

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

April 5, 2023

IN RE:

JOINT PETITION OF SUPERIOR
WASTEWATER SYSTEMS, LLC AND TPUC
STAFF AS A PARTY TO INCREASE RATES AND
CHARGES

DOCKET NO.
22-00087

ORDER DENYING MOTION IN LIMINE FILED BY SUPERIOR

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the *Motion In Limine* (“*Motion*”) filed by Superior Wastewater Systems, LLC (“Superior” or the “Company”) on February 10, 2023.

SUPERIOR’S *MOTION*

In its *Motion* filed on February 10, 2023, Superior argues the Hearing Officer stated in her ruling on the Motion to Compel filed by the Consumer Advocate Division in the Office of the Tennessee Attorney General (“Consumer Advocate”) that the issue of the escrow funds is not relevant to the proceedings in this docket, therefore, any reference to the escrow accounts should be removed from the record. In addition, Superior requests that the Consumer Advocate be “prohibited from addressing the escrow account issue at the hearing either via testimony or argument.”¹ Superior states the Consumer Advocate filed a letter date February 8, 2023 indicating the only remaining issue subject to dispute in this docket is the access fees, and the Consumer Advocate states it is a policy issue that needs clarification by the Commission. Superior maintains

¹ *Motion*, p. 1 (February 10, 2023).

this Docket is an “improper vehicle for the Consumer Advocate to seek a significant policy change.”² Superior argues that a change to a Commission policy would impact more than just Superior’s customers, and it is unfair for Superior or its ratepayers to potentially bear the burden of such expense.³ Therefore, Superior asks the Commission to remove references to escrow accounts in Mr. Dittmore’s testimony from the record and to prohibit the Consumer Advocate from referencing escrow accounts at the hearing, and any discussion regarding access fees, which is a significant policy change, should be deferred to another docket.⁴

CONSUMER ADVOCATE’S RESPONSE

On February 17, 2023, the Consumer Advocate filed *The Consumer Advocate’s Response to Superior Wastewater Systems, LLC’s Motion in Limine* (“*Consumer Advocate’s Response*”) in which it maintains Superior’s sole basis to strike testimony concerning the Company’s escrow account is the denial of the Consumer Advocate’s Motion to Compel. The Consumer Advocate argues that the ruling on the Motion to Compel just prevented further inquiry into the Company’s escrow activities and “has no bearing on Mr. Dittmore’s testimony filed January 4, 2023. Thus, the order does not provide an adequate basis for the removal of all references to the escrow account from the record.”⁵ In addition, the Consumer Advocate points out it has already informed the Commission in a letter that it will not be pursuing the escrow issue further in this docket.⁶ The Consumer Advocate asserts it is not seeking a change in policy regarding access fees but a clarification in the policy. The Consumer Advocate states it 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.”⁷ According to the Consumer

² *Id.* at 2.

³ *Id.*

⁴ *Id.* at 3.

⁵ *Consumer Advocate’s Response*, p. 2 (February 17, 2023).

⁶ *Id.*

⁷ *Id.* at 3.

Advocate, the *Motion in Limine* is improper because it should not be used as a substitute for a dispositive motion and should not be used to cut off a party's entire claim.⁸

FINDINGS & CONCLUSIONS

The Hearing Officer finds the Consumer Advocate stated clearly in its letter dated February 8, 2023 that "the Consumer Advocate believes it will be able to fully represent the consumer interest related to the escrow concerns through its participation in Docket No. 21-00086. **The matter will not be further pursued by the Consumer Advocate in the present docket.**" Since, the Consumer Advocate does not plan to pursue the issue of the escrow account further in this docket, Superior's request to remove all reference to the escrow account from testimony previously filed by the Consumer Advocate and to prohibit the Consumer Advocate from mentioning the escrow accounts at the hearing is unnecessary. Further, the Hearing Officer is not persuaded by Superior's rationale for not allowing the Consumer Advocate to present the access fee issue, its only remaining issue in the docket. The Hearing Officer finds the Consumer Advocate seeks clarification regarding the access fees for Superior and should be allowed to raise this issue. Based on these findings, the Hearing Officer concludes that Superior's *Motion in Limine* should be **DENIED.**

IT IS SO ORDERED.



Monica Smith-Ashford, Hearing Officer

⁸ *Id.*