

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 12, 2023

IN RE:)	
)	
STAFF COMPLIANCE AUDIT OF SUPERIOR)	DOCKET NO.
WASTEWATER SYSTEMS, LLC’S COMPLIANCE)	21-00086
WITH COMMISSION RULES 1220-04-13-.07 AND)	
1220-04-13-.08 REGARDING FINANCIAL)	
SECURITY AND RULE 1220-04-13-.16)	
REGARDING AFFILIATE TRANSACTIONS)	

**ORDER GRANTING THE PETITION TO INTERVENE FILED BY THE
CONSUMER ADVOCATE**

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the *Petition to Intervene* filed by the Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on October 5, 2022.¹

RELEVANT BACKGROUND

Superior Wastewater Systems, LLC (“Superior” or the “Company”) is a public utility providing wastewater service to approximately 342 residential customers located in its service territory in Williamson County, Tennessee. On September 15, 2021, the Commission issued its *Order Opening Compliance Audit Review Docket* to review Superior’s compliance with Commission Rules 1220-04-13-.07 and 1220-04-13-.08 regarding financial security and 1220-04-13-.16 regarding affiliate transactions for the year ended March 31, 2020. TPUC Staff as a Party

¹ Superior was not represented by counsel when the Consumer Advocate’s *Petition to Intervene* was filed. On October 21, 2022, the Hearing Officer issued an Order requiring Superior to obtain counsel by November 4, 2022. Superior did not comply with the Order until December 2, 2022. After Superior obtained counsel, the Hearing Officer gave Superior an opportunity to respond to the Consumer Advocate’s *Petition to Intervene* filed October 5, 2022.

(“Party Staff”) was ordered to conduct a comprehensive examination of Superior’s actions and compliance with Commission rules and to file a Compliance Audit Report on its findings.

CONSUMER ADVOCATE’S *PETITION TO INTERVENE*

On October 5, 2022, the Consumer Advocate filed a *Petition to Intervene* seeking to intervene in the docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to represent the interests of Tennessee consumers of public utility services in proceedings before the Commission. The Consumer Advocate maintains that:

[t]he interests of consumers served by Superior Wastewater, including but not limited to the funding and the Company’s management of the reserve/escrow account, may be affected by determinations and orders made by the Commission with respect to (a) the interpretation, application, and implementation of Commission Rule 1220-04-13-.07(7) and other statutory and regulatory provisions, and (b) the review and analysis of the Company’s documentation, financial spreadsheets, and materials.²

Further, the Consumer Advocate asserts that only by participating in this docket can it adequately represent the interests of Tennessee consumers.³

SUPERIOR’S OBJECTION

On December 9, 2022, Superior filed *Superior Wastewater Systems, LLC’s Objection to Consumer Advocate Division’s Motion to Intervene* (“*Superior’s Objection*”), requesting that the Consumer Advocate’s *Petition to Intervene* be denied. Superior argues that Superior and Party Staff are still in the process of completing the Audit review, and the Consumer Advocate’s intervention is premature.⁴ Further, Superior maintains that if the intervention is granted, it will cause an unnecessary delay in completing the audit and resolving the issues.⁵ According to Superior, “the Commission and Party Staff are uniquely experienced and capable of making a

² *Petition to Intervene*, p. 2 (October 5, 2022).

³ *Id.* at 4.

⁴ *Superior’s Objection*, p. 2 (December 9, 2022).

⁵ *Id.*

determination regarding the interpretation, application, and implementation of Commission Rules. The Consumer Advocate's participation will provide nothing of value to this proceeding and will increase costs which ultimately will be paid by consumers."⁶

CONSUMER ADVOCATE'S RESPONSE

The Consumer Advocate filed the *Consumer Advocate's Response to Superior Wastewater Systems, LLC's Objection to Consumer Advocate Division's Motion to Intervene* ("Consumer Advocate's Response") on December 14, 2022.⁷ The Consumer Advocate argues that it meets the standard for being granted intervention and because the docket deals with accounting principles and is not dependent on a fact investigation, as asserted by Superior, is not relevant to the analysis of whether the intervention should be granted.⁸ The Consumer Advocate asserts its intervention will not cause unnecessary delay and that its perspective is valuable and necessary in these proceedings to represent the interests of the consumers.

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

⁶ *Id.*

⁷ The Consumer Advocate failed to seek the Hearing Officer's permission prior to filing the *Consumer Advocate's Response*, as required by Commission Rule 1220-01-02-.06 (3). However, pursuant to Commission Rule 1220-01-01-.05(1), the Hearing Officer will grant a waiver of the rule and allow the *Consumer Advocate's Response*. Requests to file a response and even a reply to the response are often granted if time permits. Further, Superior is not prejudiced by the filing of the *Consumer Advocate's Response*. The *Consumer Advocate's Response* was filed on December 14, 2022, and Superior has had ample opportunity to request to file a reply but has not done so.

⁸ *Consumer Advocate's Response*, p. 2 (December 14, 2022).

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.⁹

Although it is not an automatic or absolute right to participate in proceedings before the Commission, Tenn. Code Ann. § 65-4-118(b)(1) provides a general basis for the qualification of the Consumer Advocate to be permitted to intervene as a party to represent the interests of Tennessee public utility consumers. It provides as follows:

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the commission or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the commission.¹⁰

Because the compliance audit docket will examine Superior's compliance with Commission rules, including, but not limited to, its use of escrow fees paid by Superior's customers, the Hearing Officer finds there is a sufficient factual basis to find that the legal rights or interests held by those consumers may be determined in this proceeding.

THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of Tennessee consumers may be determined in this proceeding. Further, the Hearing Officer finds that the Consumer Advocate qualifies under

⁹ Tenn. Code Ann. § 4-5-310.

¹⁰ Tenn. Code Ann. § 65-4-118(b)(1).

law as an intervenor for the purpose of representing those consumer interests, and its *Petition to Intervene* was timely-filed and should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that the Consumer Advocate's *Petition to Intervene* should be granted.

IT IS THEREFORE ORDERED THAT:

The *Petition to Intervene* filed by the Consumer Advocate Division of the Office of the Tennessee Attorney General is granted. The Consumer Advocate Division of the Office of the Tennessee Attorney General may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.

A handwritten signature in black ink that reads "Monica Smith-Ashford". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Monica Smith-Ashford, Hearing Officer