

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
JOINT PETITION OF SUPERIOR)	
WASTEWATER SYSTEMS, LLC, AND)	Docket No. 22-00087
TPUC STAFF (AS A PARTY) TO INCREASE)	
RATES AND CHARGES)	
)	

**CONSUMER ADVOCATE’S RESPONSE TO MOTION FOR APPROVAL OF
DEFERRAL AND RECOVERY OF RATE CASE EXPENSE**

The Consumer Advocate Division in the Office of the Tennessee Attorney General (“Consumer Advocate”), pursuant to TENN. COMP. R. & REGS. 1220-01-02-.06(2), hereby submits this response to the *Motion for Approval of Deferral and Recovery of Rate Case Expense* (“*Motion*”) filed January 11, 2023, by Superior Wastewater Systems, LLC (“Superior Wastewater” or “Company”) and the Tennessee Public Utility Commission (“TPUC” or “Commission”) staff (“Party Staff”) (collectively, “Joint Petitioners”). For the reasons set forth herein, the Consumer Advocate respectfully requests that the Commission deny the Motion.

The *Motion* attributes, solely to the Consumer Advocate, a delay in this docket of one hundred and forty (140) days.¹ The *Motion* states that the Consumer Advocate’s intervention “was not anticipated and the costs related to the intervention were not calculated into the projected rate increase.”² However, the Joint Petitioner’s failure to subjectively anticipate the Consumer Advocate’s intervention is not pertinent and does not place responsibility for the delay upon the Consumer Advocate. While the Consumer Advocate appreciates that the Joint Petitioners shared information and met with the Consumer Advocate the week of the September 9, 2022, filing of the

¹ See the fourth paragraph of the *Motion*.

² See the second paragraph of the *Motion*.

Joint Petition,³ that week marked the first opportunity for the Consumer Advocate to begin looking into the issues that would ultimately necessitate its intervention. The Consumer Advocate would reiterate that its statutory duty “to represent the interests of Tennessee consumers”⁴ (here, by intervention) applies regardless of whether a utility is assisted by Party Staff.

Though the *Motion* admits that the Joint Petitioners optimistically (though ultimately incorrectly) presumed against intervention by the Consumer Advocate, the *Motion* fails to account for the entirely unnecessary delay caused by the manner in which the Company has opted to engage in discovery. The Company apparently decided not to participate in the informal discovery process initiated and preferred by the Consumer Advocate (and expressly encouraged by the Commission “in order to avoid undue expense and delay”).⁵ This required formal discovery to be conducted, to which the Company refused to respond, thus resulting in the *Consumer Advocate’s Motion to Compel* (“*Motion to Compel*”) filed December 21, 2022.⁶ For these reasons, the *Motion* mistakenly attributes any delay solely to the intervention of the Consumer Advocate.

Additional deficiencies should lead the Commission to find that the *Motion* is not well-taken. Particularly, the *Motion* asks the Commission to “defer and recover reasonable rate case expense”⁷ at the conclusion of the docket, yet the Joint Petitioners have in no way identified the

³ *Joint Petition of Superior Wastewater Systems, LLC, and TPUC Staff (As A Party) to Increase Rates and Charges*, TPUC Docket No. 22-00087 (Sept. 9, 2022).

⁴ TENN. CODE ANN. 65-4-118(b)(1).

⁵ TENN. COMP. R. & REGS. 1220-01-02-.11(1) states:

Parties are encouraged where practicable to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay in the resolution of the matter at hand. When such attempts have failed or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure.

⁶ The Company responded to the *Motion to Compel* on January 6, 2022. See *Superior Wastewater Systems, LLC’s Response to Consumer Advocate’s Motion to Compel*, TPUC Docket No. 22-00087 (Jan. 6, 2022). While TENN. R. CIV. P. 37 does not specify a time in which to respond to such a motion, TENN. COMP. R. & REGS. 1220-01-02-.06 requires responses to preliminary motions within seven (7) days.

⁷ See the fifth paragraph of the *Motion*.

incremental “costs related to the intervention”⁸ of the Consumer Advocate. Furthermore, no estimate, or evidence in support thereof, has been presented concerning any additional rate case expenses the Company will incur in this proceeding, nor how such costs should factor into its revenue requirement determination for the Commission to approve the request. Finally, regarding the *Motion*’s request for recovery of such costs, the Consumer Advocate would note that even if the Commission were to grant the accounting deferral, it need not guarantee approval of recovery following the deferral. This has been noted by the Commission’s predecessor, the Tennessee Regulatory Authority, where it specifically “advised that the deferral of these costs does not equate to a determination that the Company will be allowed to recover such costs when they are considered by the [Commission].”⁹

Accordingly, the Consumer Advocate asks that the *Motion* be denied.

RESPECTFULLY SUBMITTED,



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⁸ See the second paragraph of the *Motion*.

⁹ *Order Granting Deferred Accounting*, p. 3, TRA Docket No. 13-00121 (Nov. 13, 2013) (available at <http://share.tn.gov/tra/orders/2013/1300121d.pdf> 21d.pdf (tn.gov)).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail,
with a courtesy copy by electronic mail upon:

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On this the 18th day of January 2023.



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