

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 30, 2020

IN RE:

PETITION OF SUPERIOR WASTEWATER SYSTEMS,
LLC TO AMEND ITS CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE
WASTEWATER SERVICE TO THE FOX PARCEL IN
WILLIAMSON COUNTY, TENNESSEE

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DOCKET NO.
20-00109

ORDER AMENDING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before Vice Chairman Herbert H. Hilliard, Commissioner John Hie, and Commissioner David F. Jones of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on October 12, 2020, for consideration of the *Petition of Superior Wastewater Systems, LLC to Amend Its Certificate of Public Convenience and Necessity to Provide Wastewater Service to the Fox Parcel in Williamson County, Tennessee* (“*Petition*”) filed by Superior Wastewater Systems, LLC (“Superior,” “Company,” or “Petitioner”) on September 9, 2020. In its *Petition*, Superior requests the Commission’s approval of an amendment to the Company’s Certificate of Public Convenience and Necessity (“CCN”) in order to provide wastewater service to an additional parcel of property located in Williamson County.

BACKGROUND AND PETITION

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.¹ In its

¹ *Petition*, Exh. 1.1 (September 9, 2020).

Petition, Superior seeks to expand the service of its Kings Chapel Subdivision wastewater system to also provide wastewater services to the Fox parcel.²

In support of its *Petition*, the Company filed a map showing the location of the Fox parcel in relation to the current service territory.³ Upon completion of the proposed expansion, the system will be capable of serving 729 wastewater customers. A total of 607 lots are currently platted to Superior's wastewater facility.⁴

The Company also filed the testimony of John Powell, owner and president of Superior.⁵ Mr. Powell testifies that the addition of the Fox parcel will add 78 homes to Superior's service area. Further, he states that the Fox parcel facilities will be constructed in one phase funded by the developer of the Fox parcel subdivision. The utility will become the owner and assume responsibility for the collection system.⁶ Mr. Powell also states that the Fox parcel is immediately adjacent to the Company's existing service territory and is not served by any provider of wastewater services.⁷ Mr. Powell testifies that the Company possesses the managerial, financial, and technical capabilities to operate a wastewater system to serve the Fox parcel.⁸ Additionally, 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.⁹

In response to a data request from Commission Staff, Tennessee Wastewater Systems, Inc. ("TWSI") provided information that the Fox parcel is within the service area granted to

² *Id.* at Exh 1.7.

³ *Id.*

⁴ *Id.* at Exh. 4.1, p. 4.

⁵ John Powell, Pre-Filed Direct Testimony (September 30, 2020).

⁶ *Id.* at 4.

⁷ *Id.* at 2.

⁸ *Id.* at 3-4.

⁹ *Id.* at 4-5.

TWSI. TWSI further stated that it is willing and able to provide wastewater service to the Fox parcel, but is willing to relinquish the Fox parcel to Superior upon a Commission determination that Superior possesses the requisite managerial, financial, and technical abilities to provide service to the parcel.¹⁰ No other party sought intervention in this matter.

THE HEARING

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on October 12, 2020, as noticed by the Commission on October 2, 2020. Participating in the Hearing were:

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

During the Hearing, 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*. He offered one clarification to his Pre-Filed Testimony: while the *Petition* indicates a total of 78 homes would be served, the actual number will not be known until the Williamson County Planning Commission approves the site plan. Mr. Powell was subject to questions from the voting panel of Commissioners and Commission Staff. 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:

¹⁰ Tennessee Wastewater Systems, Inc. Response to the Commission Staff Data Request Dated September 25, 2020 (September 30, 2020).

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.¹¹

As the *Petition*, Pre-Filed Testimony of John Powell, and the testimony of Mr. Powell and statements of counsel during the Hearing indicate that the Fox parcel is adjacent to property already 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”).¹² 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.¹³

¹¹ Tenn. Code Ann. § 65-4-109 (Supp. 2019).

¹² *Id.*

¹³ Tenn. Comp. R. & Regs. 1220-04-13-.17.

