA UTILITIES )  
COMPANY, INC. AND LIMESTONE WATER )  
UTILITY OPERATING COMPANY, LLC FOR )  
AUTHORITY TO SELL OR TRANSFER TITLE )  
TO THE ASSETS, PROPERTY, AND REAL )  
ESTATE OF A PUBLIC UTILITY AND FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY )

DOCKET NO.  
19-00062

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**ORDER DENYING *MOTION IN LIMINE***

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This matter came before the Hearing Officer on the *Consumer Advocate's Motion in Limine re: Case Studies 1,2,3 and Videos of Elm Hills Utility Operating Company-CSWR and Indian Hills Utility Operating Company-Transformation ("Motion")*. On August 7, 2020, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") filed the *Motion* and Aqua Utilities Company, Inc., and Limestone Water Utility Operating Company, LLC (together "Joint Applicants") filed the *Joint Applicants' Response to Consumer Advocate's Motion in Limine ("Joint Applicants' Response")* on August 7<sup>th</sup>, as well.

***MOTION***

The Consumer Advocate's *Motion* asks the Commission to "exclude any reference to or

use by any witnesses of the Joint Applicants of the following items/documents: Case Study 1; Case Study 2; Case Study 3; and videos of Elm Hills Utility Operating Company-CSWR and Indian Hills Utility Operating Company Transformation.”<sup>1</sup> The Consumer Advocate objects to any reference to or use of the items/documents by any of the Joint Applicants’ witnesses. According to the Consumer Advocate, the items/documents were not referred to in Josiah Cox’s testimony and it would be inappropriate for him to refer to them in his summary.<sup>2</sup>

***JOINT APPLICANTS’ RESPONSE***

The Joint Applicants ask that the Hearing Officer deny the Consumer Advocate’s *Motion*. The Joint Applicants state the items/ documents were not a part of the docket file but were shared with the Consumer Advocate as a possible exhibit the Joint Applicants may use at the Hearing.<sup>3</sup> According to the Joint Applicants, the Consumer Advocate does not suggest that the items/documents are irrelevant or prejudicial, only that there was no prior reference by a witness.<sup>4</sup> The Joint Applicants maintain “[t]hat certainly is not a ground to grant the Motion.”<sup>5</sup>

**FINDINGS AND CONCLUSIONS**

The Hearing Officer reviewed the items/documents the Joint Applicants seek to use at Hearing, and the Hearing Officer finds the items/documents do not contain anything that would be prejudicial to the Consumer Advocate. The Hearing Officer asked the parties to exchange any demonstrative exhibits, not related to a witness’s pre-filed testimony by August 5, 2020, and the Joint Applicants complied. The Hearing Officer finds that while the items/documents submitted may not have been directly related to the witness’s pre-filed testimony, the Consumer Advocate

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<sup>1</sup> *Motion*, p. 1 (August 7, 2020).

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> *Joint Applicants’ Response*, p. 1 (August 7, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

had an opportunity to see the information contained in the items/documents and to prepare. Further, the Hearing Officer finds the items/documents the Joint Applicants seek to admit are not highly technical nor do they go to the particular facts of this docket such that they would be prejudicial to the Consumer Advocate or its case. For the foregoing reasons, the Hearing Officer concludes the Consumer Advocate's *Motion* should be denied.<sup>6</sup>

**BE IT THEREFORE ORDERED THAT:**

The *Consumer Advocate's Motion in Limine re: Case Studies 1,2,3 and Videos of Elm Hills Utility Operating Company-CSWR and Indian Hills Utility Operating Company-Transformation* is **DENIED**.



Monica Smith-Ashford, Hearing Officer

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<sup>6</sup> Since the Hearing was being held on August 10, 2020, the Hearing Officer made a verbal ruling on August 7, 2020, and this Order is a memorialization of that ruling.