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September 22, 2022

VIA Electronic Filing to the Office of Commission Clerk

Attn: Melinda Watts, Engineering Specialist
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 20220062-WS - Application for transfer of water and wastewater facilities of C.F.A.T. H2O, Inc., water Certificate No. 552-W, and wastewater Certificate No. 481-S to CSWR-Florida Utility Operating Company, LLC, in Marion County.

Dear Ms. Watts:

CSWR-Florida Utility Operating Company, LLC (“CSWR-Florida UOC”) submits the following responses to Staff’s August 23, 2022 First Data Request.

1. Does the Utility intend to request that the Commission defer its decision regarding the requested positive acquisition adjustment?

RESPONSE: Yes.

2. If the transfer is approved, does CSWR plan on using the leverage formula?

RESPONSE: CSWR-Florida UOC has not yet determined whether it will use the leverage formula. At the appropriate time, CSWR-Florida UOC will consider whether the leverage formula produces a return on equity that is reflective of its business, regulatory and operational risk.

3. Based on CSWR, LLC’s extensive experience serving approximately 180,000 customers through many utilities in several states, what do you estimate will be the approximate overall cost of capital?



RESPONSE: CSWR-FL UOC does not have an estimate at this time relating to the overall cost of capital for the CFAT system. The weighted cost of capital is dependent on a number of factors that can be volatile, including prevailing market rates for debt and the pace at which the Company can secure debt to achieve its goal of a capital structures that includes 40%-50% debt.

4. Since the contract between CSWR and the seller was signed, CSWR has had over 12 months to learn about the system to be acquired and the area. Based on CSWR, LLC's extensive experience in operating utilities in other states, what estimated cost savings is anticipated for the benefit of the customers? Please quantify the response with as much detail as available.

RESPONSE: The Company has found that many of the benefits that customers have experienced as a result of CSWR, LLC's acquisition of systems in Florida and other jurisdictions (including an improved quality of service, more timely resolution of customer concerns, and improved environmental compliance due to more experienced operators) will not result in direct cost savings and are difficult to quantify. Subject to this, quantitative cost savings are outlined below:

Cost savings are typically achieved through the realization of economies of scale available at CSWR. These economies of scale are seen through the bidding process utilized by CSWR in the bidding process utilized for the selection of an operations partner (operations bidding power) as well as the identification of a construction partner for any necessary process improvements (construction bidding power). Finally, cost savings are realized through economies of scale associated with CSWR's management of the system as part of a larger portfolio of water / wastewater systems (management expense scale).

Operations Bidding Power

CSWR is dedicated to identifying and employing qualified low-cost firms to operate facilities that we acquire. A multi-step process has been developed to ensure that the operations firm that delivers the best value of service is selected. The cost savings yielded from this process are due to the ability to bid multiple systems in a single bid package, and the ability of CSWR-Florida UOC to choose from the lowest cost qualified bidders.

The first step in this process is to identify potential firms in the vicinity of the acquisition. CSWR utilizes several avenues to identify potential operation firms. This includes, but is not limited to, web searches, contacting local Rural Water Associations, word of mouth, and local contacts in the area. The goal is to contact as many potential operating firms as possible to make sure that we can identify a firm



that provides adequate services to assist CSWR in delivering safe and reliable water resources to the communities we serve.

After identifying potential firms, CSWR sends a Request for Qualifications (RFQ) packet. The RFQ packet will allow CSWR to formally determine an operating firm's suitability to operate / maintain CSWR water / wastewater systems. After a firm is deemed qualified, CSWR will begin to send the Request for Proposals (RFPs) for projects that are within the operation firm's service area and within that firm's operational capabilities. These RFPs typically contain multiple service areas/projects in order to best realize economies of scale and yield cost-savings to the customers. As new firms are identified and become qualified, the Company receives more bids and has a better chance of finding the best valued firm to provide service.

After approval for acquisition, the Company will divide up the newly acquired projects due for closing on a regional basis. This is done in an attempt to lower the operational costs and make the projects more manageable for CSWR and the selected operations firm. Another benefit to the regional break up is that it gives the opportunity for local operations firms to compete with nationwide firms. After the RFPs have been returned, CSWR's Environmental Health & Safety team reviews all the proposals to find the best value for the facility. The value is determined by a combination of cost, operator capabilities, and services provided from the operations firm. After the best value is determined, CSWR and the selected firm negotiate to ensure that all parties agree on how to best serve the community.

The table below shows the Company's projected operations expenses in the "Contractual Services" line item. Due to the transportation and rent expenses being included in the 3rd Party O&M contracts, those lines have been left blank.

Construction Bidding Power

CSWR relies upon recommendations from 3rd party engineering consultants to select groups of construction contractors. From these groups the Company will request bids for construction projects. The Company's strict insurance requirements typically correlate to medium-large contractors having a lower cost structure, established safety programs and sufficient workforce to complete projects on time and on budget. The contractors that make it through this vetting process are then placed on an approved bidder list for the areas in which they service.

Once bid packages are assembled, reviewed and approved by the Company's 3rd party engineering consultant, CSWR and the state regulatory body (as required), the bid packages are sent out to the approved contractors in the area of the proposed project. Once bids are received, they are evaluated by our 3rd party engineering consultant and CSWR for cost and completeness. The lowest cost responsive bidder is typically chosen to perform the construction project. This



process allows for economies of scale due to the decreasing marginal cost as more projects are added. This process also allows for more competitive bidding as the amount of work increases which lends itself to higher value at a lower cost.

Management Expense Scale

Utilizing CSWR, LLC as the management for this system allows the Company to spread out the salaries and wages across the entire customer base of approximately 94,000 connections. This allows for the customers of the acquired system to receive high quality technical and managerial expertise at a much lower cost than could otherwise be expected. The table below details cost savings at the “Salaries and Wages” level due to the economies of scale utilized from such a large customer base.

Overall Cost Savings:

Both the CFAT water and wastewater systems have an extensive history of compliance issues. The CFAT water system has had a number of violations in recent years for failure to complete required testing, including two unresolved violations related to the Revised Total Coliform Rule and a failure to conduct assessment monitoring for E. coli. The CFAT wastewater was issued a warning letter following a Compliance Evaluation Inspection (CEI) in December 2021 which included warnings for failure to submit a permit renewal request, a leaking chlorine contact chamber, and a failure to submit flow meter calibration reports. While this warning letter was marked resolved by the state in August 2022, the CFAT wastewater system remains subject to a consent order for consistent exceedance of effluent limitations which requires an engineering analysis for facility improvements. While CFAT customers will still benefit from a significant qualitative improvement in their service (and the aforementioned economies of scale), given the grave and habitual nature of CFAT’s violations CSWR expects overall costs post-acquisition to increase by approximately \$23,000. This increase in financial outlays is primarily due to costs associated with contracting operators who possess the expertise necessary both to cure CFAT’s continuing compliance issues and to ensure that the system can provide its customers with safe, reliable, and environmentally sustainable service without any future disruption.

Acct No	Account Name	CFAT Water Amount	CSWR-Florida Amount
601	Salaries and Wages - Employees		\$ 20,006.76
603	Salaries and Wages - Officers, Directors, Stockholders	\$ 27,000.00	\$ -
615	Purchased Power	\$ 3,643.00	\$ 4,860.00
618	Chemicals	\$ 500.00	\$ 3,660.00
620	Materials and Supplies	\$ 1,027.00	\$ 1,500.00



630	Contractual Services	\$ 27,560.00	\$ 61,368.00
640	Rents		\$ -
650	Transportation Expense	\$ -	\$ -
655	Insurance Expense		\$ 3,500.00
670	Bad Debt	\$ 426.00	
675	Misc. Expense	\$ 7,175.00	\$ 2,400.00
	Total Ops and Maint Expense	\$ 67,331.00	\$ 97,294.76

Acct No	Account Name	CFAT Wastewater	CSWR-Florida Amount
701	Salaries and Wages - Employees	\$ -	\$ 20,573.75
703	Salaries and Wages - Officers, Directors, Stockholders	\$ 27,000.00	\$ -
711	Sludge Removal	\$ 14,005.00	
715	Purchased Power	\$ 13,445.00	\$ 10,320.00
718	Chemicals	\$ 4,194.00	\$ 2,160.00
720	Materials and Supplies	\$ 1,027.00	\$ 1,500.00
730-736	Contractual Services	\$ 34,229.00	\$ 61,368.00
741-742	Rents		\$ -
750	Transportation Expense		\$ -
757	Insurance Expense		\$ 3,500.00
775	Misc. Expense	\$ 15,485.00	\$ 2,400.00
	Total Ops and Maint Expense	\$ 109,385.00	\$ 101,821.75

5. Please estimate and quantify the impact you expect the requested positive acquisition adjustment to have on existing customer rates in potential future rate case proceedings.

RESPONSE: No such estimate is available at this time. Because numerous factors effect utility rates, the Company is unable to estimate and quantify the impact to customer rates due to the requested positive acquisition adjustment. Capital structure, ROI, and the amortization period are among the variables that could influence the impact of a positive acquisition adjustment to rates.



6. In its application, the Utility stated that through the consolidation of many small systems, CSWR will reduce overall operating expenses of the acquired systems. The following items relate to this assertion.
 - a. In order to demonstrate cost savings, please estimate and provide a breakdown of projected operation and maintenance (O&M) expenses that reflect CSWR assuming operation of the subject utility. In your response, please include all bases, assumptions, documentation, and calculations which support CSWR's estimated/projected O&M expenses.

RESPONSE: Please see the Company's response to request 4.

- b. Using the O&M expenses from subject utility's 2021 Annual Report, please compare and identify projected cost savings to operating expenses that will be achieved through CSWR's acquisition.

RESPONSE: Please see the Company's response to request 4.

7. Please provide a copy of all orders in original cost states where CSWR, LLC, one of its affiliates, or one of its subsidiaries has been granted or denied a positive acquisition adjustment.

RESPONSE: It has been CSWR's experience, in the other original cost states in which CSWR operating company affiliates have sought to acquire water / wastewater utilities, that the state commission have either: (1) implicitly deferred the treatment of an acquisition adjustment by considering an acquisition adjustment in a subsequent rate case rather than in the transfer docket, or (2) expressly deferred consideration of an acquisition adjustment to a subsequent rate case. To date, of all the original cost states in which CSWR operating company affiliates have filed transfer applications, Florida has been the only state to require consideration of an acquisition adjustment in the transfer docket. See transfer dockets 20210093-WS (Aqarina Utilities, Inc.), 20210095-WU (Sunshine Utilities of Central Florida, Inc.), and 20210133-SU (North Peninsula Utilities Corporation).

In Texas, Missouri, and Kentucky, CSWR operating company affiliates have not requested a positive acquisition adjustment in a transfer docket. Instead, those states allow for consideration of an acquisition adjustment in a subsequent rate case. Accordingly, there is implicit authority to defer the decision on a positive acquisition adjustment. Consistent with this implicit deferral, there are no state commission orders for CSWR to provide from these states that are responsive to this request. A list of the docket numbers in these three states in which acquisitions adjustments are implicitly deferred to rate cases is attached.



In four other states, Arizona, Mississippi, Tennessee and Louisiana, CSWR operating company affiliates have requested and received express deferral of the consideration of an acquisition adjustment to a subsequent rate case. Please see the attached spreadsheet setting forth the relevant CSWR operating company, docket number, order date and the relevant language from the order. In addition, copies of the referenced orders are attached.

Thank you for providing CSWR-Florida UOC the opportunity to submit additional information in support of the application.

Sincerely,

/s/ Thomas A. Crabb

Thomas A. Crabb
Attorney for CSWR-Florida UOC

cc: Charles Rehwinkel, Esq., Office of Public Counsel (rehwinkel.charles@leg.state.fl.us)
Steven Baird, Esq., Office of Public Counsel (baird.steven@leg.state.fl.us)
Charles deMenzes (charlie@altfo.com)

State	Regulatory Entity	CSWR UOC	Docket Number	Order Date	Relevant Language
TN	Tennessee Public Utility Commission	Limestone Water	2100053	1/24/2022	"In any future rate proceeding, Limestone may present evidence and argument concerning the value of assets used and useful for provisioning public utilities services, and the Consumer Advocate or other interested parties may oppose such values or present their own evidence and argument concerning the value of such assets. Limestone, the Consumer Advocate, or other interested parties, may present evidence and set forth their respective arguments related to the appropriateness of an Acquisition Premium or Gain on Sale for this transaction in the next rate proceeding."
TN	Tennessee Public Utility Commission	Limestone Water	1900062	12/7/2020	"In any future rate proceeding, Limestone may present evidence and argument concerning the value of assets used and useful for provisioning public utilities services, and the Consumer Advocate or other interested parties may oppose such values or present their own evidence and argument concerning the value of such assets"
AZ	Arizona Corporation Commission	Cactus State	SW-03036A-21-0141; WS-21155A-21-0141	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-01557A-21-0161; WS-21155A-21-0161	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-01967A-21-0139; WS-21155A-21-0139	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-01982A-21-0143; WS-21155A-21-0143	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-020940A-21-0137; WS-21155A-21-0137	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-02096A-21-0140; WS-21155A-21-0140	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-02169A-21-0151; WS-21155A-21-0151	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-02211A-21-0138; WS-21155A-21-0138	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-02245A-21-0135; WS-21155A-21-0135	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-02498A-21-0155; WS-21155A-21-0155	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-02564A-21-0156; WS-21155A-21-0156	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-02800A-21-0153; WS-21155A-21-0153	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-03254A-21-0154; WS-21155A-21-0154	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-03868A-21-0152; WS-21155A-21-0152	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-1580A-21-0150; WS-21155A-21-0150	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
AZ	Arizona Corporation Commission	Cactus State	W-20459-21-0149; WS-21155A-21-0149	12/28/2021	"It is further ordered that Cactus State Utility Operating Company, LLC may record a deferred debit of not greater than _____ subject to audit, verification, and true-up in it's next rate case"
MS	Mississippi Public Service Commission	Great River	2020-UA-144	6/8/2021	"The rate base used to set rates in Great River's initial state-wide rate caes shall not exceed the total purchase price paid for the acquired systems (in aggregate) plus the reasonable and prudent costs associated with any capital investments made for post-acquisition improvements and capitalized acquisition-related expenses. It is anticipated that evidence concerning all of these issues will be presented by Great River and any other interested party in Great River's first rate case post-acquisition."
MS	Mississippi Public Service Commission	Great River	2020-UA-143	6/8/2021	"The rate base used to set rates in Great River's initial state-wide rate caes shall not exceed the total purchase price paid for the acquired systems (in aggregate) plus the reasonable and prudent costs associated with any capital investments made for post-acquisition improvements and capitalized acquisition-related expenses. It is anticipated that evidence concerning all of these issues will be presented by Great River and any other interested party in Great River's first rate case post-acquisition."
MS	Mississippi Public Service Commission	Great River	2021-UA-157	12/7/2021	"Therefore, the Commission grants Great River's request for an acquisition adjustment consistent with the policy and conditions outlined by the Commission in Docket No. 2020-UA-143."
MS	Mississippi Public Service Commission	Great River	2021-UA-158	12/7/2021	"Therefore, the Commission grants Great River's request for an acquisition adjustment consistent with the policy and conditions outlined by the Commission in Docket No. 2020-UA-144."



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON- Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

IN THE MATTER OF THE JOINT APPLICATION OF TIERRA MESA ESTATES WATER COMPANY, INC., AN ARIZONA CORPORATION, AND CACTUS STATE UTILITY OPERATING COMPANY, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, FOR APPROVAL TO TRANSFER WATER UTILITY SYSTEM ASSETS, AND CERTIFICATE OF CONVENIENCE AND NECESSITY, PURSUANT TO A.R.S. § 40-285 AND A.A.C. R14-2-402.D; ESTABLISHMENT OF A DEFERRED DEBIT FOR TIERRA MESA ESTATES WATER COMPANY, INC. WATER SYSTEM ASSETS.

DOCKET NO. W-02498A-21-0155
DOCKET NO. WS-21155A-21-0155

DECISION NO. 78374

OPINION AND ORDER

DATE OF HEARING: September 14 and 15, 2021

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Sasha S. Paternoster

APPEARANCES: Mr. Patrick J. Black and Ms. Lauren Ferrigni, FENNEMORE CRAIG, PC., on behalf of Tierra Mesa Estates Water Company, Inc. and Cactus State Utility Operating Company, LLC;

DOCKETED

DEC 28 2021

DOCKETED

Mr. Daniel W. Pozefsky, Chief Counsel, on behalf of the Residential Utility Consumer Office; and

Mr. J. Antonio Arias and Mr. Max Carpinelli, Staff Attorneys, Legal Division, on behalf of the Arizona Corporation Commission.

