

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION**

**NASHVILLE, TENNESSEE**

**April 8, 2020**

**IN RE:**

**PETITION OF SUPERIOR WASTEWATER SYSTEMS,  
LLC FORMERLY KNOWN AS KING’S CHAPEL  
CAPACITY, LLC TO AMEND SERVICE TERRITORY  
TO INCLUDE THE HILL PARCEL AND ROBERTS  
PARCEL FOR THE KING’S CHAPEL  
DEVELOPMENT IN WILLIAMSON COUNTY**

**DOCKET NO.  
19-00043**

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**ORDER**

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This matter came before Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner David F. Jones of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on February 18, 2020, for consideration of the *Petition of King’s Chapel Capacity, LLC to Amend Service Territory to Include the Hill Parcel and Roberts Parcel for the King’s Chapel Development in Williamson County* (“*Petition*”) filed by Superior Wastewater Systems, LLC<sup>1</sup> (“Superior,” “Company,” or “Petitioner”) on March 27, 2019.<sup>2</sup> In its *Petition*, Superior requests the Commission’s approval of an amendment to the Company’s service territory, adding two parcels of property located in Williamson County to the Company’s present service territory.

**BACKGROUND AND PETITION**

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<sup>1</sup> Superior Wastewater Systems, LLC was formerly known as King’s Chapel Capacity, LLC (“KCC”). KCC filed Articles of Amendment with the Secretary of State on January 24, 2019 changing the name of the company to Superior Wastewater Systems, LLC. See *Superior Wastewater Systems, LLC Filing Information with the Secretary of State* (January 8, 2020).

<sup>2</sup> Superior filed an *Amendment to Petition* on January 29, 2020 changing all references to “King’s Chapel Capacity, LLC” to “Superior Wastewater Systems, LLC”. See *Amendment to Petition* (January 29, 2020).

Superior is a limited liability company organized under the laws of the State of Tennessee with a principal place of business located at 9539 Mullens Road, Arrington, Tennessee.<sup>3</sup> Superior currently serves two hundred sixty-nine (269) residential customers in the King’s Chapel subdivision service territory (“King’s Chapel Subdivision”). The Company expects to serve over six hundred thirty-two (632) customers in the service territory. In its *Petition*, which contains several exhibits, including the documentation indicating it is registered and in good standing with the Tennessee Secretary of State,<sup>4</sup> Superior seeks to acquire and operate a water and wastewater system (the “System”) serving customers when the development is completed.<sup>5</sup> The addition of two parcels of land that Superior has requested to be added to the Company’s service territory, the Roberts parcel and Hill parcel, will add one hundred seventy (170) residential customers.<sup>6</sup> Superior states that the developer of the Roberts and Hill parcels will bear the expense for engineering, expansion of treatment facilities, collection system construction, and acquisition of drip fields.<sup>7</sup>

In support of its *Petition*, the Company filed a map showing the location of the Roberts and Hill parcels in relation to the Company’s current service territory<sup>8</sup> and the testimony of John Powell, owner and president of Superior.<sup>9</sup> In his Pre-Filed Testimony, Mr. Powell states that the Roberts and Hill parcels are immediately adjacent to the Company’s existing service territory.<sup>10</sup> Mr. Powell further testifies that the Roberts and Hill parcels are not served by any provider of wastewater service and provided a letter from the Nashville Land and Housing Group, LP requesting that Superior provide wastewater service to the “Hill and Roberts parcels contiguous

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<sup>3</sup> *Superior Wastewater Systems, LLC Filing Information with the Secretary of State* (January 8, 2020).

<sup>4</sup> *Id.* at Exh. F.

<sup>5</sup> *Petition*, p. 1 (March 27, 2019).

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

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at Exh. 1.

<sup>9</sup> *Id.* at Exh. 2.

