

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 20, 2022

IN RE:

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)
APPLICATION OF LIMESTONE WATER UTILITY)
OPERATING COMPANY, LLC FOR AUTHORITY)
TO SELL OR TRANSFER TITLE TO THE ASSETS,)
PROPERTY, AND REAL ESTATE OF A PUBLIC)
UTILITY, CARTWRIGHT CREEK, L.L.C., AND)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY APPLICATION OF LIMESTONE)
WATER UTILITY OPERATING COMPANY, LLC)
FOR AUTHORITY TO SELL OR TRANSFER TITLE)
TO THE ASSETS, PROPERTY, AND REAL ESTATE)
OF A PUBLIC UTILITY, CARTWRIGHT CREEK,)
L.L.C., AND FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY)

DOCKET NO.
21-00053

ORDER DENYING THE PETITION TO INTERVENE FILED BY SUPERIOR
WASTEWATER SYSTEMS, INC.

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider *Superior Wastewater Systems’ Petition to Intervene* (“*Petition to Intervene*”) filed by the Superior Wastewater Systems, Inc. (“Superior”) on October 12, 2022.

RELEVANT BACKGROUND

On May 6, 2021, Limestone Water Utility Operating Company, Inc. (“Limestone”) filed its *Application of Limestone Water Utility Operating Company, LLC, for Authority to Sell or Transfer Title to the Assets, Property and Real Estate of a Public Utility, Cartwright Creek, LLC, and for a Certificate of Public Convenience and Necessity* (“*Application*”). On January

24, 2022, the Commission issued an Order approving the *Stipulation and Settlement Agreement* between Limestone, Cartwright Creek, LLC (“Cartwright Creek”), and the Consumer Advocate Division in the Office of the Tennessee Attorney General (“Consumer Advocate”) and granting Limestone a Certificate of Public Convenience and Necessity (“CCN”) to serve Arrington Retreat, The Grasslands, The Hideaway, and the Hardeman Springs subdivisions in Williamson County currently served by Cartwright Creek. On September 26, 2022, the parties filed a *Joint Motion for Clarification* (“*Joint Motion*”). The parties filed the *Joint Motion* asking the Commission to clarify that the new certificate granted to Limestone covers the same service territory as the certificate held by Cartwright Creek. The *Joint Motion* explains that in Docket No. 04-00358, Cartwright Creek was granted a CCN to serve an undeveloped portion of land in Williamson County known as Planned Growth Area 5 (“PGA 5”), and it was the intent of the parties that the CCN for the undeveloped land in PGA 5 be transferred from Cartwright Creek to Limestone as well.

SUPERIOR’S *PETITION TO INTERVENE*

On October 12, 2022, Superior filed a *Petition to Intervene* seeking to intervene in the docket pursuant to Tenn. Code Ann. § 4-5-310(a). Superior states it currently has a CCN to serve an area in Williamson County adjacent to PGA 5 and is “currently planning to seek authority to provide wastewater service to unserved areas in Williamson County and other locations throughout Tennessee.”¹ Superior maintains that any decision in the docket “could have a precedential effect on any future filings of SWS to expand its present service territory. Therefore, the outcome of the above-captioned proceeding will have a direct impact on the rights, duties, privileges, immunities, or other legal interests of SWS.”

¹ *Petition to Intervene*, p. 1 (October 12, 2022).

CARTWRIGHT CREEK’S RESPONSE

Cartwright Creek filed a *Response to the Petition to Intervene* (“*Response*”) on October 17, 2022. Cartwright Creek asks that the *Petition to Intervene* be denied because it is untimely. Cartwright Creek argues that the final, unappealed order was issued by the Commission ten months ago, on January 24, 2022.² Further, Cartwright Creek maintains that even if there was a proceeding in which to intervene, Superior has failed to demonstrate that its “legal rights, privileges, immunities or other legal rights may be determined” in this proceeding.³ Cartwright Creek asserts that Superior seeks to intervene pursuant to Tenn. Code Ann. § 4-5-310(a), which states a petition to intervene shall be granted if it is filed at least seven days prior to the hearing and the Petitioner’s legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding. The hearing in this matter was held on December 6, 2022, and the final order issued January 24, 2022. Cartwright Creek maintains “...the case is over and the Petition to Intervene is almost a year late.”⁴ Further, Cartwright Creek argues that even if the case was still pending, Superior does not have a legal interest in any issue addressed in this docket. According to Cartwright Creek, Superior states a decision by the Commission to change the certificated area of PGA 5 could affect future filings made by Superior. Cartwright Creek argues that the parties have not proposed the change the certificated area of PGA 5, but the area was transferred from Cartwright Creek to Limestone.⁵ Further, Cartwright Creek asserts that if Superior wants to challenge Limestone’s right to provide service to parts of PGA 5, this is not the docket. Cartwright Creek argues that if Superior wants to serve a portion of PGA 5 it should file a petition and establish

² *Response*, p. 1 (October 17, 2022).

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.*

a public need and then “try to persuade the Commission to amend Limestone’s service territory.”⁶

FINDINGS & CONCLUSIONS

Tenn. Code Ann. § 4-5-310 establishes the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.⁷

The Hearing Officer finds that the Commission has previously made a determination on the merits of this docket and issued its Order on January 24, 2022. Therefore, Superior’s *Petition to Intervene* is not timely. The *Joint Motion* currently before the Hearing Officer simply seeks clarification of the Commission’s January 24th Order. In addition, the Hearing Officer finds that Superior does not have a legal interest in the proceedings in this docket at this time. However, this finding should not be interpreted as a determination on whether Superior may have a legal interest sufficient to

⁶ *Id.* at 3.

⁷ Tenn. Code Ann. § 4-5-310.

be granted intervention in a future docket.

THEREFORE, upon due consideration, the Hearing Officer concludes that Superior's *Petition to Intervene* is not timely and the legal rights, duties, privileges, immunities or other legal interest of Superior will not be determined by the consideration of the *Joint Motion*. For these reasons, the Hearing Officer concludes that Superior's *Petition to Intervene* should be **DENIED**.
IT IS SO ORDERED.

A handwritten signature in black ink that reads "Monica Smith-Ashford". The script is cursive and fluid.

Monica Smith-Ashford, Hearing Officer