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

1 The Residential Utility Consumer Office's representative and witnesses appeared via teleconference for the hearing.

FINDINGS OF FACT

1
2 1. On May 27, 2021, Tierra Mesa Estates Water Company, Inc. (“Tierra Mesa”) and
3 Cactus State Utility Operating Company, LLC (“Cactus State”) (collectively “Applicants”) filed a joint
4 application with the Commission for approval to transfer Tierra Mesa’s water utility system assets and
5 Certificate of Convenience and Necessity (“CC&N”) to Cactus State, pursuant to A.R.S. § 40-285 and
6 Arizona Administrative Code (“A.A.C.”) R14-2-402.D; a finding that Cactus State is a fit and proper
7 entity to acquire and maintain Tierra Mesa’s assets and CC&N; and for establishment of a deferred
8 debit for Tierra Mesa’s water system assets.²

9 2. On June 18, 2021, Applicants filed Late-Filed Exhibits, providing public versions of
10 Cactus State’s consolidated balance sheet and income statement, pro-forma income statement and
11 balance sheet, an unredacted version of the Agreement for Sale of Utility System, and the third-party
12 engineering report.

13 3. On June 25, 2021, the Commission’s Utilities Division (“Staff”) filed a Sufficiency
14 Letter, stating that Applicants’ joint application had met the sufficiency requirements as outlined in
15 A.A.C. R14-2-402.

16 4. On June 29, 2021, a Procedural Order regarding Consent to Email Service was issued.

17 5. On July 1, 2021, a Procedural Order was issued scheduling a telephonic procedural
18 conference to be held concurrently for each of the Cactus State applications on July 7, 2021.

19 6. On July 7, 2021, the telephonic procedural conference was held concurrently for each
20 of the Cactus State dockets as scheduled. Tierra Mesa, Cactus State, and Staff appeared through
21 counsel. The parties discussed the possibility of case consolidation and potential dates for the hearing
22 and other related matters.

23 7. On July 8, 2021, a Procedural Order was issued scheduling a hearing for September 14,
24 2021, setting the intervention deadline for August 13, 2021, and establishing other procedural

25
26 ² Cactus State also seeks approval of applications in separate dockets related to Loma Estates Water Company, LLC, White
27 Hills Water Company, Inc., Q Mountain Water, Inc., Gonzalez Utility Services dba Carter Water Company and dba Loma
28 Linda Water Company, Verde Lee Water Company, Inc., Harrisburg Utility Company, Inc., Stoneman Lake Water
Company, Utility Systems, LLC, Tonto Village Water Company, Inc., Lake Verde Water Company, Inc., Sweetwater Creek
Utilities, Inc., Citrus Park Water Company, Inc., Rancheros Bonitos Water Company, LLC, and El Prado Water Company,
Inc.

1 guidelines and deadlines.

2 8. On July 27, 2021, Cactus State filed a Notice of Filing Supplemental Direct Testimony,
3 attaching the Direct Testimony of Ray L. Jones, P.E.

4 9. On July 30, 2021, Cactus State filed a Notice of Errata, providing a Revised Exhibit
5 RLJ-DT3.

6 10. On August 13, 2021, Cactus State filed a Notice of Filing Affidavit of Proof of
7 Publication and Proof of Mailing, certifying that a copy of the public notice had been published in the
8 *Yuma Sun* on July 25, 2021, and that notice of the hearing had been mailed to all customers on July 15,
9 2021.

10 11. On August 17, 2021, the Residential Utility Consumer Office (“RUCO”) filed a Motion
11 to Modify Procedural Schedule, requesting additional time for RUCO to file responsive testimony,
12 extend the time for any replies to the responses, and also requested that its intervention request in
13 Docket Nos. W-20459A-21-0149 and WS-21155A-21-0149 filed on July 19, 2021, “be extended to all
14 16 dockets involved.”

15 12. Also on August 17, 2021, Cactus State filed a Notice of Filing Supplemental Exhibit,
16 providing an estimated bill impact to customers on an individual and consolidated basis, over a 30-year
17 period, if the deferred debit is approved as Cactus State requested.

18 13. On August 19, 2021, by Procedural Order, RUCO was granted intervention, and
19 RUCO’s Motion to Modify Procedural Schedule was granted.

20 14. On August 26, 2021, Staff filed its Staff Report, recommending approval of the joint
21 application.

22 15. On September 3, 2021, RUCO filed a Motion to Modify Procedural Schedule, filing the
23 Response Testimony of Bentley Erdwurm.

24 16. Also on September 3, 2021, RUCO filed a Notice of Errata to correct the title of the
25 pleading filed on the same date from Motion to Modify Procedural Schedule to Notice of Filing
26 Responsive Testimony.

27 17. On September 10, 2021, Staff filed a Notice of Filing of Additional Witness and Exhibit
28 and Witness Lists.

1 18. Also on September 10, 2021, Cactus State filed a Notice of Filing Response to Staff
2 Report and RUCO Testimony.

3 19. On the same date, Cactus State filed Notice of Filing Witness List and List of Exhibits.

4 20. On September 13, 2021, RUCO filed a Notice of Filing List of Witness and Exhibits.

5 21. On September 14, 2021, RUCO filed a Notice of Errata, attaching Exhibit RUCO-1,
6 Attachment A which had been inadvertently omitted.

7 22. On September 14 and 15, 2021, the hearing was held concurrently for each of the Cactus
8 State matters as scheduled. Cactus State, Tierra Mesa, RUCO, and Staff were each represented by
9 counsel. Cactus State and Tierra Mesa presented the testimony of Mr. Josiah Cox and Mr. Ray Jones.
10 RUCO presented the testimony of Mr. Bentley Erdworm. Staff presented the testimony of Ms.
11 Stephanie Huang, Mr. Hassan Maqbool, and Mr. Briton Baxter. No members of the public appeared
12 to provide comment. At the conclusion of the hearing, the matter was taken under advisement pending
13 submission of a Recommended Opinion and Order to the Commission.

14 **Background**

15 23. Tierra Mesa is a class E utility that provides water utility service to approximately 243
16 customers near Yuma, Arizona.³

17 24. Tierra Mesa was granted its existing CC&N to serve this area in Decision No. 56011
18 (June 13, 1988).⁴

19 25. Tierra Mesa's current rates and charges were approved by the Commission in Decision
20 No. 62981 (November 2, 2000).⁵

21 26. Cactus State is owned by CSWR, LLC ("CSWR").⁶ CSWR owns and operates water
22 and wastewater utility systems in Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Tennessee,
23 and Texas, and serves approximately 49,000 water customers and 78,000 wastewater customers.
24 Cactus State is seeking to expand into Arizona with the purchase of 16 Arizona utilities, including
25 Tierra Mesa.⁷ Cactus State also has pending applications to acquire systems in Florida and North

26 ³ Exhibit. S-1d at 1.

27 ⁴ Ex. S-1d at 1.

27 ⁵ Ex. S-1d at 1.

28 ⁶ A copy of CSWR's Organizational Chart is attached to Ex. CS-1d at Exhibit 5.

⁷ Transcript at 26.

1 Carolina.⁸

2 27. Mr. Cox, President of Cactus State, stated that Cactus State will hire a local non-
3 affiliated firm to manage the day-to-day utility operations and any emergency calls, and the third-party
4 billing and customer service firm used by all of CSWR's affiliates will provide the customer service.
5 CSWR will provide management, financial reporting, underground utility safety and location services,
6 Commission regulatory reporting, environmental regulatory reporting and management, operations
7 oversight, utility asset planning, engineering planning, ongoing utility maintenance, utility record
8 keeping, and final customer dispute management services.⁹

9 28. In addition to the public notice required by law, Cactus State sent an introductory letter
10 to each customer on August 27, 2021, along with a summary of the issues that Tierra Mesa's water
11 system is facing, the anticipated improvements to the specific system, and how service would change
12 under Cactus State.¹⁰

13 29. According to Mr. Cox, the ratepayers of the acquired utility systems experience cost
14 savings through centralized management, better construction pricing due to larger purchasing power,
15 and centralized customer service.¹¹ Mr. Cox testified that the overwhelming ratepayer response to
16 Cactus State's acquisitions has been positive.¹²

17 **Application**

18 30. Tierra Mesa and Cactus State's joint application seeks approval of the sale of assets of
19 Tierra Mesa to Cactus State and the transfer of Tierra Mesa's CC&N to Cactus State. The joint
20 application also requested that the Commission find Cactus State to be a fit and proper entity and to
21 establish a deferred debit for Cactus State to be used in Cactus State's first rate proceeding, at which
22 time Cactus State intends to seek consolidated rates.¹³

23 31. According to Cactus State, CSWR's business model is built on acquiring distressed
24 utilities and addressing the utility system's infrastructure needs to ensure safe and reliable utility

25 _____
26 ⁸ Ex. CS-1d, Ex. 1 at 4.

27 ⁹ Ex. CS-1d, Ex. 1 at 11.

28 ¹⁰ Ex. CS-3 at 17; Tr. at 29.

¹¹ Tr. at 45-46.

¹² Tr. at 56.

¹³ Ex. CS-1d at 1-2.

1 service. Cactus State asserts that CSWR's successful acquisition of utilities in other states establishes
 2 "a proven track record with the technical, financial and managerial expertise" necessary to operate the
 3 utilities for the short and the long-term. CSWR believes that consolidating distressed utilities
 4 throughout the state under one company that has the financial resources to address infrastructure
 5 concerns and the managerial experience to operate the systems is the most effective way to provide
 6 customers safe, adequate, and reliable utility service.¹⁴

7 32. According to Mr. Cox, Cactus State has a particular expertise in running small water
 8 and wastewater utilities because of its ability to make infrastructure improvements more economically
 9 and its computerized maintenance management plan allowing for Cactus State to handle tasks more
 10 economically.¹⁵

11 33. Cactus State asserts that approval of the joint application is in the public interest because
 12 Cactus State will meet the service standards required by the Commission and the provision of services
 13 by Cactus State will not adversely impact the availability of affordable utility service.¹⁶

14 34. On March 12, 2021, Tierra Mesa and CSWR entered into an Agreement for Sale of
 15 Utility System, in which all of Tierra Mesa's property, assets, and water rights necessary to provide
 16 water service are transferred from Tierra Mesa to CSWR for the purchase price of \$230,000.00.¹⁷ Proof
 17 that any liabilities, such as customer deposits or outstanding main line extension refunds, have been
 18 satisfied by the seller is a condition of closing. At hearing, Mr. Cox stated that if Tierra Mesa fails to
 19 refund these outstanding debts, Cactus State will honor them.¹⁸

20 35. Cactus State intends to purchase Tierra Mesa assets with equity.¹⁹

21 36. The joint application states that Cactus State will continue to charge the authorized rates
 22 and charges for Tierra Mesa. Therefore, Tierra Mesa customers will not experience a rate change upon
 23 transfer of the system.²⁰

24 . . .

25 ¹⁴ Ex. CS-1d at 2.

26 ¹⁵ Tr. at 202.

26 ¹⁶ Ex. CS-1d at 3-6.

27 ¹⁷ Ex. CS-1d, Ex. 7 at 3.

27 ¹⁸ Tr. at 251.

28 ¹⁹ Ex. CS-1d at 10.

28 ²⁰ Ex. CS-1d at 3.

1 **Engineering Analysis**

2 37. The Tierra Mesa water system consists of two wells, two storage tanks, two pressure
3 tanks, and a distribution system. The West well site includes an emergency generator, two storage
4 tanks, four booster pumps, and two pressure tanks. The East well site includes an electrical cabinet.²¹

5 38. Staff concluded that Tierra Mesa has adequate well production of 720 gallons per
6 minute (“gpm”) to serve the present customer base and reasonable growth but lacked adequate storage
7 capacity. According to Staff, either the West well needs a well pump yield of at least 175 gpm or the
8 utility must acquire additional storage capacity to adequately serve the present customer base and
9 reasonable growth.²² Staff recommended that Cactus State file with Docket Control, as a compliance
10 item in this docket, a copy of an Arizona Department of Environmental Quality (“ADEQ”) Approval
11 of Construction (“AOC”) or an ADEQ AOC exemption letter for a storage tank, or documentation
12 demonstrating the West well pump yield has been increased to at least 175 gpm, or some combination
13 thereof, that demonstrates the water system satisfies ADEQ’s minimum storage capacity requirement
14 as required by A.A.C. R18-5-503, within one year of the effective date of a Decision in this proceeding.

15 39. Staff noted that during the 2017 calendar year, Tierra Mesa reported 57,314,815 gallons
16 pumped and 60,309,450 gallons sold, resulting in a negative water loss. Staff questioned the validity
17 of the data provided because the utility reported several months of negative water loss percentages.
18 Staff reported that the wells’ master meters were replaced in the last few years, which Staff hopes
19 rectified the inaccurate reporting.²³

20 40. According to an ADEQ Compliance Status Report (“CSR”) dated June 11, 2021, ADEQ
21 reported monitoring and reporting deficiencies and cannot determine whether Tierra Mesa is delivering
22 water that meets the water quality standards required by Title 40 Code of Federal Regulations, Part
23 141, the National Primary Drinking Water Regulations, and A.A.C. Title 18, Chapter 4. The CSR
24 indicated that Tierra Mesa has an ongoing uranium maximum contaminant level (“MCL”) violation
25 and public notice violations. ADEQ also issued a Consent Order effective April 7, 2021, for Tierra
26 Mesa to address the uranium MCL violation, detailing a compliance schedule and an approved third-

27 ²¹ Ex. S-1d, Ex. 2 at 2-4.

28 ²² Ex. S-1d, Ex. 2 at 4.

²³ Ex. S-1d, Ex. 2 at 4.

1 party contractor to determine how to achieve compliance.²⁴

2 41. Tierra Mesa is not located within an Arizona Department of Water Resources
3 (“ADWR”) Active Management Area. According to an ADWR Water Provider Compliance Report
4 dated June 23, 2021, Tierra Mesa is currently compliant with ADWR’s requirements governing water
5 providers and/or community water systems.²⁵

6 42. The Commission’s Compliance section reported that there are no outstanding
7 compliance items for Tierra Mesa.²⁶

8 43. According to Staff, the sale and transfer of the assets and CC&N of Tierra Mesa will
9 not have any adverse impacts on customers or their water service.²⁷

10 44. Staff concluded that Cactus State is an established utility and appears to have the
11 financial, managerial, and technical capability needed to operate the water system, and that the sale and
12 transfer is in the public interest.²⁸

13 **Non-Viability**

14 45. According to the joint application, Tierra Mesa is a non-viable water utility.²⁹

15 46. Decision No. 75743 (September 19, 2016) defines a non-viable water or wastewater
16 utility as one that (1) lacks and is unable to acquire the managerial, technical, or financial capabilities
17 to safely and adequately operate; (2) currently is not in compliance or is unable to achieve compliance
18 with ADEQ, ADWR, or Commission rules or orders, or is unable to achieve such compliance without
19 managerial, technical, or financial assistance; or (3) will not be able to meet other regulatory
20 requirements on a short or long-term basis.

21 47. Staff agrees that Tierra Mesa is a non-viable utility under the criteria set forth in
22 Decision No. 75743, citing to Tierra Mesa’s lack of managerial and technical capabilities to operate
23 the water system as evidenced by its failure to file a full rate case since May 2000, the ongoing uranium
24 MCL violation resulting in an ADEQ Consent Order, and lack of compliance with minimum storage

25 _____
26 ²⁴ Ex. S-1d, Ex. 2 at 6.

27 ²⁵ Ex. S-1d, Ex. 2 at 6.

28 ²⁶ Ex. S-1d, Ex. 2 at 6.

²⁷ Ex. S-1d at 5.

²⁸ Ex. S-1d at 7.

²⁹ Ex. CS-1d at 7.

1 capacity requirements.³⁰

2 48. In Decision No. 75743, the Commission listed multiple factors to consider when making
3 a viability determination and identified the failure to file for regular rate cases and the inability to meet
4 the regulatory requirements as examples of considerations that may exist in a non-viable utility.

5 49. Based on the evidence in this matter, we find that Tierra Mesa is a non-viable water
6 utility under the criteria set forth in Decision No. 75743. Tierra Mesa lacks the managerial and
7 technical capabilities to operate safely and adequately, and is unable to acquire such capabilities.

8 **Deferred Debit**

9 50. According to the joint application, in order to make Cactus State's acquisition of Tierra
10 Mesa a viable transaction, Cactus State requests that a deferred debit of \$93,373.50 be established as a
11 regulatory asset to be included in rate base for recovery in its next rate case. According to Cactus State,
12 its request is consistent with the incentives set forth in the Commission's water policies in Decision
13 No. 75626 (July 25, 2016). Cactus State calculated its proposed deferred debit as follows: amount of
14 the purchase price plus expenses incidental to the purchase, including regulatory approval thereof, less
15 the net book cost of utility plant acquired as established in Cactus State's next rate case, plus, if
16 applicable, the net contributions in aid of construction as established in Cactus State's next rate case to
17 be included in rate base for recovery in Cactus State's next rate case.³¹

18 51. Mr. Jones provided additional testimony recommending the establishment of the
19 deferred debit, defining it as an accounting acquisition premium used by the Commission to incentivize
20 the consolidation of small, often troubled water and wastewater providers. Mr. Jones stated that the
21 deferred debit will not have immediate rate impacts on Tierra Mesa's customers but will effect rates
22 once a future rate application is filed.³² Further, Mr. Jones stated that the proposed deferred debit is
23 consistent with the dictates of Decision No. 75626, namely that the acquisition serves the general public
24 interest, the acquiring utility is viable, the acquired system is a non-viable class D or E utility, neither
25 the acquiring nor the selling system is an affiliated interest of another, the purchase price is fair and
26 reasonable and conducted through arms' length negotiations, and the acquisition premium is associated

27 ³⁰ Ex. S-1d at 7-8.