<sup>10</sup> *Id.* at Exh. 2, John Powell, Pre-Filed Direct Testimony, p. 2.

to your wastewater plant and the subdivision known as King’s Chapel.”<sup>11</sup> Mr. Powell testifies that the Company possesses the managerial, financial, and technical capabilities to operate a wastewater system to serve the Roberts and Hill parcels.<sup>12</sup> Further, Mr. Powell states that the Company’s existing rates will be applicable to the new customers. Finally, he testifies that the Company, its affiliates, and he himself have no financial interest in the proposed development, the construction of the proposed wastewater system, or provision of the materials and supplies for the wastewater system construction.<sup>13</sup>

The Hearing Officer assigned to this docket issued a notice on May 17, 2019, in which, due to a response from a data request to Tennessee Wastewater Systems, Inc. (“TWSI”) from Commission Staff that indicated the Hill and Roberts parcels are within the service area granted to TWSI in Docket No. 97-01393, a deadline of June 4, 2019 was established for the filing of any petition to intervene.<sup>14</sup> Subsequently, TWSI filed its *Petition of Tennessee Wastewater Systems to Intervene* on June 3, 2019. TWSI alleged in its *Petition to Intervene* that “TWSI’s legal rights, duties, privileges, and other legal interests related to the provision of service within its certificated territory” are at issue in the docket and will be affected by any decision relating to the Hill and Roberts parcels.<sup>15</sup> The Hearing Officer granted the intervention of TWSI by entry of the *Order Granting Petition to Intervene Filed by Tennessee Wastewater Systems, Inc.*, on July 8, 2019. The following day, TWSI filed a *Withdrawal [sic] of Petition to Intervene*, stating that based upon discussions with Superior, TWSI will transfer the Hill and Roberts parcels from its

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<sup>11</sup> *Id.* at Exh. 2, p. 6.

<sup>12</sup> *Id.* at Exh. 2, pp. 3-4.

<sup>13</sup> *Id.* at Exh. 2, pp. 4-5.

<sup>14</sup> *Notice of Filing Deadline* (May 17, 2019).

<sup>15</sup> *Petition of Tennessee Wastewater Systems to Intervene* (June 3, 2019).

service territory to Superior upon the Commission finding that Superior has the financial, managerial, and technical capabilities to provide service to these properties.<sup>16</sup>

The Consumer Advocate Unit in the Financial Division of the Tennessee Attorney General's Office ("Consumer Advocate") filed a *Petition to Intervene* on September 4, 2019, citing among its reasons for intervention the withdrawal of TWSI's intervention and the need for additional information from Superior to meet minimum filing requirements for dockets concerning a certificate of convenience and necessity ("CCN").<sup>17</sup> On September 25, 2019, the Hearing Officer granted the Consumer Advocate's *Petition to Intervene*. The Hearing Officer issued a *Protective Order* on September 26, 2019 to expedite filings and discovery and to facilitate the prompt resolution of the *Petition*.

The Company provided additional information in a supplemental filing on October 15, 2019 and in response to the Consumer Advocate's discovery request on November 14, 2019. Subsequently, the Consumer Advocate submitted the Pre-Filed Testimony of its witness, Alex Bradley, which generally supports the amendment of Superior's CCN to include the Hill and Roberts parcels and discusses the Company's supplemental filing and discovery responses.<sup>18</sup>

The parties submitted a joint letter to the Commission stating that, as indicated by the parties' respective Pre-Filed Testimony, there are no contested issues on the merits of the *Petition*, and that the *Petition* should be granted in a manner consistent with that reflected in the Pre-Filed Testimony of the parties. The letter also set out the parties' agreement as to procedural matters concerning the conduct of the Hearing on the *Petition*.<sup>19</sup>

## **THE HEARING**

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<sup>16</sup> *Withdrawal [sic] of Petition to Intervene* (July 9, 2019).

<sup>17</sup> *Petition to Intervene*, pp. 3-5 (September 4, 2019).

<sup>18</sup> Alex Bradley, Pre-Filed Direct Testimony (December 2, 2019).

<sup>19</sup> *Letter to Chairperson Morrison from Karen H. Stachowski, Consumer Advocate* (December 26, 2019).

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on February 18, 2020, as noticed by the Commission on February 7, 2020. Participating in the Hearing were:

Superior Wastewater Systems – Charles B. Welch, Jr., Esq., Farris Bobango, PLC, 414 Union Street, Suite 1105, Nashville, Tennessee 37219; John Powell, President and General Manager, 9539 Mullens Road, Arrington, Tennessee.

Consumer Advocate – Karen H. Stachowski, Esq., and Alex Bradley, Accounting and Tariff Specialist, Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202.