The rule further establishes minimum information filing guidelines for applications for new or expanded CCNs.¹⁴

FINDINGS AND CONCLUSIONS

In its *Petition*, Superior has asked the Commission to amend its CCN to include the Fox parcel, alleging that the parcel is 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 Hearing testimony and statements of counsel indicate that the parcel is "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 following conditions must be met:

1. The proposed service must be an extension of existing service;
2. The proposed service must be in or to territory contiguous to the utility's existing route, plant, line, or system; and
3. The contiguous territory must not be subject to similar service from another utility.

For purposes of analysis, "contiguous" means 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 Kings Chapel Subdivision. Further, it is not disputed that the Fox parcel is immediately adjacent to the Kings Chapel Subdivision. However, based upon the information provided by TWSI in its response to Commission Staff data requests, it is also undisputed that the Fox parcel lies within that portion of the Milcrofton Utility District service area to which TWSI was given exclusive service rights in Docket No. 97-

¹⁴ *Id.*

01393.¹⁵ Hence, though TWSI has no system, plant, or line on the Fox parcel, this parcel is within the TWSI exclusive service territory and thus served by TWSI. Further, in its response to data requests, TWSI asserts that it will relinquish the Fox parcel 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 this parcel.¹⁶ Therefore, the voting panel found that because the Fox parcel is in the exclusive service territory of TWSI, the Contiguous Territory Clause is not applicable to this docket.

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

The panel found that the Fox parcel requires wastewater service to move forward with the proposed development and that the parcel, though in the exclusive service territory of TWSI, is not currently connected to a wastewater treatment facility operated by TWSI or any other municipal utility, utility district, or other private wastewater utility. No other utility is seeking to serve the parcel. Indeed, though TWSI has the service rights to provide wastewater service to the Fox parcel, it has represented through documents filed in this docket that it is willing to relinquish the service territory to Superior conditioned upon a finding the 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 Fox parcel as required by Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1).

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

¹⁵ *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).

¹⁶ Tennessee Wastewater Systems, Inc. Response to the Commission Staff Data Request Dated September 25, 2020 (September 30, 2020).

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; Ashby Communities, LLC; Charlie Fox; and/or any party contributing to the build-out/expansion of the wastewater system servicing the Fox parcel;
2. A copy of the final signed plat from Williamson County showing Superior 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 a total of 729 equivalent dwelling units, certified as being inspected by Superior;
5. A final detailed cost itemization of the complete wastewater system transferred from the Developer to Superior;
6. A copy of the surety from Ashby Communities/Charlie Fox confirming the utility as the beneficiary to insure complete construction of the system;
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 the Fox parcel as provided in the permit application documentation filed in this docket;
8. A tariff in this Docket file for the Fox parcel reflecting the rates, including any bonding rates to be charged with an effective date to coincide with the start-up date of the wastewater system.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Superior Wastewater Systems, LLC to Amend Its Certificate of*

Public Convenience and Necessity to Provide Wastewater Service to the Fox Parcel in Williamson County, Tennessee is approved, contingent upon Superior Wastewater Systems, LLC filing the following in this docket:

- a) All final signed contract(s) between Superior Wastewater Systems, LLC; Ashby Communities, LLC; Charlie Fox; and/or any party contributing to the build-out/expansion of the wastewater system servicing the Fox parcel;
- 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 a total of 729 equivalent dwelling units, certified as being inspected by Superior Wastewater Systems, LLC;
- e) A final detailed cost itemization of the complete wastewater system transferred from the developer to Superior Wastewater Systems, Inc.;
- f) A copy of the surety from Ashby Communities, LLC and/or Charlie Fox confirming the Superior Wastewater Systems, LLC as the beneficiary to insure complete construction of the system;
- g) A copy of the registered deed and registered easements for the additional land to be deeded to Superior Wastewater Systems, LLC for the additional drip field(s) prior to any new customer being provided service on any of the properties of the Fox parcel, as provided in the permit application documentation filed in this docket;
- h) A tariff for the Fox parcel reflecting the rates, including any bonding rates to be charged with an effective date to coincide with the start-up date of the wastewater system.

2. 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.

3. 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.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Vice Chairman Herbert H. Hilliard,
Commissioner John Hie, and
Commissioner David F. Jones concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director