28 ³¹ Ex. CS-1d at 6-7.

³² Ex. CS-2 at 4-5.

1 with improvements.

2 52. According to Mr. Jones, Decision No. 75626 and its incentives are extensions of the
3 regulatory compact between the Commission and the utilities it regulates, i.e., the Commission grants
4 the utility an exclusive right to provide service via a CC&N and the utility agrees to provide
5 nondiscriminatory service at just and reasonable rates.³³ Mr. Jones explained that Decision No. 75626
6 provides utilities incentives to acquire smaller, distressed utilities by offering the opportunity to receive
7 an acquisition premium on the purchase price of the systems.³⁴

8 53. Mr. Jones testified that the request to establish a deferred debit is Cactus State's attempt
9 to begin to implement the policy incentives set forth in Decision No. 75626 by sending clear signals at
10 the CC&N stage to companies looking to acquire smaller, distressed utilities that the Commission will
11 seriously consider putting the costs of acquisition into rates in the next rate case.³⁵ In response to a
12 question about the need for a deferred debit in this proceeding when the amount will need to be audited
13 and verified in the rate case, Mr. Jones responded, "We're talking about establishing the processes to
14 assure the companies that are trying to operate under Decision 75626 that the incentives laid out there
15 exist and that the Commission intends to honor those incentives through the rate case process. And
16 this deferred debit is a key signal in that process of implementing Decision 75626 and assuring potential
17 buyers that these incentives for acquiring these small companies are real and that they can expect some
18 sort of return on their costs of acquiring these systems that are above and beyond the rate base of these
19 systems."³⁶

20 54. Mr. Jones stated that Cactus State does not agree with Staff's recommendation to
21 exclude legal, regulatory, and titling costs, relying on National Association of Regulatory Utility
22 Commissioners ("NARUC") Uniform System of Accounts Accounting Instruction No. 21 to establish
23 that expenses incidental to acquisition of utility plant are usual and customary and should be included
24 in the cost of the utility plant.³⁷ Mr. Jones testified that the administrative costs being requested in this
25 matter are all outside costs that were incurred to assist with the actual transactional processes, and that

26 ³³ Tr. at 65-66.

27 ³⁴ Tr. at 66.

³⁵ Tr. at 74-75.

³⁶ Tr. at 76.

28 ³⁷ Ex. CS-4 at 7.

1 no internal Cactus State costs are included.³⁸ Cactus State estimates that, on a stand-alone basis, its
2 proposed deferred debit would result in a monthly impact to customers of \$4.10 per customer per
3 month. If consolidated rates are approved, Cactus State estimates the impact would be \$13.81 per
4 customer per month.³⁹

5 55. RUCO intervened in this non-rate case matter for the sole purpose of addressing the
6 proposed deferred debit, recommending that the Commission defer any decision related to ratemaking
7 treatment of an acquisition premium until the next rate case.⁴⁰ RUCO objected to the establishment of
8 a deferred debit/acquisition premium in a CC&N case because, pursuant to the Commission's water
9 policies and due to the short duration of CC&N matters, acquisition premiums should be considered in
10 a rate case.⁴¹ RUCO asserted that public notice with regard to the deferred debit was inadequate
11 because most customers do not understand the term deferred debit, potentially harming ratepayers if
12 one is awarded in this case without ratepayer input. RUCO requested that the Commission direct
13 Cactus State to include engineering costs, cost benefit analysis associated with the purchase of the
14 system, justification for the purchase price of the system, and any issues related to customer deposits,
15 advances in aid of construction ("AIAC"), and Water Infrastructure Financing Authority ("WIFA")
16 loans in the next rate case.⁴²

17 56. RUCO also raised concerns with the amount of the purchase price that Cactus State paid
18 for the systems, stating that the creation of a deferred debit can create a "perverse incentive" for Cactus
19 State to overpay for the selling utility's system if Cactus State anticipates the Commission will approve
20 the ratemaking treatment.⁴³ RUCO asserted that this situation leaves the ratepayer to bear the extra
21 costs.

22 57. Mr. Erdwurm testified that RUCO supports "justified acquisition premiums" but that he
23 believed Cactus State's deferred debit request violates the water policies set forth in Decision No.
24 75626 because that Decision directs any acquisition premiums to be reviewed and approved in a rate
25

26 ³⁸ Tr. at 80.

³⁹ Ex. S-1d at 6.

⁴⁰ Ex. RUCO-1 at 1.

⁴¹ Ex. RUCO-1 at 3.

⁴² Ex. RUCO-1 at 9.

⁴³ Ex. RUCO-1 at 11.

1 case.⁴⁴ Mr. Erdwurm further testified that the purchase price must be audited which can only be done
2 in a rate case with all of the information. He also raised concern that any number approved in this
3 matter will likely not be modified in a future rate case because “you’re just too busy to fully go back
4 and verify those numbers later.”⁴⁵ Mr. Erdwurm also did not agree to the capitalization of engineering
5 and administrative costs by their inclusion in rate base but instead, recommended that they be
6 expensed.⁴⁶ Mr. Erdwurm requested that Cactus State be required to file in its future rate case bill
7 comparisons based on different consolidation alternatives, such as full consolidation, regional
8 consolidation, and stand-alone basis.⁴⁷

9 58. In response to RUCO’s testimony relating to the purchase price, Mr. Cox testified that
10 Cactus State is motivated to negotiate the lowest purchase price because Cactus State has the burden
11 of proof to establish that the cost was just and reasonable, the initial outlay of capital generally does
12 not earn a return for the first two to three years, and there is no guarantee that the deferred debit which
13 incorporates the purchase price will be approved in a future rate proceeding after audit and
14 verification.⁴⁸

15 59. According to Mr. Cox, it would be inconsistent with the goal to consolidate small,
16 distressed water utilities if the Commission does not establish a deferred debit in this case.⁴⁹ Mr. Cox
17 testified that the Commission’s water policies appear to incentivize the acquisition of the small utilities
18 that require substantial infrastructure investment through a deferred debit by indicating the investment
19 will be recognized in a future rate case.⁵⁰ Mr. Jones also testified that failure to establish a deferred
20 debit in this case may “deter [Cactus State’s] ability or their desire with other acquisitions that are
21 pending.”⁵¹

22 60. According to Mr. Jones, recovery of the acquisition premium via a surcharge
23 mechanism is not appropriate in this case because no significant growth is anticipated for the Tierra
24

25 ⁴⁴ Tr. at 94-96.

26 ⁴⁵ Tr. at 98.

27 ⁴⁶ Tr. at 99.

28 ⁴⁷ Tr. at 112-113.

⁴⁸ Tr. at 31.

⁴⁹ Tr. at 50.

⁵⁰ Tr. at 50.

⁵¹ Tr. at 84.

1 Mesa system making a simpler mechanism more appropriate.⁵²

2 61. Staff recommends the establishment of a deferred debit with a maximum amount of
3 \$55,811, which reflects the purchase price plus the engineering costs, less the net book value of the
4 plant.⁵³ Staff includes engineering costs in its deferred debit calculation as recognition of the
5 engineering issues that many of these troubled systems have. Staff recommends excluding the
6 administrative costs of \$37,563, stating legal, titling, and regulatory costs are not appropriate to include
7 for recovery as they were not contemplated under the Commission's water policies. Staff agrees that
8 to amortize the deferred debit over 30 years is reasonable, which under Staff's recommended amounts
9 would result in a monthly customer bill impact of \$0.64 per customer per month.⁵⁴

10 62. Staff's policy witness, Mr. Baxter, testified that Staff believes the establishment of a
11 deferred debit "is in the spirit of the policy that was adopted by the Commission to promote the
12 consolidation of these small, troubled systems."⁵⁵ Mr. Baxter testified that the deferred debit is akin to
13 an accounting order wherein the Commission is providing the framework for potential recovery in a
14 future rate case.⁵⁶ Mr. Baxter pointed out that Staff included engineering costs in its calculation of the
15 deferred debit because "it would be difficult to improve a system without fully understanding what's
16 going on in that system."⁵⁷ Mr. Baxter further testified that administrative costs were excluded from
17 Staff's calculation of the deferred debit because the deferred debit should be tied to system
18 improvements and legal costs, titling fees, and regulatory fees are not tied to system improvements.⁵⁸
19 Mr. Baxter also stated that in this case Staff recommended a maximum amount for the deferred debit
20 that can be recovered in a future rate case to "define the parameters under which this mechanism will
21 be evaluated in the rate case."⁵⁹

22 63. Mr. Jones testified that Decision No. 75626 is silent with respect to the inclusion of
23 administrative costs in the calculation of the deferred debit but it does not prohibit the recovery of such

24 _____
⁵² Tr. at 85.

25 ⁵³ Staff confirmed that "net book value of the plant" is calculated as net plant minus contributions in aid of construction;
Tr. at 307.

26 ⁵⁴ Ex. S-1d at 7.

27 ⁵⁵ Tr. at 176.

⁵⁶ Tr. at 189.

⁵⁷ Tr. at 177.

⁵⁸ Tr. at 177.

28 ⁵⁹ Tr. at 321.

1 costs. Mr. Jones stated that failure to include these costs in this matter would preclude the
2 Commission's ability to clarify whether administrative costs are appropriate for recovery in the rate
3 case.⁶⁰

4 **Staff's Recommendations**

5 64. Staff recommends:

- 6 1. Approval of the sale of assets and transfer of the CC&N from Tierra Mesa
7 to Cactus State;
- 8 2. Establishment of a deterred debit, with a maximum amount of \$55,811
9 reached by calculating the Purchase Price plus the Engineering Costs less
10 the Net Plant. The deferred debit will be subject to audit and verification in
11 a future rate case;
- 12 3. That Cactus State file with Docket Control, as a compliance item in this
13 docket and within two years of the effective date of a Decision in this
14 proceeding, a copy of the amended county franchise agreement including
15 Tierra Mesa's water service transfer area;
- 16 4. That Cactus State and Tierra Mesa be authorized to engage in any
17 transactions and to execute, or cause to be executed, any documents
18 necessary to effectuate the authorizations requested as part of the
19 application;
- 20 5. That Cactus State be required to file all pertinent documents evidencing the
21 consummation of this transaction within 90 days of the effective date of a
22 Decision in this proceeding;
- 23 6. That Cactus State file with Docket Control, as a compliance item in this
24 docket, a copy of an ADEQ AOC of Water facilities permit, or an ADEQ
25 AOC exemption letter for a storage tank, or documentation demonstrating
26 the West well pump yield has been increased to at least 175 gpm, or some
27

28 ⁶⁰ Tr. at 86-87.

1 combination thereof, that demonstrates the water system satisfies ADEQ's
2 minimum storage capacity requirements as required by A.A.C. R18-5-503,
3 within one year of the effective date of a Decision in this proceeding;

4 7. That Cactus State file with Docket Control, as a compliance item in this
5 docket, documentation that an Approval To Construct permit for a treatment
6 system using best available technology to achieve compliance with the MCL
7 for uranium has been submitted to ADEQ, within two years of the effective
8 date of a Decision in this proceeding;

9 8. That Cactus State file with Docket Control, as a compliance item in this
10 docket, documentation demonstrating that the well vents have been covered
11 with number 16 mesh screen within 90 days of the effective date of a
12 Decision in this proceeding;

13 9. That Cactus State file with Docket Control, as a compliance item in this
14 docket, a Curtailment Tariff for Standard Systems within 90 days of a
15 Decision in this proceeding; and

16 10. That Cactus State file with Docket Control. as a compliance item in this
17 docket. a Cross-Connection/Backflow Prevention Tariff within 90 days of a
18 Decision in this proceeding.

19 65. Aside from the amount of the deferred debit, Cactus State did not object to any of Staff's
20 recommendations.

21 **Resolution**

22 66. Decision No. 75626 clearly establishes the Commission's support of the use of
23 incentives to encourage the acquisition of non-viable utilities.⁶¹ We agree with both Cactus State and
24 Staff that the establishment of a deferred debit in this CC&N proceeding is appropriate as a means to
25 incentivize utilities with the financial, technical, and managerial capabilities to purchase distressed
26 utilities who may be unable or unwilling to provide safe, reliable, and adequate service to its ratepayers.

27 _____
28 ⁶¹ Decision No. 75626 at P. 18, "We support the notion that the purchase of non-viable Class D and E water utilities should be encouraged through incentives."

1 We disagree with RUCO's assertion that approval of a deferred debit in this matter will go
2 unchallenged in a rate case given the diligent audit Staff and other intervenors conduct to verify relevant
3 numbers throughout a rate case proceeding. As a result, we find that the establishment of a deferred
4 debit in a CC&N proceeding where the determination of viability is assessed is an appropriate extension
5 of the incentives developed to encourage the consolidation of small water utilities, while adhering to
6 the Commission's water policy directives that the underlying acquisition adjustment will be approved
7 in a rate case. Without such a direct signal to larger utilities that their efforts will be rewarded, the
8 Commission's desire to consolidate distressed utilities may go unrealized.

9 67. With respect to what costs can be included in the calculation of a deferred debit, Cactus
10 State argues that administrative costs necessary to effectuate the transaction, i.e., titling costs,
11 consultant fees, etc., should be included whereas Staff asserts that such costs do not relate to the
12 improvement of the small utility and were not contemplated within the confines of Decision No. 75626.
13 Here, we find Staff's position to be more compelling based on the language in Decision No. 75626 that
14 states, "The acquisition premium must be associated with improvements, which can be qualitative or
15 quantitative or both."⁶² Therefore, we adopt Staff's calculation of the deferred debit for a maximum
16 amount of \$55,811, calculated by including the purchase price plus the engineering costs less the net
17 book value of the plant, subject to audit and verification in the next rate case.

18 68. We find that it is in the public interest to approve the joint application, as recommended
19 by Staff. We further find that Staff's recommendations and conditions are reasonable and appropriate,
20 and we adopt them.

21 69. We further find that it is reasonable and appropriate to require Cactus State to file an
22 attestation that all customer deposits and liabilities owed by Tierra Mesa have either been returned or
23 will be carried forward and honored by Cactus State.

24 70. We also find that it is reasonable and appropriate to require Cactus State to notify the
25 customers acquired from Tierra Mesa of the acquisition and Cactus State's contact information for
26 customer service and emergencies, by means of an insert in its first billing to customers, and to file a
27

28 ⁶² Decision No. 75626 at 22.

1 copy of the notice with Docket Control within 10 days of the notice being sent.

2 **CONCLUSIONS OF LAW**

3 1. Tierra Mesa Estates Water Company, Inc. and Cactus State Utility Operating Company,
4 LLC are public service corporations within the meaning of Article XV of the Arizona Constitution and
5 A.R.S. §§ 40-281, 40-282, and 40-285.

6 2. The Commission has jurisdiction over Tierra Mesa Estates Water Company, Inc. and
7 Cactus State Utility Operating Company, LLC and of the subject matter of the joint application.

8 3. Notice of the joint application was provided in the manner prescribed by Arizona law.

9 4. Cactus State Utility Operating Company, LLC is a fit and proper entity to receive the
10 assets and certificated area of Tierra Mesa Estates Water Company, Inc., and it is in the public interest
11 to approve the sale of assets and transfer of Tierra Mesa Estates Water Company, Inc.'s Certificate of
12 Convenience and Necessity to Cactus State Utility Operating Company, LLC.

13 5. Staff's recommendations are reasonable and in the public interest, and should be
14 adopted.

15 **ORDER**

16 IT IS THEREFORE ORDERED that the joint application to transfer the assets and transfer the
17 Certificate of Convenience and Necessity of Tierra Mesa Estates Water Company, Inc. to Cactus State
18 Utility Operating Company, LLC is hereby granted.

19 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC may record a
20 deferred debit of not greater than \$55,811 subject to audit, verification, and true-up in its next rate case.

21 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
22 Docket Control, as a compliance item in this docket and within two years of this Decision, a copy of
23 the amended county franchise agreement including Tierra Mesa Estates Water Company, Inc.'s water
24 service transfer area.

25 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC and Tierra
26 Mesa Estates Water Company, Inc. are authorized to engage in any transactions and to execute, or
27 cause to be executed, any documents necessary to effectuate the authorizations requested as part of the
28 application.

1 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file all
2 pertinent documents evidencing the consummation of this transaction within 90 days of the effective
3 date of this Decision.

4 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
5 Docket Control, as a compliance item in this docket, a copy of an Arizona Department of
6 Environmental Quality Approval Of Construction of Water facilities permit, or an Arizona Department
7 of Environmental Quality Approval Of Construction exemption letter for a storage tank, or
8 documentation demonstrating the West well pump yield has been increased to at least 175 gallons per
9 minute, or some combination thereof, that demonstrates the water system satisfies Arizona Department
10 of Environmental Quality's minimum storage capacity requirements as required by A.A.C. R18-5-503,
11 within one year of the effective date of this Decision.

12 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
13 Docket Control, as a compliance item in this docket, documentation that an Approval To Construct
14 permit for a treatment system using best available technology to achieve compliance with the MCL for
15 uranium has been submitted to Arizona Department of Environmental Quality, within two years of the
16 effective date of this Decision.