During the Hearing, the parties affirmed that there are no contested issues and confirmed agreement on the Hearing procedure. John Powell, President and General Manager of Superior, presented testimony on behalf of the Company and adopted both his Pre-Filed Direct Testimony and attested to the truth and accuracy of the Company's *Petition*, supplemental filing, and discovery responses. He offered no corrections or amendments to his Pre-Filed Testimony or the Company's filings. Mr. Powell was subject to questions from the voting panel of Commissioners. The Consumer Advocate's witness, Alex Bradley, also presented testimony and adopted his Pre-Filed Testimony with no corrections or amendments. Mr. Bradley was also subject to questions from the voting panel of Commissioners. Members of the public were given an opportunity to offer comments, at which time, no comments were submitted.

#### **STANDARD FOR COMMISSION APPROVAL**

A public utility is not permitted to begin construction or operation of a new utility service without first obtaining a CCN from the Commission, as set forth in Tenn. Code Ann. § 65-4-201(a), which 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.<sup>20</sup>

As the *Petition*, Pre-Filed Testimony of John Powell, and the supplemental filings state that the Hill and Roberts parcels are “adjacent” to or “contiguous” to property served by Superior, it is also relevant for the Commission to consider the applicability of the last clause of the statute concerning extensions into territory “contiguous to its route, plant, line, or system...” (“Contiguous Territory Clause”).<sup>21</sup> The Contiguous Territory Clause establishes an exception to the requirement to obtain a CCN prior to construction or operation of a plant or system.

Additionally, in order to obtain a CCN to provide wastewater service, TPUC Rule 1220-04-13-.17(1) provides:

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.<sup>22</sup>

The rule further establishes minimum information filing guidelines for applications for new or expanded CCNs.<sup>23</sup>

## **FINDINGS AND CONCLUSIONS**

<sup>20</sup> Tenn. Code Ann. § 65-4-109 (Supp. 2019).

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

<sup>22</sup> Tenn. Comp. R. & Regs. 1220-04-13-.17.

<sup>23</sup> *Id.*

In its *Petition*, Superior has asked the Commission to amend its service area to include the Hill and Roberts parcels, alleging that the parcels are adjacent to the Company's present service territory and that the Company possesses the managerial, technical, and financial capability to provide service to these parcels. Because the Company's *Petition*, Pre-Filed Testimony, and supplemental filings state that the parcels are "contiguous" or "adjacent" to the Company's present service territory, it is necessary to examine as a threshold issue, the applicability of the Contiguous Territory Clause to this docket. In order to qualify for the CCN exception provided in the Contiguous Territory Clause, the service to be provided must:

1. Be an extension of existing service;
2. Be in territory contiguous to an existing route, plant, line, or system; and
3. Not receive similar service from another public utility.

For purposes of analysis, "contiguous" shall mean immediately adjacent, sharing at least one significant common boundary line.

From review of the entire record in this matter, it is not disputed that the proposed service to be provided by Superior is an extension of the same service provided to the King's Chapel Subdivision. Further, it is not disputed that the Hill and Roberts parcels share a common boundary line with the King's Chapel Subdivision. However, based upon the information provided by TWSI in its response to Commission Staff data requests, its *Petition to Intervene*, and the subsequent withdrawal of its intervention, it is also undisputed that the Hill and Roberts parcels lie within that portion of the Milcrofton Utility District service area to which TWSI was given exclusive service rights in Docket No. 97-01393.<sup>24</sup> Hence, though TWSI has no system, plant, or line on the Hill and Roberts parcels, these parcels are within the TWSI exclusive service

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<sup>24</sup> *In re: Petition of On-Site Systems, Inc. to Amend its Certificate of Convenience and Necessity*, Docket No. 97-01393, *Order Approving Petition of On-Site Systems, Inc. to Amend its Certificate of Convenience and Necessity for Expansion of Service Area* (March 31, 1998).

territory and thus served by TWSI. Further, in the withdrawal of its intervention, TWSI asserts that TWSI will transfer the Hill and Roberts parcels from its service territory to Superior, conditioned upon the Commission finding that Superior possesses the requisite financial, managerial, and technical capability to provide wastewater service to these parcels.<sup>25</sup> Therefore, the voting panel found that because the Hill and Roberts parcels receive similar service from TWSI as part of its exclusive service territory, the Contiguous Territory Clause is not applicable to this docket.

