

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

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

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**THE CONSUMER ADVOCATE’S RESPONSE TO SUPERIOR WASTEWATER  
SYSTEMS, LLC’S MOTION IN LIMINE**

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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 in Limine* (“Motion”) filed February 10, 2023, by Superior Wastewater Systems, LLC (“Company”). For the reasons set forth below, the Consumer Advocate respectfully requests that the Commission deny the Motion.

**I. The Motion Fails to Demonstrate Any Warrant for Striking Escrow Testimony.**

The Motion asks the Commission to “remove each reference of escrow accounts in Mr. Dittmore’s testimony from the record and prohibit the Consumer Advocate from any reference of same at the hearing through testimony or argument.”<sup>1</sup> The Company cites the denial of the Consumer Advocate’s *Motion to Compel* as the sole basis of its request to strike testimony concerning the Company’s escrow abuses.<sup>2</sup> However, the February 6, 2023 *Order Denying Motion to Compel filed by the Consumer Advocate* was a ruling only on the Consumer Advocate’s further inquiry into the Company’s escrow activities in this docket by the specific discovery

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<sup>1</sup> *Motion in Limine*, at 3, TPUC Docket No. 22-00087 (Feb. 10, 2023).

<sup>2</sup> *Id.*; *Order Denying Motion to Compel filed by the Consumer Advocate*, TPUC Docket No. 22-00087 (Feb. 6, 2022).

requests at issue and has no bearing on Mr. Dittimore’s testimony filed January 4, 2023.<sup>3</sup> Thus, the order does not provide an adequate basis for the removal of all references to the escrow account from the record.

Furthermore, as acknowledged in the Motion,<sup>4</sup> the Consumer Advocate has already informed the Commission by letter that it will not be pursuing the escrow issue further in this docket.<sup>5</sup> Accordingly, an additional order prohibiting the Consumer Advocate from doing what it has already agreed not to do is unnecessary. However, to the extent such an order is issued, it should likewise prohibit any testimony or argument from any other party concerning the escrow issue.

## **II. The Access Fee Policy Should Be Clarified in this Docket.**

The Company baldly asserts that the Consumer Advocate “challenges” the “longstanding policy” of the Commission that “access fees are not assessed to lot owners of undeveloped lots until collection lines are installed to the lot.”<sup>6</sup> Not only does the Company misrepresent the Consumer Advocate’s position, the Company provides no citation to authority or otherwise attempts to demonstrate the alleged “longstanding policy.” The Consumer Advocate’s position, consistent with its letter and testimony, is that this docket presents an opportunity for the Commission to clarify its policy on access fees,<sup>7</sup> which the Consumer Advocate believes currently aligns with the rationale articulated by the Consumer Advocate.<sup>8</sup> The Consumer Advocate is not

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<sup>3</sup> *Order Denying Motion to Compel filed by the Consumer Advocate*, at 5–6, TPUC Docket No. 22-00087 (Feb. 6, 2022); *Direct Testimony of David N. Dittimore*, TPUC Docket No. 22-00087 (Jan. 4, 2023).

<sup>4</sup> *Motion in Limine*, at 2, TPUC Docket No. 22-00087 (Feb. 10, 2023).

<sup>5</sup> *Letter to Chairman Herbert H. Hilliard Re Outstanding Issues From Mason Rush, Consumer Advocate*, at 2, TPUC Docket No. 22-00087 (Feb. 9, 2023).

<sup>6</sup> *Motion in Limine*, at 2, TPUC Docket No. 22-00087 (Feb. 10, 2023).

<sup>7</sup> *Letter to Chairman Herbert H. Hilliard Re Outstanding Issues From Mason Rush, Consumer Advocate*, at 2, TPUC Docket No. 22-00087 (Feb. 9, 2023).

<sup>8</sup> For example, Mr. Dittimore’s testimony includes a citation to the 2011 DSH & Associates, LLC rate case, where the Commission’s predecessor held: “The rationale for this charge [access fee] is that even if a lot owner has not built his/her home, wastewater facilities have already been built to serve the customer.” *See Direct Testimony*

seeking a change of policy, but clarification of policy. Regardless of other utilities' tariffs, the Consumer Advocate is arguing that the access fee should remain in this Company's tariff and be assessed by this Company against lots to which it applies under the existing policy rationale concerning access fees.

Moreover, apart from the Motion's lack of both substance and authority, the Motion itself is improper in this instance. "[A] motion in limine should not be used as a substitute for a dispositive motion,"<sup>9</sup> nor should it "be used to 'choke off' a party's entire claim or defense."<sup>10</sup> Yet, this is exactly what the Motion seeks to do. It is, in essence, a dispositive motion aimed at the sole remaining contested issue, for which there is no legitimate reason for the Commission not to address in this docket.

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

*[Signature on following page]*

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of David N. Dittemore, at 9, TPUC Docket No. 22-00087 (Jan. 4, 2023); *Final Order Approving Rate Petition*, at 21, TRA Docket No. 11-00162 (May 16, 2012). Thus, the fee is assessed with reference to the existence of a wastewater system and facilities, not the existence of a collection or service line to the lot.

<sup>9</sup> *Duran v. Hyundai Motor Am., Inc.*, 271 S.W.3d 178, 192 (Tenn. Ct. App. 2008).

<sup>10</sup> *Id.* at 193.

RESPECTFULLY SUBMITTED,

A handwritten signature in blue ink that reads "Mason C. Rush". The signature is fluid and cursive, with the first name "Mason" being the most prominent.

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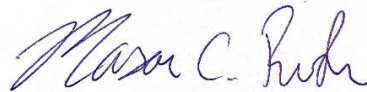
**CERTIFICATE OF SERVICE**

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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*Attorneys for Superior Wastewater Systems, LLC*

On this the 17<sup>th</sup> day of February 2023.



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**MASON C. RUSH**  
Assistant Attorney General