17 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
18 Docket Control, as a compliance item in this docket, documentation demonstrating that the well vents
19 have been covered with number 16 mesh screen within 90 days of the effective date of this Decision.

20 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
21 Docket Control, as a compliance item in this docket, a Curtailment Tariff for Standard Systems within
22 90 days of the effective date of this Decision.

23 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
24 Docket Control. as a compliance item in this docket. a Cross-Connection/Backflow Prevention Tariff
25 within 90 days of the effective date of this Decision.

26 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall file with
27 Docket Control, as a compliance item in this matter and within one year of this Decision,
28 documentation demonstrating that all liabilities owed by Tierra Mesa Estates Water Company, Inc.

1 have been returned or will be honored by Cactus State Utility Operating Company, LLC.

2 IT IS FURTHER ORDERED that Cactus State Utility Operating Company, LLC shall notify
3 the customers acquired from Tierra Mesa Estates Water Company, Inc. of the acquisition and Cactus
4 State Utility Operating Company, LLC's contact information for customer service and emergencies,
5 by means of an insert in its first billing to customers, and to file a copy of the notice with Docket
6 Control within 10 days of the notice being sent.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9
10 *Lea Marquez Peterson*
11 CHAIR WOMAN MARQUEZ PETERSON

DISSENT
COMMISSIONER KENNEDY

12 *Justin Olson*
13 COMMISSIONER OLSON

Anna Tovar
COMMISSIONER TOVAR

James O'Connor
COMMISSIONER O'CONNOR



15 IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,
16 Executive Director of the Arizona Corporation Commission,
17 have hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
this 29 day of December 2021.

19 *Matthew J. Neubert*
20 MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

21 *James St. Kennedy*
22 DISSENT

23
24 DISSENT
SP/(gb)

1 SERVICE LIST FOR:

CACTUS STATE UTILITY OPERATING COMPANY,
LLC AND TIERRA MESA ESTATES WATER
COMPANY, INC.

2
3 DOCKET NO.:

W-02498A-21-0155 AND WS-21155A-21-0155

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Tierra Mesa Estates Water Company, Inc.
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Consented to Service by Email

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Louisiana Public Service Commission



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November 23, 2021

BRANDON M. FREY
Executive Secretary

KATHRYN H. BOWMAN
Executive Counsel

JOHNNY E. SNELLGROVE, JR.
Deputy Undersecretary

2021 NOV 24 PM 12:10
LA PUBLIC SERVICE
COMMISSION

VIA E-MAIL TO:

Andrew B. Ezell
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***In Re: Docket No. S-36098, Magnolia Water Utility Operating Company, LLC, ex parte
In re: Request for a Letter of Non-Opposition to the Transfer of the Wastewater System
Assets Owned Clear Stream Utilities, L.L.C., a Regulated Wastewater Utility, to
Magnolia Water Utility Operating Company, LLC.***

Dear Mr. Ezell:

This letter is response to your request submitted on behalf of Magnolia Water Utility Operating Company, LLC (“Magnolia” or the “Company”) and received by the Louisiana Public Service Commission (“Commission”) on July 6, 2021, requesting non-opposition to the transfer of certain system assets.

Company’s Request

On July 6, 2021, Magnolia filed an application requesting that the Commission issue a letter of non-opposition to its acquisition of the wastewater systems operated by Clear Stream Utilities, L.L.C. (the “Seller”) that will serve the Abby Lakes, Caro Estates, Herrington Place, Highland Oaks, Le Belle, and Magnolia subdivisions, all located Lafourche Parish, as well as Acadian Villa and Jolie Oaks, in Terrebonne Parish. Notice of this request was published in the

Commission's Official Bulletin, dated July 9, 2021. No interventions, timely or otherwise, were filed.

Magnolia is a Louisiana Limited Liability Company whose principal office is located at 500 Northwest Plaza Drive, Suite 500, St. Ann, Missouri, 63704¹. Magnolia is a fully-owned subsidiary of Central States Water Resources ("CSWR"), which is a Missouri for-profit Corporation. Magnolia applied for and was granted authority by the LPSC to operate as a utility providing water and wastewater services in Docket Nos. S-35197 and S-35198 on August 5, 2019.

Magnolia is proposing to buy and the Seller is proposing to sell all, or substantially all, of the Seller's franchises, works, operations, systems, land and related improvements, easements, rights-of-way, permits, leases, service facilities, equipment, machinery, lines, plant, pipes, manholes and appurtenances, supplies, and other assets currently used to provide regulated wastewater services in Louisiana, as outlined in the Purchase and Sale Agreement.

In support of the application, the Company submitted the following documents:

- Responses to the eighteen points in accordance with the March 18, 1994 General Order;
- A copy of the Purchase and Sale Agreement;
- CSWR Consolidated Income Statement and Balance Sheet for 2019; and
- Responses to one formal set of Data Requests issued by Staff.

Commission Authority

The Commission exercises jurisdiction in this proceeding pursuant to Article IV, Sec. 21 of the Louisiana Commission.

La. Const. Art. IV. Sec. 21 provides in pertinent part:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce

¹ Louisiana Secretary of State filings indicate that the current primary domicile and mailing address of the Company is located at 10761 Perkins Road, Suite A, Baton Rouge, LA 70810, which is associated with the Company's counsel.

reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Pursuant to this authority, the Commission issued its **March 18, 1994 General Order**, as amended (“1994 General Order”), which requires utilities to respond to the eighteen (18) points. The 1994 General Order provides on pertinent part:

No utility or common carrier subject to the jurisdiction of the Louisiana Public Service Commission shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system, nor by any means direct or indirect, merge or consolidate its utility works, operations, systems, franchises, or any part thereof, nor transfer control or ownership of any assets, common stock or other indicia of control of the utility to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated entity or any other entity, nor merge or combine with another person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated company or any other entity, or divide into two or more utilities or common carriers, where the values involved in such action exceed one percent (1%) of the gross assets of such regulated utility or common carrier, or subsidiary thereof, nor in any way commit itself to take such action or affect any right, interest asset, obligation, stock ownership, or control, involved in such action without prior full disclosure of the prior intent and plan of such utility or common carrier with regard to such action and without prior official action of approval or official action of non-opposition by the Louisiana Public Service Commission. This section is intended to apply to any transfer of the ownership and/or control of the public utilities and common carriers regardless of the means used to accomplish that transfer.

In determining whether to approve any such transfer of ownership or control the Commission shall take into account the following factors[.]

Staff Review

Magnolia provided Audit Staff with its responses to the eighteen (18) points, summarized below:

- Magnolia is committed to operating the assets of the utility in a prudent and fiscally responsible manner to the highest possible level of customer service and satisfaction.
- Magnolia is committed to providing safe, reliable, dependable, and adequate service to its utility customers in Louisiana.
- The transfer of Clear Stream’s assets will not have a negative effect on any local competition.
- The transfer of the assets will preserve the jurisdiction of the Commission and its ability to effectively regulate and audit the utility operations in the State of Louisiana.
- Magnolia has identified certain investments in upgrades, improvements, and replacements it plans to make to the system to improve the utility.

Magnolia has stated the Company has available capital required to make investments and expenditures in the system, should they become necessary. Staff reviewed the filings, including accompanying exhibits and formal data requests. Staff also contacted other regulatory bodies, including Commission and Consumer advocates, in states where Magnolia’s parent company operates to determine the previous actions and due diligence of CSWR. Staff contacted Louisiana Department of Environmental Quality (“LDEQ”) regarding the system’s compliance. LDEQ informed staff the system is in compliance and the permit will be transferred to Magnolia once financial security requirements are met.

Staff concurs with the Company’s assessment of the eighteen (18) points that was submitted to Staff. Staff agrees that the acquisition of the Seller’s assets by Magnolia is in the public interest, as it will relieve a current and willing seller of duty to operate the utility assets and provide a significant investment in physical plant. Staff was informed that Clear Stream partners with The STAT Group (“STAT”) to operate the wastewater facilities, and that Magnolia plans to continue operations with STAT.

Staff Analysis of the 18 points

Staff generally agrees with Magnolia’s responses to the 18 points, as summarized below:

- Staff finds that the transfer is in the public interest.

- Staff finds that because Magnolia has the necessary access to capital, the Company will be able to ensure the system's compliance.
- Staff finds that Magnolia's intent to hire a qualified and experienced third-party contractor to manage and operate the system will benefit the customers utilizing the system.
- Audit Staff finds that the transfer will preserve the jurisdiction of the Commission and its ability to effectively regulate and audit the utility operations in the State of Louisiana.
- The transfer will have no effect on the Commission's ability to regulate and audit operations of the remaining assets of Clear Stream in Louisiana effectively.

Staff Recommendation

Based on Staff's review of the application, the accompanying financials, the responses to the eighteen (18) points in accordance with the Commission General Order dated March 18, 1994, the responses to Staff's formal data requests, Staff believes that the transfer of Clear Stream Subdivision's assets to Magnolia is in the best interest of the ratepayers. Accordingly, Staff issues this Letter of Non-Opposition, granting Magnolia the right to acquire the assets of Clear Stream Subdivision's subject to the following conditions:

1. Magnolia should file a copy of all signed agreements and accounting journals entries used to record the transfer of the systems assets into the record of this Docket within thirty (30) days of closing.
2. Should the Utility Service Agreement be modified in any way, prior to closing, the newly revised agreement shall be filed into the record of this proceeding no later than five (5) business days before closing.
3. Within sixty (60) days of issuance of this Letter of Non-Opposition, Magnolia shall file into record of this proceeding proof of change in ownership and operating permit filed with and approved by the LDEQ, LDH, or both.
4. Within sixty (60) days of issuance of this Letter of Non-Opposition, Magnolia shall file into record of this proceeding proof that Magnolia has added the Subdivision's wastewater system to a current letter of credit as required by LDH, LDEQ, or both.

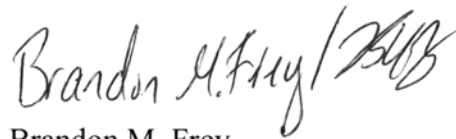
5. Within sixty (60) days of issuance of this Letter of Non-Opposition, Magnolia shall submit a rate tariff and Terms of Service to the LPSC Utilities Division reflecting the change in ownership of the wastewater systems.
6. If the transfer does not take place within sixty (60) days of the issuance of the Letter of Non-Opposition, the Company be required to file a letter into record of this Docket explaining the failure to close.
7. The Seller will provide Magnolia with all financial information, customer lists, and any other information pertaining to the Subdivision's assets.
8. The transfer shall not cause the interruption of wastewater service to the affected customers, and those customers will be billed under the current tariff, with no adjustments in rates without approval of the LPSC in a full rate review.
9. Magnolia shall be required to maintain a hypothetical capital structure of 50% equity and 50% debt for rate making purposes. If equity falls below 50% then an actual capital structure will be enforced.
10. Magnolia shall, in good faith, seek and obtain multiple bids for the performance of work in making all Capital Improvements to the acquired systems, for the purpose of evaluating costs comparatively. The Company shall file into this Docket, proof of its due diligence in obtaining and evaluating bids for all capital improvements and include a short narrative regarding the selection of any birds that may be considered an outlier of more than 10% in a cost comparison. All improvements shall be reviewed for prudence as part of the rate proceeding.
11. Magnolia shall, in good faith, seek the lowest cost market rate for debt financing associated with making Capital Improvements to the acquired systems. The Company shall file with the Commission, an application for assumption of liability before obtaining any debt in accordance with the Commission's General Order dated November 13, 1996.
 - a. Staff encourages the Company to explore multiple options, including available State funding, grants, and private sources of debt financing, before proceeding with such a filing.
12. Magnolia shall file reports into this docket, beginning sixty (60) days after this approval and semi-annually thereafter, updating Staff regarding the progress of capital

improvements to the wastewater systems. These reports shall also include a narrative regarding the system operators, including the qualifications of those operators.

13. The Commission reserves the right to review the current rate structure of the acquired company during the impending rate proceeding.
14. Future rate treatment for the acquired system(s) shall be governed by and subject to any requirement or condition established in Magnolia's ongoing consolidated rate proceeding in Docket U-35822.
15. This approval is made without prejudice to the authority of the Commission to make investigations and require and reasonably necessary change that the Commission may legally find to be in the public interest.

Should you have any questions, please feel free to contact my office at (225) 342-4999.

Sincerely,

A handwritten signature in black ink that reads "Brandon M. Frey" followed by a stylized monogram "BMB".

Brandon M. Frey

Executive Secretary

**Service List for S-36098
as of 11/23/2021**

Commissioner(s)

Craig Greene

Eric Skrmetta

Foster L. Campbell

Lambert C. Boissiere, III.

Mike Francis

LPSC Staff Counsel

Noah Hoggatt, LPSC Staff Attorney

LPSC Staff

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Don Dewald, LPSC Utilities Division

Petitioner :

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BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

GREAT RIVER UTILITY
OPERATING COMPANY, LLC

DOCKET NO. 2020-UA-144

IN RE: PETITION OF GREAT RIVER UTILITY OPERATING COMPANY, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING GREAT RIVER UTILITY OPERATING COMPANY, LLC TO OPERATE AS A PUBLIC UTILITY IN THE STATE OF MISSISSIPPI AND APPROVING THE SALE AND TRANSFER OF CERTAIN ASSETS, FACILITIES, PROPERTY, AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR THE PROVISION OF WASTEWATER DISPOSAL SERVICE IN ADAMS, DESOTO, FORREST, HINDS, LAFAYETTE, LAMAR, LAUDERDALE, TATE AND WARREN COUNTIES, MISSISSIPPI

FINAL ORDER

THIS CAUSE came on for consideration by the Mississippi Public Service Commission (“Commission”) on the Petition for Certificate to Operate (“Petition”), as modified by that certain Supplemental Petition, both filed by Great River Utility Operating Company, LLC (“Great River”) in the above referenced docket, and, being fully apprised in the premises and having considered the documents and record before it, this Commission renders a final decision as follows:

PETITIONER

1. Great River is a single-member Mississippi limited liability company authorized to conduct business in the State of Mississippi and having a physical address of 1650 Des Peres Road, Suite 303, St. Louis, MO 63131. Great River intends to brand and operate under the “d/b/a” of “Great River Water” in Mississippi. Great River is part of an affiliate group of state operating companies that are owned and controlled by CSWR, LLC, a Missouri limited liability company, (“CSWR”). CSWR owns and controls several other state operating companies which operate small water or wastewater systems in Arkansas, Kentucky, Louisiana and Missouri as well as

Central States Water Resources, Inc., a Missouri corporation, (“Central States”), which acts as manager for the CSWR affiliate companies.

PETITIONER’S REQUESTS

2. Great River has entered into separate asset purchase agreements with the owners of a total of nine (9) water systems and thirty-five (35) wastewater systems currently providing service in Mississippi. This docket pertains to the wastewater systems being acquired by Great River.¹ Great River’s Petition in this Docket, as modified by its Supplemental Petition, specifically requests that the Commission:

a. Grant to Great River Utility Operating Company, LLC d/b/a Great River Water a certificate of public convenience and necessity to operate as a public utility in Mississippi;

b. Approve the sale and transfer of all wastewater systems to be acquired and any and all assets of such systems, including, but not limited to, all real property, lines, towers, tanks, pumps, meters, fixtures, easements, rights-of-way, certificates and related facilities and equipment to Great River so as to permit Great River to operate the systems and provide utility service to and for the public for compensation;

c. Authorize Great River to provide service to the systems being acquired in accordance with the existing service rules and regulations and the schedule of rates and charges for each system, all of which are a part of the Commission-approved tariffs applicable to each system;

¹ The water systems being acquired are the subject of a similar petition pending in Docket No. 2020-UA-143.

d. Determine it to be in the best interest of the State and the customers served and to be served by the acquired systems for Great River to be afforded, in the state-wide rate case to be initiated post-acquisition, the right to place all land and land rights being acquired in rate base and earn a just and reasonable return thereon at a valuation equal to the total purchase price paid for the acquired systems.

e. Authorize Great River to evaluate the immediate compliance and operational needs for each system and make the necessary investment and improvements to stabilize the systems and bring their operation into compliance with applicable federal and state regulations, subject to a subsequent prudence review to be conducted in the subsequent rate proceeding to be filed at the conclusion of an operational stabilization period of not less than six (6) months following acquisition of the systems.

PROCEDURAL HISTORY

3. On or about October 9, 2020, Great River filed its Petition, pre-filed testimony, exhibits and schedules in this Docket. Pursuant to the Commission's Public Utilities Rules of Practice and Procedure ("Rules"), Great River served notice of the Petition on all "interested persons" as identified in Exhibit "D" to the Petition.

4. Through the office of the Executive Secretary, notice by publication was perfected as follows:

- a. *The Natchez Democrat* on October 21, 2020;
- b. *The Oxford Eagle* on October 21, 2020;
- c. *Meridian Star* on October 22, 2020;
- d. *The Clarion-Ledger* on October 23, 2020;

e. *Hattiesburg American* on October 23, 2020; and

f. *The Pine Belt News* on October 29, 2020;

5. In addition, although not required by Commission Rule, on November 19, 2020, Great River filed a Verification of Notice to Customers verifying Great River made a good faith effort to provide existing customers notice of the Petition via mail on or before October 28, 2020. A copy of the notice sent to customers as well as the customer lists used in this effort are on file with the Commission.