Based upon a review and consideration of the pleadings, Pre-Filed Testimony, and the entire administrative record, the voting panel made the following additional findings and conclusions:

The panel found that the Hill and Roberts parcels require wastewater service to move forward with proposed development and that the parcels, though in the exclusive service territory of TWSI, do not receive wastewater service from TWSI nor any other municipal utility, utility district, or other private wastewater utility. No other utility is seeking to serve the parcels. Indeed, though TWSI has the service rights to provide wastewater service to the parcels, it has represented through pleadings filed in this docket its willingness to transfer the service territory to Superior conditioned upon a finding that Superior possesses the requisite managerial, financial, and technical capabilities. Therefore, the panel voted unanimously that there exists a public need to provide wastewater service to the Hill and Roberts parcels as required by Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1).

The panel found Superior has demonstrated that it possesses the requisite managerial, financial, and technical capabilities to provide wastewater service to the Hill and Roberts parcels. In addition, Superior is in good standing with the Commission and is in compliance with all

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<sup>25</sup> *Withdrawal [sic] of Petition to Intervene* (July 9, 2019).



Commission rules. Based upon these findings, the panel voted unanimously to grant Superior's *Petition*, contingent upon the filing of the following documents:

1. All final signed contract(s) between Superior Wastewater Systems, LLC and NADG/WDG Acquisition Corporation and/or any party contributing to the buildout/expansion of the wastewater system servicing the Hill and Roberts parcels;

2. A copy of the final signed plat from Williamson County showing Superior Wastewater Systems, LLC as the Wastewater Utility of record;

3. A copy of the final State Operating Permit issued by the Tennessee Department of Environment and Conservation;

4. "As-built" plans for the Sewer System and the Collection System capable of providing wastewater service for a total of 632 equivalent Dwelling Units, certified as being inspected by Superior Wastewater Systems, LLC; and,

5. A final detailed cost itemization of the complete wastewater system transferred from the Developer to Superior;

6. A copy of the Surety from NADG/WDG confirming the Utility as the beneficiary to insure complete construction of the system; and,

7. A copy of the registered deed and registered easements for the additional land to be deeded to Superior for the additional drip field(s) prior to any new customer being provided service on any of the properties of JP Properties, LLC, the Hill parcel, and the Roberts parcel, as provided in the SOP-03032 documentation found in this docket.

Further, the voting panel directed Superior to file a report in this docket demonstrating its compliance with the above filing requirements prior to providing wastewater service to the Hill and Roberts parcels. In the event the compliance report is not filed within six (6) months of the date of this *Order*, the voting panel directed Superior to file a report on the status of providing

wastewater service to the Hill and Roberts parcels and the status of compliance with each of the above filing requirements.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of King's Chapel Capacity, LLC to Amend Service Territory to Include the Hill Parcel and Roberts Parcel for the King's Chapel Development in Williamson County* is approved contingent upon Superior Wastewater Systems, LLC, (formerly known as King's Chapel Capacity, LLC) filing the following in this docket:

a) All final signed contract(s) between Superior Wastewater Systems, LLC and NADG/WDG Acquisition Corporation and/or any party contributing to the buildout/expansion of the wastewater system servicing the Hill and Roberts parcels;

b) A copy of the final signed plat from Williamson County showing Superior Wastewater Systems, LLC as the Wastewater Utility of record;

c) A copy of the final State Operating Permit issued by the Tennessee Department of Environment and Conservation;

d) "As-built" plans for the Sewer System and the Collection System capable of providing wastewater service for a total of 632 equivalent Dwelling Units, certified as being inspected by Superior Wastewater Systems, LLC; and,

e) A final detailed cost itemization of the complete wastewater system transferred from the Developer to Superior;

f) A copy of the Surety from NADG/WDG confirming the Utility as the beneficiary to insure complete construction of the system; and,

g) A copy of the registered deed and registered easements for the additional land to be deeded to Superior for the additional drip field(s) prior to any new customer being provided service on any of the properties of JP Properties, LLC, the Hill parcel, and

the Roberts parcel, as provided in the SOP-03032 documentation found in this docket.

2. Superior Wastewater Systems, LLC shall file a report in this docket demonstrating its compliance with above listed filing requirements prior to providing wastewater service to the Hill and Roberts parcels.

3. In the event that Superior Wastewater Systems, LLC has not filed a compliance report within six (6) months of the date of this *Order*, then Superior Wastewater Systems is directed to file, no later than six (6) months of the date of this *Order*, a report providing the status of compliance with each of the above listed filing requirements and the status of the provision of wastewater service to the Hill and Roberts parcels.

4. Any person who is 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.

5. Any person who is 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.

**Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner David F. Jones concur. None dissent.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**