6. By order of the Commission, four interveners were granted party status: S2 Environmental, LLC; Red River Utility Co.; the City of Natchez, Mississippi; and Natchez Water Works. None of these parties have objected to or contested the Petition or the Supplemental Petition in this matter, and two of the parties—S2 Environmental, LLC and Red River Utility, Co.—are sellers seeking to transfer systems that are the subject of this Docket.

7. On or about January 21, 2021, Great River, the City of Natchez, Mississippi and Natchez Water Works filed a Stipulation, the terms of which are discussed further below.

8. The Mississippi Public Utilities Staff (“Staff”), serving as advisors to the Commission, propounded a total of twenty-nine (29) formal data requests to Great River as part of its investigation. The record reflects that Great River has fully responded and complied with all such requests and has held several conference calls with the Staff concerning questions and issues raised by the Petition and Supplemental Petition.

9. In addition, on April 19, 2021, the Staff filed a total of twenty-seven (27) Shortage Letters seeking additional information from Great River regarding certain systems being acquired

and subject to this Docket. Great River submitted a response to all twenty-seven Shortage Letters on April 28, 2021.

10. No motion has been filed with the Commission by any party or the Staff as to any deficiency in or lack of access to discovery in this proceeding.

11. On April 20, 2021, Great River filed its Supplemental Petition for the purpose of correcting the record with respect to certain systems that are the subject of this Docket and clarifying and supporting Great River's request for an acquisition adjustment for the systems to be acquired by Great River.

12. This matter was placed on the agenda of the regular monthly meeting of the Commission to be held June 8, 2021, and notice of the meeting was issued to the public consistent with the requirements of the Mississippi Open Meetings Act.

APPLICABLE LAW

13. The Commission has jurisdiction over the parties and subject matter pursuant to Miss. Code Ann. § 77-3-5. Great River's Petitions and the requests therein were made pursuant to Miss. Code Ann. §§ 77-3-11 and 77-3-23 and Rules 7 and 8 of the Commission's Rules. These statutes and rules govern the issuance of a certificate to operate as a public utility as well as the sale and transfer of certificates of public convenience and necessity and public utility property and facilities.

14. Specifically, Miss. Code Ann. § 77-3-11(3) provides the following concerning the issuance of a certificate to operate for a wastewater disposal facility in Mississippi:

No person shall construct, acquire, extend or operate equipment or facilities for collecting, transmitting, treating or disposing of sewage, or otherwise operating an intrastate sewage disposal service, to or for the public for compensation, without first having obtained from the commission a certificate that the present or future

public convenience and necessity require or will require the operation of such equipment or facilities.

15. Miss. Code Ann. § 77-3-23 provides in pertinent part with respect to sale and transfer petitions:

Whenever a purchase, lease, assignment or transfer is proposed, the utility or utilities or the person seeking authority therefor shall present an application to the commission in such form as may prescribed by the commission. . . . If, [after any required hearing], the commission finds that the transaction proposed is in good faith, that the proposed assignee, lessee, purchaser, or transferee, is fit and able properly to perform the public utility services authorized by such certificate and to comply with the lawful rules, regulations and requirements of the commission, and that the transaction is otherwise consistent with the public interest, it may enter an order approving and authorizing such sale, lease, assignment or transfer upon such terms and conditions as it shall find to be just and reasonable and with such modification as it may prescribe.

16. While not specifically addressed by statute, Commission Rule 8.102 governs rate adjustments related to the approval of a sale and transfer of public utility property:

Unless specifically requested in the petition and clearly allowed by the Commission's order, the approval of any sale or transfer by the Commission shall not, in and of itself, provide a basis or justification for any subsequent adjustment to rate base or operating expenses. An acquisition adjustment shall not be implied or allowed except upon written request for same in the Petition for Sale and Transfer and only where expressly allowed by order of the Commission when it grants approval for the sale and transfer. If an acquisition adjustment is sought, all supporting documentation and legal authority must be attached to the Petition presented pursuant to this rule. Adjustments, if allowed, shall be by Order of the Commission.

17. The Commission has granted acquisition adjustments in the past that have been upheld by the Mississippi Supreme Court.²

18. In establishing rates for public utilities, the Commission is primarily guided by Miss. Code Ann. § 77-3-33, which provides: "Rates prescribed by the commission shall be such

² See *State ex rel. Allain, et al. v. Miss. Pub. Serv. Comm'n*, 435 So. 2d 608 (Miss. 1983); *United Gas Corp. v. Miss. Pub. Serv. Comm'n*, 127 So. 2d 404 (Miss. 1961).

as to yield a fair rate of return to the utility furnishing service, upon the reasonable value of the property of the utility used or useful in furnishing service.” With respect to determining the “reasonable value of the property of the utility used or useful in furnishing service,” the Commission is granted great discretion under Miss. Code Ann. § 77-3-43:

In regulating the rates of any public utility subject to the provisions of this chapter, the commission shall, on hearing after reasonable notice, ascertain and fix the rate base of the property of the public utility in such manner as to be fair both to the public utility and to the consumer when the same is relevant or material to the exercise of the jurisdiction of the commission. The commission shall make readjustments from time to time, and ascertain the cost of all new construction, extensions and additions to the property of every public utility. In arriving at such rate base, the commission shall give due consideration to: (a) the reasonable original costs of the property used and useful, or to be used and useful within a reasonable time after the test period; (b) the portion of the cost which has been consumed by previous use recovered by depreciation expense; (c) the allowance for funds used during construction, not to exceed on borrowed funds the true net interest cost of such funds, computed according to the actuarial method, and, on the equity component thereof, a rate of return granted on common equity in the last rate proceedings before the commission, or if such rate has not been established with the preceding three (3) years, then the average rate of return actually earned on equity during the preceding three (3) years; (d) any other elements deemed by the commission to be material in determining the rate base for rate-making purposes.

19. The Mississippi Supreme Court has specifically held the Commission is not bound by statute to use any specific formula for establishing just and reasonable rates:

Our statute does not bind the Commission to the use of any particular formula in determining the reasonable value of the property of a public utility for rate-making purposes. Our statute merely provides that the rates prescribed shall be such as to yield a fair rate of return upon the reasonable value of the property used and useful in furnishing service, and that, the Commission in arriving at such rate base “shall give due consideration to all elements that are generally considered in determining the rate base for rate making purposes.” There are a number of formulas which are useful in the determination of the reasonable value of a utility’s property for rate-making purposes. No public utility has a vested right to any particular method of valuation.

20. With respect to evidentiary hearings, neither Miss. Code Ann. §§ 77-3-11 nor 77-3-23 require hearings in an uncontested case like this one. For example, Miss. Code Ann. § 77-3-

23 states: “Notwithstanding any provision of this section to the contrary, the application may be granted as applied for without a hearing in uncontested cases” Miss. Code Ann. § 77-3-47, which governs Commission hearings generally, also does not impose any hearing requirements for uncontested, non-rate cases.

SUMMARY OF EVIDENCE

21. Great River’s original Petition generally provided the following documentation concerning its proposed acquisition:

- a. Pre-filed direct testimony of Mr. Josiah Cox, President of Great River.
- b. Confidential and redacted/public versions of each asset purchase agreement.
- c. Corporate organizational documents for Great River and its relevant affiliates and parent companies, which included the required information concerning the owners, directors and executive management of each.
- d. Maps and legal descriptions applicable to each system being acquired.
- e. A general description of each system, including a list of customer addresses and any available environmental permitting documentation.
- f. Consolidated and audited financial statements of the Petitioner evidencing Great River’s financial ability to provide public utility services in Mississippi.

22. Great River’s Supplemental Petition corrected certain Schedules filed in its original Petition and also clarified Great River’s request concerning an acquisition adjustment for the systems. Along with this clarification, Great River provided all supporting documentation and legal authority related the acquisition adjustment request. The information provided in Great

River's Supplemental Petition was previously provided to the Staff through the data request process.

23. Great River has explained that very little accounting documents, customer information and facility documentation is maintained by the various sellers that currently own and operate the systems.³ This is independently evidenced by the overwhelming majority of the systems that were determined to have not complied with this Commission's Rules requiring the filing of annual utility reports.⁴ Given these circumstances, the Commission finds that the pleadings, testimony, exhibits, data and documentation submitted by Great River in this Docket reasonably comply with all applicable statutes and Commission rules. Therefore, for good cause shown, the Commission waives any other filing requirements which may be prescribed by its rules.

24. No parties contest—through pleadings or otherwise—any facts presented by Great River. In fact, the City of Natchez and Natchez Water Works, through its Stipulation, state they “have no objection to Great River's proposed acquisition of Oakland.”⁵ Further, the Commission observes the only remaining parties, S2 Environmental, LLC and Red River Utility Co., are two of the entities seeking to sell their facilities and assets to Great River through this proceeding. Finally, good faith efforts were made to notify all of the current customers of the acquired systems, and neither the Commission nor the Staff has received a written or verbal communication contesting or otherwise questioning Great River's proposed acquisition of the systems subject to this proceeding. This case is uncontested and the facts in evidence are undisputed.

³ See Supp. Petition, Ex. “F”.

⁴ Great River reports that annual reports could only be located for 7 of the 44 systems being acquired. See Great River Supp. Petition, Ex. “F”; see also Great River's response to MPUS 1-1, Ex. D.

⁵ Stipulation, Docket No. 2020-UA-144, ¶3 (Jan. 19, 2021).

25. A summary of the relevant, substantial and uncontested evidence presented by Great River in support of its Petition is warranted.

26. Great River is an affiliate company of the CSWR affiliate group founded in 2014 and headquartered in St. Louis, Missouri.⁶ CSWR and Central States are owned and funded by U.S. Water Systems, LLC, which provides equity capital necessary to acquire and operate water and wastewater systems and make any identified upgrades and improvements to those systems.⁷ At the time the original Petition was filed the CSWR affiliate group combined served nearly 100,000 customers across Arkansas, Kentucky, Louisiana and Missouri.⁸ Since 2015, the CSWR group has designed, permitted and constructed nearly \$10 million in new water and wastewater infrastructure investment across its operations.⁹ In addition to expanding to Mississippi, the CSWR group has active acquisition cases in Kentucky, Missouri, Tennessee and Texas.¹⁰

27. Great River seeks to acquire a total of thirty-five (35) wastewater systems throughout Mississippi. Attached as Exhibit "A" to this Order is a chart summarizing the relevant facts associated with each system as derived from the evidence currently contained in the record. Combined, the wastewater systems are estimated to serve 5,942 customer connections,¹¹ and the majority of the systems have been in operation for several decades. Initial due diligence conducted by Great River has confirmed that most, if not all, of the systems require some capital investment and/or maintenance work to restore the systems to reliable operations in compliance with

⁶ Direct Testimony of Josiah Cox, p. 5.

⁷ Great River Petition, ¶2.

⁸ Direct Testimony of Josiah Cox, p. 5.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

¹¹ See Great River response to MPUS 1-21, Ex. A.

applicable laws and regulations.¹² A public records request made to the Mississippi Department of Environmental Quality also evidenced that several of the systems being acquired have had historic environmental compliance issues of varying degrees.¹³

28. Great River's Supplemental Petition corrected the record evidence concerning one wastewater facility subject to this petition. The system originally labeled "T&J" located in Warren County, Mississippi and believed to be owned by the seller Utility One Limited Liability Company was determined through subsequent due diligence to be referred to as "Lake Village" and served by two separate entities under common ownership—T&J Utility Company, Inc. ("T&J") and Quality Contractors, Inc. ("Quality").¹⁴ Both T&J and Quality were recently purchased by Mr. Steve Womack (principal of Utility One) in his individual capacity, and a petition seeking Commission approval of the transfer of stock in T&J and Quality to Mr. Womack is pending in Docket No. 2020-UA-214.¹⁵ Great River's Supplemental Petition updated all of the documentary evidence concerning the Lake Village system to correct the Commission's record concerning this system.

29. Another system being acquired by Great River in Adams County, Mississippi, Oakland Water Works, LLC ("Oakland") has a currently effective wastewater disposal/treatment service agreement ("Sewer Agreement") with the City of Natchez and Natchez Water Works. The Sewer Agreement was previously approved by this Commission in Docket No. 2005-UA-73, and a copy of the Sewer Agreement was filed in this Docket as an exhibit to the Stipulation between

¹² See system-by-system Engineering Due Diligence Reports produced by Great River in response to MPUS 1-1, Ex. "A".

¹³ See Great River's Response to Staff Shortage Letter, Ex. "A".

¹⁴ Great River Supp. Petition, ¶2.

¹⁵ *Id.*

the parties. In the Stipulation, Great River has agreed to “take all necessary steps to assign all rights and obligations in the Sewer Agreement from Oakland to Great River at the closing of the sale of the overall system.”¹⁶ Based upon this agreement, the Natchez entities have no objection to Great River’s proposed acquisition of Oakland.¹⁷

30. Great River has requested, where possible, to adopt the current rates, charges and tariffs approved for each system to govern operations and service to customers post-acquisition. Exhibit “A” provides the docket number wherein the current rates were approved for each system being acquired. In addition, the Commission-approved tariffs were provided to the Staff during discovery.¹⁸ As detailed in Exhibit “A”, however, nine (9) wastewater systems being acquired do not have rates approved by this Commission. Therefore, Great River has filed in separate dockets, notices of intent to establish initial rates for these nine systems. These separate rate cases remain pending and are not addressed by this order.

31. Great River also identified eight (8) wastewater systems being acquired that do not have an area certificate issued by the Commission. Therefore, Great River has filed in separate dockets, petitions for a certificate of public convenience and necessity for these eight systems. The names of these systems, the corresponding sellers and the docket numbers wherein each petition is pending is provided in the attached Exhibit “A.”

SALE AND TRANSFER

32. Great River has presented copies of each asset purchase agreement governing the sale and transfers contemplated in this docket, which this Commission has reviewed. Great River

¹⁶ Stipulation, Docket No. 2020-UA-144, ¶3 (Jan. 19, 2021).

¹⁷ *Id.*

¹⁸ *See* Great River’s Response to MPUS 1-1, Ex. “H”.

has presented evidence to show, and this Commission has no reason to doubt, that the agreements were negotiated in good faith and represent arms' length transactions between unrelated counter parties.¹⁹

33. With respect to Great River's fitness, Mr. Cox details the financial capital, experience and expertise possessed by or available to Great River to operate the systems to be acquired in Mississippi, which, by all accounts, would be an improvement over the level of each currently made available by the owners and operators of the systems being acquired.²⁰ Great River committed to invest the capital necessary to restore the reliability of the acquired systems: "Great River and CSWR have access to adequate capital and are willing and able to invest the capital necessary to bring the water and wastewater systems at issue in this case up to standard and maintain compliance with applicable state and federal regulations."²¹

34. With respect to serving the interests of customers and the public, Mr. Cox testified that Great River's business model and centralized management structure is specifically designed to produce economies of scale and lower cost to customers that would otherwise arise under similar levels of reliability and service.²² Great River commits improving customer service and communication by implementing systems and services such as 24-hour emergency service phone lines, on-call emergency service contractor personnel, a computerized maintenance management

¹⁹ See Great River Supp. Petition, Ex. "F".

²⁰ Direct Testimony of Josiah Cox, pp. 6-7.

²¹ *Id.* at 9.

²² *Id.*

system, real-time remote monitoring to ensure service reliability, online bill-pay options, and up-to-date website bulletins.²³

35. This uncontroverted evidence demonstrates that the transactions proposed are in good faith and in the public interest, and that Great River is fit and able to properly perform the public utility services authorized by such certificate and to comply with the lawful rules, regulations and requirements of this Commission. Therefore, the Commission finds that the present and future public convenience and necessity requires and will require that Great River Utility Operating Company, LLC d/b/a Great River Water be granted a certificate of public convenience and necessity to operate as a water and wastewater public utility in the State of Mississippi. In addition, the Commission hereby approves the sale and transfer of all of the wastewater systems identified in Exhibit "A" attached to this Order and any and all assets of such systems, including, but not limited to, all real property, lines, towers, tanks, pumps, meters, fixtures, easements, rights-of-way, certificates and related facilities and equipment to Great River so as to permit Great River to operate the systems and provide utility service to and for the public for compensation.

36. With respect to the Stipulation between Great River and the Natchez entities, the Commission has reviewed its terms and hereby approves the Stipulation in full and without modification. The Commission hereby ratifies its approval of the Sewer Agreement and assents to the assignment and continuation of the Sewer Agreement according to its terms from and after the date Great River acquires the Oakland system.

²³ *Id.* at 7.

37. With respect to the eight systems to which an area certificate has not been granted and a certificate petition filed by Great River remains pending in a separate Commission docket (identified in Exhibit "A"), Great River is hereby authorized to close the contemplated transaction with the seller in order to transfer the physical assets of the system and the Commission will issue a separate order at a later date in the pending docket addressing the request for an area certificate.²⁴

38. The Commission hereby authorizes Great River to provide service to the systems being acquired in accordance with the existing service rules and regulations and the schedule of rates and charges for each system, all of which are a part of the Commission-approved tariffs applicable to each system. For the nine systems without Commission approved rates, Great River is hereby directed to operate the systems in good faith and without charging a monthly fee for service until such time as the rate cases currently pending before the Commission can be finally ruled upon.

ACQUISITION ADJUSTMENT

39. Although not a rate case, Great River provided more than sufficient evidence concerning the impact to customer rates that are likely at a later time as a result of approval of these acquisitions. First, Great River has requested that certain assets associated with the acquisition (i.e. land and land rights) be placed in rate base in its post-acquisition rate case at a value equal to the purchase price. Great River estimates the rate impact associated with this request could result in a monthly per-customer impact of between approximately \$7.00 and \$9.50 for wastewater customers, depending upon the final ratemaking assumptions adopted by this

²⁴ The Commission would note that an area certificate is not required by law to operate as a public utility in Mississippi—such authority is granted by the certificate to operate being issued herein. Rather, an area certificate merely grants the holder an exclusive right to serve the certificated area.

Commission.²⁵ Second, Mr. Cox testified that “the current rates do not reflect the actual cost of providing service” and “these systems require investment that would likely result in a rate increase request of some amount after those additions have been completed.”²⁶ It is noted that the rate base issue is currently before this Commission, while the second issue regarding future increases in costs is not ripe and will be fully addressed in a subsequent rate case, once the cost impacts are known and evidence can be presented.

40. There is a question as to whether Great River’s request for a commitment from this Commission for future rate base treatment constitutes an acquisition adjustment. Great River submitted a legal brief discussing the applicable law, which this Commission has reviewed. The Commission has also consulted with the Staff concerning this issue.

41. Commission Rule 8.102 provides: “An acquisition adjustment shall not be implied or allowed except upon written request for same in the Petition for Sale and Transfer and only where expressly allowed by order of the Commission when it grants approval for the sale and transfer.” The Commission would not promulgate a rule governing acquisitions adjustments if it did not believe it had the legal authority to grant them. Furthermore, the Commission has granted acquisition adjustments in the past that have been upheld by the Mississippi Supreme Court.²⁷

42. The policy considerations and implications of granting acquisition adjustments are important and can be significant. With respect to water and wastewater acquisitions, the Staff has advised, and the Commission agrees, that very few, if any, acquisition adjustments have been

²⁵ See Great River Supp. Petition, Ex. “F”.

²⁶ Direct Testimony of Josiah Cox, pp. 10-11.

²⁷ See *State ex rel. Allain, et al. v. Miss. Pub. Serv. Comm'n*, 435 So. 2d 608 (Miss 1983); *United Gas Corp. v. Miss. Pub. Serv. Comm'n*, 127 So. 2d 404 (Miss. 1961).

awarded in the last few decades. No party has cited to one in this case. Having considered the circumstances of this case and the current state of the water and wastewater infrastructure in Mississippi, the Commission has been convinced a narrow change in policy is warranted in this particular case.

43. Mississippians are provided water and wastewater services by hundreds of different governmental and private entities across the state. The vast majority of these entities and systems are stand-alone operators with a relatively small customer base over which to spread fixed cost investment. As Great River has testified, customers could benefit from economies of scale when consolidations are done correctly.

44. The general health of Mississippi's water and wastewater infrastructure is poor. Great River cited to the American Society for Civil Engineers' 2021 Mississippi Infrastructure Report Card, wherein Mississippi's drinking water and wastewater infrastructure grades were both graded with a D (poor).²⁸ Mississippi is not alone; in ASCE's 2021 U.S. Infrastructure Report Card, the entire country's drinking water infrastructure was given a C- and its wastewater infrastructure was given a D+.²⁹ One need only read the newspaper to see recent examples of Mississippi's aging and worsening water and wastewater infrastructure.³⁰ The consequences of poor infrastructure to customers and the general public are well documented. Aging and poorly maintained infrastructure pose an environmental risk to the States rivers and streams, a health risk to its residents, and poor service reliability and high operating costs to customers. Aging and

²⁸ See <https://infrastructurereportcard.org/state-item/mississippi/>

²⁹ See <https://infrastructurereportcard.org/>

³⁰ See e.g., <https://www.wbur.org/onpoint/2021/03/26/the-jackson-mississippi-water-crisis-and-americas-crumbling-water-system>

poorly performing infrastructure can only be cured through new capital investment, regular and diligent maintenance, and efficient management and operations. For public entities, required new capital is raised through tax increases or privatization. For private entities, like the systems that are the subject of this docket, the primary option is private capital markets. The Commission is persuaded that the general circumstances concerning the State's infrastructure and the specific facts of this case, namely the scalability and centralized operations of various systems under consolidated ownership, justify the adoption of a policy that will incentivize responsible, experienced and well-capitalized companies like Great River to acquire old, out-of-compliance systems so that they can be rehabilitated and operated reliably and in compliance with every-increasing environmental regulations. The Commission believes that incentivizing consolidations in the private water and sewer sector, when the circumstances justify it, will improve the quality of life for all Mississippians and enhance reliability and satisfaction for utility customers.

45. Turning to the facts of this case, the circumstances are quite compelling. Most if not all of the systems being acquired are decades old.³¹ Great River's due diligence to date indicate many are in disrepair.³² Many of the current owners/operators are or have been in out of regulatory compliance. In fact, the Commission need not look further than the fact that nine systems currently operate without rates approved by this Commission and the majority of the sellers have failed to comply with the Commission's simple and straightforward annual reporting requirements. The Commission has the experience to know that the reasons for this non-compliance vary and often times are not malicious. Nonetheless, the evidence is clear that vast room for improvement exists.

³¹ See system-by-system Engineering Due Diligence Reports produced by Great River in response to MPUS 1-1, Ex. "A".

³² See *id.*

Finally, while not presented as evidence by Great River, this Commission will note that it has received customer complaints of poor service concerning some of the systems that are the subject of this docket.³³

46. This Commission has already detailed the facts demonstrating that Great River has a track record of rehabilitating failing systems in multiple states. Further, a review of the confidential financial documentation presented by Great River confirms sufficient capital exists to follow through on the vision Great River has presented. It should be noted that the Commission rarely encounters a water or sewer buyer with Great River's credentials and financial capital, both of which are necessary to make meaningful and long-term improvement to the customers affected by the purchase. Stated simply, this docket has presented the Commission with a unique opportunity to begin to address the infrastructure issues faced by much of the State.

47. For the reasons detailed above, the Commission finds that it is in the best interest of the public and the affected customers to grant Great River's request for an acquisition adjustment. Specifically, this Commission will determine the "reasonable value" of rate base for Great River to include the cost of acquiring the assets to the extent such costs exceed the net book value of the acquired assets determined at the time of acquisition. Great River is hereby directed to make the appropriate accounting entries to record the entire acquisition cost as original cost for ratemaking purposes. To the extent the net book value of the acquired assets cannot be ascertained at the time of acquisition, Great River shall undertake the appropriate studies to develop a reasonable estimate of the net book value. The rate base used to set rates in Great River's initial

³³ See Order Establishing Docket and Referring Matter for Hearing, Docket No. 2020-AD-031, (Mar. 6, 2020).

state-wide rate case shall not exceed the total purchase price paid for the acquired systems (in aggregate) plus the reasonable and prudent costs associated with any capital investments made for post-acquisition improvements and capitalized acquisition-related expenses. It is anticipated that evidence concerning all of these issues will be presented by Great River and any other interested party in Great River's first rate case post-acquisition.

48. The Commission's grant of an acquisition adjustment herein does not constitute and should not be construed as a general change in rate policy for all public utilities. Rather, the Commission's analysis and decision in this case is very fact-specific and the grant or denial of acquisition adjustments remain a case-by-case analysis when circumstances warrant.

POST-ACQUISITION IMPROVEMENTS

49. Great River's filing foreshadows a need for new investment at many of these systems shortly after closing. Great River has proposed a "Stabilization Period" wherein Great River intends to operate the facilities while evaluating the immediate compliance need for each system and making the necessary investment and improvements to stabilize the systems and bring their operation into compliance with applicable federal and state regulations. This Final Order should in no way be interpreted as pre-judging the prudence or reasonableness of these post-acquisition improvements. Any and all actions and costs incurred by Great River post-acquisition will be subject to a prudence review in the next rate case filed. Furthermore, Great River is hereby directed to comply with all notice and facility certificate requirements, as applicable, prescribed by statute and the Commission's Rules with respect to any and all of the capital work contemplated post-acquisition. As it relates to and for purposes of Commission Rule 7.102 and 7.103, the entire acquisition cost shall constitute the utility's existing jurisdictional net plant investment.

50. To keep the Commission informed of Great River's progress, Great River shall abide by the following reporting requirements that shall remain in effect until Great River files its first state-wide rate case. No more than six months following the closing of Great River's purchase of the acquired systems, and every six months thereafter, Great River shall submit a report to the Commission providing the following information for each system acquired:

- a. Discharge quality information;
- b. Number of service interruptions and employee/contractor response times;
- c. Any violations or citations in the reporting period;
- d. List of capital improvement projects underway or completed including the estimated cost to complete, actual cost incurred to date and estimated/actual completion date.

CONDITIONS

51. The Commission believes that the public convenience and necessity require that the continued effectiveness of this Final Order and the authorizations and approvals contained herein is subject to the following conditions being satisfied within a reasonable time following the issuance of this Final Order:

- a. Approval by the Mississippi Department of Environmental Quality of the transfer of all relevant environmental permits pertaining to the sewer systems that are the subject of this docket;
- b. Great River shall file with the Commission in this Docket evidence of closing of the transactions contemplated herein within fourteen (14) days of closing;

c. Should the asset purchase agreement be modified in any way, prior to closing, the newly revised agreement shall be filed in this Docket no later than five (5) business days before closing;

d. If the transfer of any transaction contemplated herein does not take place within sixty (60) days of the issuance of this Order, Great River shall file a letter in this Docket explaining why;

e. The transfer shall not cause the interruption of sewer service to the affected customers, and those customers will continue to be billed under the current tariff, with no adjustments in rates without approval of the Commission;

f. Within fourteen (14) days of the issuance of this Order, Great River shall file a Form Notice to be sent to customers regarding new ownership of the system. This Form Notice shall be included as an insert during the first billing cycle after closing;

g. Great River shall be required to maintain a hypothetical capital structure of 50% equity and 50% debt for rate making purposes. If equity falls below 50% then an actual capital structure will be enforced;

h. Great River shall, in good faith, seek the lowest cost market rate for debt financing associated with making Capital Improvements to the acquired systems; and

i. Great River shall, in good faith, seek and obtain multiple bids for the performance of work in making Capital Improvements to the acquired systems, for the purpose of evaluating costs comparatively.

52. Should any of the above conditions not be met to the satisfaction of the Commission within a reasonable period of time following the issuance of this Final Order, the Commission

reserves the right to order Great River to show cause as to why this Final Order should not be revoked and rendered null and void with respect to any affected system.

53. Given the number of systems at issue and the fact that the Commission is granting an acquisition adjustment to Great River, additional expertise is warranted. Great River's acceptance of this Final Order is conditioned upon its agreement to pay for an expert to be hired by and advise the Commission during the first state-wide rate case to be filed by Great River after the contemplated Stabilization Period. Great River is hereby authorized to include any such costs as cost of service and recover same from customers.

This Final Order shall be deemed issued on the day it is served upon the parties herein by the Executive Secretary of this Commission who shall note the service date in the file of this Docket.

Chairman Dane Maxwell voted aye; Commissioner Brandon Presley voted aye,
and Commissioner Brent Bailey voted aye.

SO ORDERED by this Commission on this the 8th day of June, 2021.

MISSISSIPPI PUBLIC SERVICE COMMISSION



Dane Maxwell
Dane Maxwell, Chairman

Brandon Presley
Brandon Presley, Commissioner

Brent Bailey
Brent Bailey, Commissioner

ATTEST A True Copy
Katherine Collier
Katherine Collier,
Executive Secretary

Effective this the 8th day of June, 2021.

EXHIBIT "A" TO FINAL ORDER

	System/Seller Information					Pending PSC Dockets			Past PSC Dockets	
	System	Type	Utility/Seller	County	PSC District	Sale & Transfer	CPCN	Rates	Legal Description	Rates
1	Knollwood	Water	Coast Waterworks, Inc.	Harrison	Southern	2020-UA-143	N/A	N/A	1990-UA-191	1990-UA-191
2	Wellsgate	Water	Delta Rain, Inc.	Lafayette	Northern	2020-UA-143	N/A	N/A	1999-UA-858	2016-UN-162
3	The Highlands	Water	Delta Rain, Inc.	Tate	Northern	2020-UA-143	N/A	N/A	1995-UA-339	1996-UN-5
4	Wellsgate	Sewer	Delta Rain, Inc.	Lafayette	Northern	2020-UA-144	N/A	N/A	1995-UA-340	2016-UN-163
5	The Highlands	Sewer	Delta Rain, Inc.	Tate	Northern	2020-UA-144	N/A	N/A	1995-UA-340	1996-UN-5
6	Enid Lakes Estates	Water	Lipe Waterworks Co., Inc.	Yalobusha	Northern	2020-UA-143	N/A	N/A	1986-UA-4909	2008-UN-417
7	Enid Shores	Water	Lipe Waterworks Co., Inc.	Panola	Northern	2020-UA-143	N/A	N/A	1986-UA-4909	2008-UN-417
8	Chickasaw	Water	Lipe Waterworks Co., Inc.	Panola	Northern	2020-UA-143	N/A	N/A	1986-UA-4909	2008-UN-417
9	Hide-a-Way Hills	Water	Lipe Waterworks Co., Inc.	Panola	Northern	2020-UA-143	N/A	N/A	1986-UA-4909	2008-UN-417
10	Oakland ²	Water	Oakland Waterworks, LLC	Adams	Southern	2020-UA-143	N/A	N/A	1957-UA-138	1988-UA-5228 2019-UN-14
11	Oakland ²	Sewer	Oakland Waterworks, LLC	Adams	Southern	2020-UA-144	N/A	N/A	1967-UA-1797	2005-UN-449 2007-UN-299
12	Black Creek	Water	Utility One, LLC	Forrest	Southern	2020-UA-143	N/A	N/A	1991-UA-45	2004-UN-426
13	Black Creek	Sewer	Utility One, LLC	Forrest	Southern	2020-UA-144	N/A	N/A	1991-UA-46	2004-UN-427
14	Lake Forest ¹	Sewer	Steve Womack	Warren	Central	2020-UA-144	N/A	N/A	1978-UA-3572 2002-UA-579	1993-UN-273
15	BLU	Sewer	Belmore Lakes	DeSoto	Northern	2020-UA-144	N/A	N/A	2000-UA-533	2006-UN-351
16	Browning Preserve	Sewer	Belmore Lakes	DeSoto	Northern	2020-UA-144	N/A	N/A	2007-UA-541	2006-UN-351
17	Brookwood Place	Sewer	Culkin Utily, Co.	Warren	Central	2020-UA-144	N/A	N/A	1989-UA-5308	2007-UN-121
18	China Grove	Sewer	Culkin Utily, Co.	Warren	Central	2020-UA-144	N/A	N/A	2005-UA-463	2007-UN-121
19	DeSoto Sewer	Sewer	DeSoto Sewer, LLC	DeSoto	Northern	2020-UA-144	N/A	N/A	2007-UA-188	2019-UN-43
20	H&B	Sewer	H&B Corporation	Warren	Central	2020-UA-144	N/A	N/A	1994-UA-159	2009-UN-387
21	King Farms	Sewer	King Farms Development, LLC	Lauderdale	Central	2020-UA-144	N/A	N/A	2006-UA-546	2008-UN-354
22	Lakes of Oxford	Sewer	Lakes of Oxford Utility Company, LLC	Lafayette	Northern	2020-UA-144	N/A	N/A	2013-UA-191	2016-UN-102
23	Pecan Lakes	Sewer	Pecan Lakes Utility, LLC	Forrest	Southern	2020-UA-144	N/A	N/A	1999-UA-611	2004-UN-100
24	Silverleaf	Sewer	Ring Road Utility Company, Inc.	Warren	Central	2020-UA-144	N/A	N/A	2003-UA-30	2004-UN-428
25	Ring Road	Sewer	Ring Road Utility Company, Inc.	Warren	Central	2020-UA-144	N/A	N/A	2003-UA-30	2004-UN-428
26	Edgewood	Sewer	Robertson Utilities of Oxford, LLC	Lafayette	Northern	2020-UA-144	N/A	N/A	2004-UA-119	2016-UN-104
27	Logan Lee Loop	Sewer	Robertson Utilities of Oxford, LLC	Lafayette	Northern	2020-UA-144	N/A	N/A	2008-UA-138	2016-UN-104
28	Red River	Sewer	S2 Environmental, LLC	Hinds	Central	2020-UA-144	N/A	N/A	1992-UA-251	2003-UN-574
29	Forest Hill	Sewer	S2 Environmental, LLC	Lamar	Southern	2020-UA-144	N/A	N/A	1977-UA-3341	2010-UN-309
30	The Trace	Sewer	S2 Environmental, LLC	Lamar	Southern	2020-UA-144	N/A	N/A	1998-UA-329	2010-UN-309
31	Business Park	Sewer	S2 Environmental, LLC	Lamar	Southern	N/A	2020-UA-147	2020-UN-161	N/A	N/A
32	Shelby Place	Sewer	Shelby Place Utility of Oxford, LLC	Lafayette	Northern	2020-UA-144	N/A	N/A	2011-UA-351	2016-UN-103
33	Taylor Greene	Sewer	Taylor Greene Wastewater Processing, LLC	Lafayette	Northern	2020-UA-144	N/A	N/A	2010-UA-27	2018-UN-24
34	Twelve Oaks	Sewer	Twelve Oaks Utility Company, Inc.	Lafayette	Northern	2020-UA-144	N/A	N/A	1999-UA-723	1999-UN-889
35	Westover	Sewer	Westover West Sewage Company, Inc.	Lamar	Southern	2020-UA-144	N/A	N/A	1975-UA-2976	2018-UN-101
36	Lagniappe	Sewer	Westover West Sewage Company, Inc.	Lamar	Southern	2020-UA-144	N/A	N/A	1980-UA-3845	2018-UN-101
37	The Trace	Sewer	Enviroserve, Inc.	Warren	Central	2020-UA-144	N/A	2020-UN-163	1998-UA-329	N/A
38	Leland Pointe	Sewer	Affordable Homes of Vicksburg	Warren	Central	N/A	2020-UA-151	2020-UN-157	N/A	N/A
39	Cedar Lane	Sewer	Cedar Creek Development, Inc.	Adams	Southern	N/A	2020-UA-146	2020-UN-160	N/A	N/A
40	Camden Place	Sewer	Ironwood Utilities, LLC	Warren	Central	N/A	2020-UA-148	2020-UN-162	N/A	N/A
41	Pecan Village	Sewer	Pecan Village Utility Company, Inc.	Warren	Central	N/A	2020-UA-150	2020-UN-159	N/A	N/A
42	Center Hill	Sewer	Wallace Ltd	DeSoto	Northern	N/A	2020-UA-153	2020-UN-156	N/A	N/A
43	Evening Shade	Sewer	Wallace Ltd	DeSoto	Northern	N/A	2020-UA-154	2020-UN-155	N/A	N/A
44	Pine Woods	Sewer	West Coast Lumber Industries, Inc.	Warren	Central	N/A	2020-UA-149	2020-UN-158	N/A	N/A

¹ The Lake Forest system is comprised of two separate certificated areas issued to T&J Utility Company, Inc. (1978-UA-3572) and Quality Contractors, Inc. (2002-UA-579). Both companies are owned by the seller Mr. Steve Womack. The T&J certificated area is being served pursuant to rates approved by the Commission in Docket No. 1993-UN-273. The Quality area does not currently have Commission-approved rates. Great River is seeking temporary rate approval to serve the Quality area in a separate docket pending before the Commission.

² The Oakland water and sewer systems each have a wholesale agreement currently in place with the Natchez Waterworks. Each agreement imposes a surcharge that is passed through to customers by separate order of the Commission. Therefore, for each Oakland system two docket numbers are listed--one corresponding to the Commission-approved monthly rate tariff for service and the second corresponding to the Commission-approved pass-thru charge.

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 7, 2020

IN RE:)	
)	
JOINT APPLICATION OF AQUA UTILITIES)	DOCKET NO.
COMPANY, INC. AND LIMESTONE WATER)	19-00062
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)	

**ORDER APPROVING SALE OF ASSETS, PROPERTY, AND REAL ESTATE AND
CERTIFICATE OF PUBLIC CONVENIENCE OF AQUA UTILITIES COMPANY, LLC
SUBJECT TO CONDITIONS AND REQUIREMENTS OF THE TENNESSEE PUBLIC UTILITY
COMMISSION**

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on September 14, 2020, to consider the *Amended and Restated Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC for Authority to Sell or Transfer Title of the Assets, Property, and Real Estate of a Public Utility and for a Certificate of Convenience and Necessity* (“*Amended Application*”) filed by Aqua Utility, Inc. (“Aqua” or the “Company”) and Limestone Water Utility Operating Company, LLC (“Limestone”) (“Joint Applicants” collectively) on December 13, 2019.

BACKGROUND AND AMENDED APPLICATION

On July 26, 2019, Aqua and Limestone jointly filed an application with the Commission seeking approval for Aqua to sell or transfer title to the assets, property and real estate of Aqua to Limestone and grant Limestone a Certificate of Convenience and Necessity to operate a public utility in the State of Tennessee. On December 13, 2019, the *Amended Application* was filed by the Joint Applicants.

Aqua is a regulated public utility and owned by its president, Mr. James E. Clausel. Aqua was first granted a CCN from the Commission in 1990 in Commission Docket No. 90-04334. Aqua provides water and wastewater utility service in Tennessee and serves approximately 353 residential water customers, 66 irrigation customers, and 353 residential wastewater customers.¹ The Company's service territory is a development of approximately 3,000-acres on the Tennessee River, about seven miles south of Savannah, Tennessee. Aqua has been authorized to provide water and wastewater service to customers in the following subdivisions in Hardin County, Tennessee: Points of Pickwick, The Preserve, and Northshore (Phases 1, 2 and 3) which includes: Anchor Bay Pointe, Grand Villas, Grandview, High Pointe, Park Place, Ridge Point, Sailboat Pointe, Turtle Cove² and Pelican Point Subdivisions.³

Mr. Josiah Cox is the president of Central States Water Resources, LLC ("CSWR" or "Central"). CSWR established Limestone to be its Tennessee operating affiliate, and Limestone was formed to acquire Aqua's assets.⁴ Mr. Cox is also the company president for Limestone.⁵ Limestone's sole member is Limestone Water Utility Holding Company, LLC ("LWUHC"). CSWR

¹ David N. Dittmore, Pre-Filed Direct Testimony, p. 2 (April 2, 2020).

² *Amended Application*, p. 4 (December 13, 2019).

³ *Limestone Water Utility Operating Company's Response to the Consumer Advocate's First Discovery Request*, p. 11, DR 1-15 (February 14, 2020).

⁴ Josiah Cox, Pre-Filed Direct Testimony, p. 3 (December 13, 2019).

⁵ *Id.* at 1-4.

provides the financial, technical, and managerial expertise and services to Limestone and the other affiliates within the group and will manage Limestone if the *Amended Application* is approved.⁶

CSWR's affiliate group collectively owns and operates wastewater systems serving approximately 4,262 customers in Missouri, Arkansas, and Kentucky; along with drinking water systems serving approximately 1,689 customers in Missouri and Arkansas.⁷ One of Limestone's affiliates, Magnolia Utility Operating Company, was recently approved by the Louisiana Public Service Commission to acquire systems that serve 30,000 customers in Louisiana, that eventually resulted in 52,000 total connections.⁸ The Joint Applicants assert that Limestone is better suited to serve the public interest. Limestone has agreed to bring Aqua into compliance, upgrade system technology, and provide 24-hour customer service to ratepayers.⁹

On August 22, 2019, the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") sought intervention which was subsequently granted.¹⁰ After conclusion of discovery, the Consumer Advocate filed the testimonies of David Dittmore, financial analyst, and Alex Bradley, accounting specialist, pursuant to the procedural schedule in effect at that time. It should be noted here that several pieces of financial information related to the proposed transaction have been designated "confidential" under a protective order issued in this docket.

⁶ *Amended Application*, p. 4 (December 13, 2019).

⁷ Josiah Cox, Pre-Filed Direct Testimony, p. 7 (December 13, 2019).

⁸ Josiah Cox, Pre-Filed Rebuttal Testimony, pp. 12-13 (July 27, 2020).

⁹ Josiah Cox, Pre-Filed Direct Testimony, pp. 3-7 (December 13, 2019).

¹⁰ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (September 23, 2019).

POSITION OF THE CONSUMER ADVOCATE

On behalf of the Consumer Advocate, Mr. David N. Dittmore submitted pre-filed direct testimony on April 2, 2020. In summary, the Consumer Advocate recommended approval of the transaction, contingent upon the adoption of the following conditions:¹¹

1. Capital Costs and Operating Expenses incurred associated with mapping the system should not be borne by ratepayers.
2. Aqua's Balance Sheet balances at the date of the acquisition, including its Contributions in Aid of Construction ("CIAC") balance, shall be transferred as the beginning balances on the books of Limestone.
3. Limestone shall record any Service Connection Fees it receives as CIAC.
4. Copies of the most recent two years' accounting records of Aqua shall be provided to Limestone.
5. Limestone shall be regulated on a Rate Base Rate of Return methodology. Its cost of debt should be no higher than debt costs for comparable firms. If actual debt costs are excessive, a hypothetical debt cost should be imputed.
6. The Acquisition Premium, the amount of which has been designated "Confidential," is comprised of the write-up of Land to its appraised value. According to the Consumer Advocate, the Acquisition Premium *should not* be recovered from ratepayers.
7. Regulatory/Transaction costs *should not* be recoverable from ratepayers.
8. Limestone shall comply with the Commissions' affiliate transaction rules.
9. Limestone should bear any future costs associated with any existing title issues and the cost to remediate any currently existing (but unknown) environmental or easement issues.
10. The Commission should place a cap on prospective Limestone rate increases of \$10/month per customer, per year. Limestone shall not seek an increase in rates until it has operated the system for one year.

The Consumer Advocate expressed that the personnel identified within the testimony of Josiah Cox had the capabilities to operate the Aqua system.¹² Mr. Dittmore described the unique business model of CSWR and noted that no systemic quality evaluation has been performed regarding Central's provision of service in other states. Therefore, Mr. Dittmore recommended that Limestone should provide an update of its performance at the time of its next rate proceeding.¹³

¹¹ David N. Dittmore, Pre-Filed Direct Testimony, pp. 4-6 (April 2, 2020).

¹² *Id.* at 6.

¹³ *Id.*

While acknowledging CSWR's capacity and expertise to operate the Aqua system, the Consumer Advocate noted three issues of concern with recent financial losses and costs.¹⁴ Moreover, Mr. Dittmore testified that he did not believe the purchase price is reasonable.¹⁵ He asserted the amount of purchase price attributed to land is excessive and contended that the only known use of the purchased land is the operation of the utility. As such, he concluded that there is no basis for acquiring property for an amount more than its book value.¹⁶

Mr. Dittmore anticipates ratepayers will incur additional costs resulting from this transaction due to other factors. According to Mr. Dittmore, Aqua is underearning based on its 2018 financial statements¹⁷ and Limestone identified several capital projects in this proposal which would be needed regardless of ownership.¹⁸ Mr. Dittmore estimated the total impact on customer bills under Limestone ownership would increase significantly.¹⁹ As such, Mr. Dittmore argued that ratepayers deserve rates based upon original cost and not upon the purchase price of the acquiring utility.²⁰

Mr. Dittmore expressed concern with the "Gain on Sale," or portion of the acquisition payment in excess of net book value that accrues to the selling utility.²¹ The Consumer Advocate framed the term Gain on Sale as excess profits beyond those required to provide a utility owner the opportunity to earn a reasonable authorized return. As such, Mr. Dittmore provides the following criteria for evaluating a Gain on Sale with respect to what portion should be assigned to customers:²²

1. Whether the related Acquisition Premium is recoverable from ratepayers;

¹⁴ *Id.* at 7-9.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 9-10.

¹⁷ *Id.* at 12.

¹⁸ *Id.*

¹⁹ *Id.* at 13-14.

²⁰ *Id.*

²¹ *Id.* at 14.

²² *Id.* at 15.

2. Whether the selling utility provided quality service to ratepayers;
3. Whether the selling utility invested necessary capital into the system;
4. Whether rate(s) increase as a result of the proposed transaction.

Mr. Dittmore recommended the Gain on Sale not be assigned to ratepayers, *contingent* upon a finding that ratepayers will not incur costs associated with the Acquisition Premium. Mr. Dittmore testified Aqua has provided an acceptable level of service to its customers, has invested funds into the system, and has no environmental Notice of Violations of which he is aware. Therefore, Mr. Dittmore asserted recovery of the Acquisition Premium should not be approved.²³

In the event recovery of the Acquisition Premium was approved or if a decision is deferred until a later hearing, the Consumer Advocate asserted Aqua should issue a pro-rata credit to ratepayers of the final Gain on Sale, once the actual number is finalized. Mr. Dittmore further recommended the Commission order the parties to submit information showing calculation of the Gain on Sale on the part of Aqua and provide a calculation of this distribution on a per customer basis.²⁴ Mr. Dittmore argued the distribution would be necessary to implement immediately rather than at a later time because once the transaction closes and the CCN passes to Limestone, the Commission will no longer have the ability to require Aqua's distribution of Gain on Sale to Ratepayers.²⁵

Also on behalf of the Consumer Advocate, Mr. Alex Bradley submitted Pre-filed Direct Testimony on March 31, 2020. The purpose of Mr. Bradley's testimony was to provide an overview of CIAC and to support two recommendations: (1) Ensure the appropriate balance of CIAC is transferred to the books of Limestone, and (2) Requiring Limestone to record funds

²³ *Id.* at 17.

²⁴ *Id.* at 18.

²⁵ *Id.*

received from Service Connection as CIAC instead of revenue, because Limestone wishes to determine its revenue requirement on a Rate Base rate of return.²⁶

CIAC consists of non-investor supplied funds that were provided to the Aqua for construction of the water and wastewater systems. As these funds are not provided by the utility, the appropriate ratemaking treatment is for them to serve as a deduction to Rate Base. Mr. Bradley testified that CIAC is amortized at a rate of 2.5% yearly to offset the Depreciation Expense of non-investor supplied plant.²⁷ The last approved rate case for Aqua was Commission Docket No. 15-00044, which established rates for the attrition period ending May 31, 2016, and Aqua had \$322,438 in CIAC for that date ended.²⁸

According to Mr. Bradley, \$0 value in CIAC was to be transferred as part of the proposed sale; however, in response to the Consumer Advocate DR 1-59 Limestone stated an amount in CIAC, the specific amount of which was designated “confidential” for this proceeding, would be transferred to the books of Limestone from Aqua. Mr. Bradley concluded the new amount was reasonable for what the CIAC balance should be.²⁹

Mr. Bradley asserted the CIAC’s balance is of great importance to the transaction due to Limestone’s stated intent to shift the utility from an Operating Margin method of recovery to a Rate Base rate of return method.³⁰ The difference between a Rate Base and Operating Margin method of recovery has been described in Aqua’s previous rate case in Commission Docket No. 15-00044:

“Under the Rate Base Method, a Fair Profit is deemed to be a reasonable rate of return on the owners’ investment in the utility system...Under the Operating Margin Method, a Fair Profit is deemed to be a reasonable return on operating expenses requiring a return factor...”³¹

²⁶ Alex Bradley, Pre-Filed Direct Testimony, p. 2 (April 2, 2020).

²⁷ *Id.*

²⁸ *Id.* at 2-3.

²⁹ *Id.* at 3.

³⁰ *Id.*

³¹ *Id.* at 3-4 (internal citations omitted).

Mr. Bradley submitted that under the Rate Base method, CIAC serves as a deduction to utility plant in service which reduces the revenue requirement. Thus, CIAC lowers the calculated return on utility plant in service and the amortization of CIAC serves as a contra expense to Depreciation.³²

Previously in Commission Docket No. 06-00187, the Commission ordered that: “Service Connection Charges shall be booked as Revenue at the tariff rate and added Utility Plant in Service at actual cost.”³³ Mr. Bradley asserted this treatment should not be continued if this transaction is approved because Limestone wishes to shift from the Operating Margin method to a Rate Base method of recovery. Mr. Bradley recommended an amount, designated “confidential” in this proceeding, placed on the books of Limestone as CIAC.³⁴ In conclusion, the Consumer Advocate recommended that the Company record Service Connection Fees as CIAC instead of revenue, and recommended the Commission clarify that the CIAC balance should be amortized at an annual rate of 2.5%.³⁵

JOINT APPLICANT’S “LIST OF ISSUES FOR DETERMINATION” AND MOTION IN LIMINE

On April 21, 2020, the Joint Applicants sought additional time for filing Pre-Filed Rebuttal Testimony due to delays related to the COVID-19 public health emergency. On May 19, 2020, the Joint Applicants filed the *Aqua Utilities Company, LLC and Limestone Water Utility Operating Company’s List of Issues for Determination* (“*List of Issues*”). In the filing, the Joint Applicants asserted that the Consumer Advocate attempted to raise issues concerning rates which were beyond the scope of the docket.³⁶ The Joint Applicants argued the issues to be determined by the Commission are limited to whether Limestone has sufficient managerial, financial, and technical

³² *Id.* at 4.

³³ *Id.* (internal citations omitted).

³⁴ *Id.* at 5.

³⁵ *Id.*

³⁶ Applicant’s *List of Issues*, p. 1 (May 19, 2020).

capability to provide utility service.³⁷ In response, the Consumer Advocate filed a competing issues list, consisting primarily of issues related to “public interest” concerns and recommended conditions for approval of the transfer discussed in Mr. Dittmore’s Pre-Filed Direct Testimony.³⁸

The Hearing Officer held a telephonic status conference on May 29, 2020, and after hearing arguments found that, consistent with Tenn. Code Ann. § 65-4-113, the Commission would consider whether Limestone has the managerial, financial, and technical ability to provide utility service and whether the transaction is in the public interest.³⁹ The Hearing Officer’s order did not make a determination as to whether any issue or pre-filed testimony should be deemed irrelevant or otherwise excluded from the record.⁴⁰ The Hearing Officer noted that the Commission is within its authority to consider other relevant issues as it deems appropriate.

On June 30, 2020, the Joint Applicants filed the *Notice of Objection to Pre-Filed Testimony and Motion in Limine* (“*Motion in Limine*”) seeking to strike issues they contended were irrelevant to the proceeding. The issues they sought to limit were primarily related to the testimony of Mr. Dittmore concerning the potential rate impact of the transaction.⁴¹ In summary, the Joint Applicants argued such matters could be taken up in any future rate case. The Consumer Advocate opposed the *Motion in Limine* and asserted that the issues involved in the sale, including the purchase price and any potential rate impact, should be examined to determine whether the sale furthers the public interest consistent with the provisions of Tenn. Code Ann. § 65-4-113.⁴²

The Hearing Officer found that the provisions of Tenn. Code Ann § 65-4-113 provide the Commission with the latitude to consider a wide range of issues with respect to determining

³⁷ *Id.* at 1-2.

³⁸ *Consumer Advocate’s Identification of Issues* (May 20, 2020).

³⁹ *Order on May 29, 2020 Status Conference*, pp. 2-3 (June 1, 2020).

⁴⁰ *Id.* at 3.

⁴¹ *Motion in Limine*, pp. 1-2 (June 30, 2020).

⁴² *Consumer Advocate’s Response to the Applicant’s Notice of Objection and Motion in Limine*, pp. 1-2 (July 14, 2020).

whether a transaction is within the public interest.⁴³ The Hearing Officer denied the *Motion in Limine*, concluding the issues the Joint Applicants sought to exclude may assist the Commission in its deliberations.⁴⁴

REBUTTAL TESTIMONY OF THE JOINT APPLICANTS

On July 27, 2020, the Joint Applicants submitted the Pre-Filed Rebuttal Testimony of Mr. Josiah Cox. Generally, the Joint Applicants maintained several of the “conditions” proposed by the Consumer Advocate should be handled in a future rate case. Nevertheless, Mr. Cox expressed that Limestone would accept several of the conditions proposed at pages 4 and 5 of Mr. Dittmore’s Pre-Filed Direct Testimony. With specific reference to Mr. Dittmore’s list and corresponding with his numbered conditions, the following conditions were deemed acceptable by Limestone:⁴⁵

Condition 2: Limestone agreed to reflect the amounts on Aqua’s balance sheet at the date of transaction closure.

Condition 3: Limestone will record any service connection fees it collects in the future as CIAC.

Condition 4: Aqua will transfer to Limestone complete copies of Aqua’s accounting records for the two calendar years immediately preceding the closing date along with partial year records for the calendar year in which closing occurs.

Condition 5: Limestone agreed to be regulated on a rate base/rate of return basis. Limestone agreed its cost of debt should be no higher than debt costs for firms with a comparable risk profile to Limestone; and should the Commission determine Limestone’s actual debt costs are excessive, hypothetical debt costs would be imputed and used for ratemaking purposes.

Condition 8: Limestone agreed to comply with the Commission’s affiliate transaction rules.

⁴³ *Order on Motion in Limine*, pp. 4-5 (August 7, 2020).

⁴⁴ *Id.* at 5.

⁴⁵ Josiah Cox, Pre-Filed Rebuttal Testimony, pp. 4-5 (July 27, 2020).

However, Limestone opposed the remaining conditions proposed by the Consumer Advocate. Again, with specific reference to Mr. Dittmore's list and corresponding with his numbered conditions, the following conditions were unacceptable to Limestone:⁴⁶

Condition 1: Limestone asserted issues related to the recovery of capital and operating costs incurred to comply with Commission rules regarding system maps and/or any other required maps should not be decided in this acquisitional case, but rather deferred to future Limestone rate cases.⁴⁷

Condition 6: Mr. Cox asserted that Limestone is not requesting an "acquisition premium" in this case, and any decision related to the recovery of the real estate value should be addressed in a future rate case. Mr. Cox also asserted that the difference between purchase price and net book value between Limestone's purchase price for Aqua's assets is largely attributed to intangible assets, referred to as "goodwill." Furthermore, Mr. Cox testified that this amount over book value is not an amount Limestone intends to ask the Commission to include in the rate base used to set rates in the future.⁴⁸

Condition 7: Limestone proposed to adopt Aqua's current rates, which the Commission already determined are fair and reasonable. Therefore, issues related to the amount of regulatory/transaction costs associated with the proposed acquisition and whether any or all of those costs should be recovered from ratepayers should be deferred to a future rate case.⁴⁹

Condition 9: Limestone proposed to adopt Aqua's current rates. Therefore, issues concerning existing title issues related to Aqua's assets, costs incurred to remediate those title issues, and whether any or all of those costs should be recovered from ratepayers should be addressed in a future rate case.⁵⁰

Condition 10: Mr. Cox argued the rate cap proposed by the Consumer Advocate is arbitrary. Limestone's future rates should be set at a level that is consistent with the Commission's legal obligation to prescribe rates that are fair and reasonable to both the utility and its customers.⁵¹

⁴⁶ *Id.* at 5-6.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 8-9.

⁴⁹ *Id.* at 7-8.

⁵⁰ *Id.* at 7-8.

⁵¹ *Id.* at 9.

With respect to the Consumer Advocate's issue of a Gain on Sale, Limestone submitted there is no support for Mr. Dittmore's proposal that utility customers would be entitled to an ownership interest or a portion of the sale proceeds.⁵²

Mr. Cox testified to several recent developments within Limestone's affiliate network attesting to its technical, managerial, and financial qualification to own and operate a water and wastewater utility. The Magnolia Utility Operating Company was authorized by the Louisiana Public Service Commission to acquire systems serving approximately 30,000 connections and is currently providing service to approximately 52,000 customers in Louisiana.⁵³ Mr. Cox asserted additional wastewater systems in Kentucky and water/wastewater systems in Missouri have been approved. In each of those states, Mr. Cox argued that regulators concluded they possessed the technical, managerial, and financial ability to operate those systems. He stated that to date, CSWR has invested more than \$85 million in equity to acquire, improve, and operate systems where they provide service.⁵⁴

PRE-HEARING MOTIONS

The hearing was noticed and scheduled for August 10, 2020.⁵⁵ On August 3, 2020, the Joint Applicants submitted the *Affidavit of James Clausel*, the owner of Aqua Utilities. In summary, Mr. Clausel attested to his opinion that running the utility is no longer financially sustainable and that the transaction was in the best interests of the utility and its customers. Following an objection filed by the Consumer Advocate noting the affidavit was untimely and alleging the affidavit contained information that conflicted with discovery responses, the Joint Applicants submitted the *Motion to*

⁵² *Id.* at 12.

⁵³ *Id.* at 12-13.

⁵⁴ *Id.* at 13.

⁵⁵ *Notice of Hearing Held Electronically Via WebEx* (July 31, 2020).

Admit the Affidavit of James Clausel (“Motion to Admit Affidavit”) on August 6, 2020. The Hearing Officer denied the *Motion to Admit Affidavit* based on a lack of timeliness.⁵⁶

On August 7, 2020, the Consumer Advocate filed the *Motion in Limine re: Case Studies 1,2,3 and Videos of Elm Hills Utility Operating Company-CWSR and Indian Hills Utility Operating Company-Transformation* (“Consumer Advocate Motion in Limine”) seeking to exclude documents and items the Joint Applicants indicated they would use at the hearing as a demonstrative exhibit. The Hearing Officer reviewed the disputed demonstrative materials and denied the *Consumer Advocate’s Motion in Limine*, concluding in part, the exhibits were not of a technical nature or prejudicial to the issues presented by the Consumer Advocate.⁵⁷ No appeals of the orders of the Hearing Officer were undertaken by the parties.

THE HEARING

The hearing in this matter was noticed by the Commission on July 31, 2020 and held during the regularly scheduled Commission Conference on August 10, 2020. The hearing was held electronically via WebEx. Pursuant to Executive Order No. 16 issued by Governor Bill Lee on March 20, 2020, and subsequently extended most recently by Executive Order No. 60, the Commission met electronically and without a physical quorum. Electronic access to the hearing was made available to the parties and the public. Making appearances were the following:

Aqua Utilities Company, LLC and Limestone Water Utility Operating Company, LLC – Charles B. Welch, Jr. Esq., Faris Bobango PLC, 414 Union Street, Suite 1105, Nashville, Tennessee 37219; Lyman Russell Mitten, Esq.⁵⁸ Limestone Water Utility Operating Company, LLC 1650 Des Peres Road, Suite 303, St. Louis, MO 63131.

Consumer Protection and Advocate Division – Karen H. Stachowski, Esq., Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee 37202-0207.

⁵⁶ *Order Denying Motion to Admit Affidavit*, pp. 3-4 (August 28, 2020).

⁵⁷ *Order Denying Motion in Limine*, pp. 2-3 (September 1, 2020).

⁵⁸ *Order Granting Permission to Plead and Practice Pro Hac Vice* (August 5, 2020).

The Hearing Panel heard the testimony of Josiah Cox, Alex Bradley, and David Dittmore. The opportunity for public comment was made available, but no comments were made. The hearing concluded on August 10, 2020, and deliberations were scheduled for September 14, 2020.

STANDARD OF REVIEW

In accordance with Tenn. Code Ann. § 65-4-113 (a), (b), and (c); § 65-4-201(a) and the Commission's rules for wastewater companies (1220-04-13), the Commission must consider the managerial, financial, and technical abilities of the petitioner; and also determine whether a public need exists for service in the requested area and whether transfer of authority for providing public utility services furthers the public interest.

Tenn. Code Ann. § 65-4-113(a) states:

No Public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the commission, to any individual, partnership, corporation or other entity without first obtaining the approval of the commission.

Tenn. Code Ann. § 65-4-113(b) states:

Upon petition for approval of the transfer of authority to provide utility services, the commission shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The commission shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Tenn. Code Ann. § 65-4-113(c) states:

Following approval of the transfer pursuant to this section, the transferee shall be granted full authority to provide the transferred services subject to the continuing regulation of the commission. The transferor shall no longer have any authority to provide the transferred services, but shall retain authority to provide other services, if any are retained, which were not included in such transfer.

Tenn. Code Ann. § 65-4-201(a) states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.

Commission Rule 1220-04-13-.17 (2018):

(1) Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (“CCN”) in accordance with Tenn. Code Ann. §§ 65-4-201, et seq., shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann. § 65-4-201 and these rules.

As such, the Commission has the authority to consider multiple factors, including the public interest, and may impose terms and/or conditions upon such transfers or sales.

FINDINGS AND CONCLUSIONS

Based on the evidentiary record, the Hearing Panel found that Limestone has the requisite managerial, technical, and financial capabilities to operate the water system and wastewater system in Hardin County serving Points of Pickwick, The Preserve, and Northshore (Phases 1, 2, and 3) now owned by Aqua. The Hearing Panel further found that the *Amended Application* is compliant with Tenn. Code Ann. § 65-4-113 relating to petitions for approval of transfer of authority to provide utility services. Additionally, under the facts in this case, the Hearing Panel concluded that there

exists a public need for Limestone to service the area and that the transfer of authority to provide utility services to Limestone furthers the public interest.

Therefore, the Hearing Panel voted unanimously to approve Limestone's petition for a Certificate of Convenience and Necessity contingent upon Limestone filing the following documents in this docket:

- (1) A copy of the recorded deed for the land where the lagoon, spray fields and treatment plant are located and registered easements in the Utility's name for all the land and ownership rights for any and all access to the water system and wastewater system within 30 days after the date of recording;
- (2) A copy of the Purchase and Sale Agreement that has been fully executed by Seller and Buyer acknowledged by the Title Company with the recorded effective date and with all Exhibits attached, complete with documentation, within 30 days after the date of acquisition;
- (3) A copy of the final executed Assignment of Rights Agreement within 30 days after the date of acquisition;
- (4) A copy of the State Operating Permit "Request for Transfer" for current permits, both for water and wastewater, within 30 days of issuance;
- (5) A tariff identifying all residential subdivisions by each subdivision name, as well as any commercial customers being served by this CCN, within 30 days of the date of acquisition;
- (6) Copies of contracts or pricing agreements between Limestone and Central States Water Resources, LLC, as well as between Limestone and contractors that will ultimately service the Limestone account, such as Midwest Water Operations, LLC and Nitor Billing Services, LLC, within 30 days of execution;
- (7) Copies of maps and engineering designs for the water and wastewater systems within 30 days of availability; and
- (8) A bond compliant with the Commission's financial security rules within 30 days of the date of acquisition.

The Hearing Panel further directed Limestone to file a report in this docket demonstrating its compliance with these filing requirements, and in the event the compliance report is not filed within six (6) months of the date the order is issued in this docket, directed Limestone to file a report on the status of its compliance with each of the aforementioned filing requirements.

Additionally, the Hearing Panel voted unanimously to approve of the sale and transfer of authority of Aqua to CSWR with the immediate assignment at closing to its affiliate, Limestone, subject to the following:

(1) Limestone shall adopt Aqua's presently tariffed rates, charges and terms of service and it shall file a new tariff substituting itself in place of Aqua as the service provider within 30 days after the date of acquisition;

(2) Limestone shall maintain its books and records in compliance with the Uniform System of Accounts as set forth in TPUC Rule 1220-04-01-.11;

(3) The recoverability or disallowance of any requested costs associated with mapping the system shall be deferred to a future rate proceeding; however, Limestone is not authorized to defer any such system mapping costs as an above-the-line regulatory asset for ratemaking purposes;

(4) Aqua's balance sheet balances at the date of acquisition, including its Contributions in Aid of Construction, shall be transferred as the beginning balances on the regulatory books of Limestone. Within 30 days after the date of acquisition, Aqua shall file a balance sheet and supporting general ledger in the Uniform System of Accounts format required by TPUC Rule 1220-04-01-.11 showing Aqua's ending balances of the assets acquired by Limestone as of the date of acquisition; and Limestone shall file a balance sheet and supporting general ledger in the Uniform System of Accounts format required by TPUC Rule 1220-04-01-.11 showing Limestone's beginning balances of the assets acquired from Aqua as of the date of acquisition;

(5) Limestone shall record any service connection fees it receives as Contributions in Aid of Construction;

(6) At closing, Aqua shall transfer to Limestone complete copies of Aqua's accounting records for the two calendar years immediately preceding the date of acquisition as well as the complete year-to-date accounting records for the calendar year in which closing occurs. Limestone shall maintain these records intact at least through completion of its first rate proceeding before the Commission;

(7) The appropriate methodology for determining Limestone's fair profit or rate of return shall be deferred and determined in Limestone's first rate proceeding before the Commission to allow the opportunity for a closer examination of the utilization of the plant for ratemaking purposes;

(8) Limestone is not requesting an acquisition premium and the Commission is not approving any acquisition adjustment related to the purchase of Aqua's assets; accordingly, Limestone's beginning value of the acquired assets for ratemaking purposes shall be the value recorded in Aqua's books and records at the date of acquisition. Further, Limestone is not authorized to book an above-the-line

regulatory asset for ratemaking purposes for any portion of the amount by which the purchase price exceeds the value of the acquired assets as reflected in Aqua's books and records at the date of acquisition. In any future rate proceeding, Limestone may present evidence and argument concerning the value of assets used and useful for provisioning public utilities services, and the Consumer Advocate or other interested parties may oppose such values or present their own evidence and argument concerning the value of such assets;

(9) The recoverability or disallowance of any requested regulatory or transaction costs related to the acquisition shall be deferred to a future rate proceeding; however, Limestone is not authorized to defer any such regulatory or transaction costs as an above-the-line regulatory asset for ratemaking purposes;

(10) Limestone shall comply with all applicable TPUC rules and regulations, including but not confined to the Commission's rules governing transactions with affiliates; and

(11) The recoverability or disallowance of any requested costs associated with any existing title issues or costs to remediate any currently existing but unknown environmental or easement issues shall be deferred to a future rate proceeding; however, Limestone is not authorized to defer any such title or remediation costs as an above-the-line regulatory asset for ratemaking purposes;

Finally, although rate caps may be ordered in appropriate circumstances, the Commission declines in this proceeding to place a cap on prospective Limestone rate increases in this docket.

IT IS THEREFORE ORDERED THAT:

1. *The Amended and Restated Joint Application of Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC for Authority to Sell or Transfer Title of the Assets, Property, and Real Estate of a Public Utility and for a Certificate of Convenience and Necessity* filed on December 13, 2019, by Aqua Utilities Company, Inc. and Limestone Water Utility Operating Company, LLC is approved, subject to the conditions and requirements herein.

2. Limestone shall file a report in this docket demonstrating its compliance with the conditions and requirements addressed to the transfer of the Certificate of Convenience and Necessity described herein, and in the event the compliance report is not filed within six (6) months of the date the order is issued in this docket, Limestone shall file a report on the status of its compliance with each of the aforementioned filing requirements.

3. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

4. Any party aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill,
Vice Chairman Herbert H. Hilliard, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director