

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

May 1, 2023

IN RE:)	
)	
JOINT PETITION OF SUPERIOR)	DOCKET NO.
WASTEWATER SYSTEMS, LLC AND)	22-00087
COMMISSION STAFF AS A PARTY TO)	
INCREASE RATES AND CHARGES)	

ORDER APPROVING JOINT PETITION

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Clay R. Good, and Commissioner John Hie of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on February 27, 2023 for consideration of the *Joint Petition* (“*Joint Petition*”) filed on September 9, 2022 by Superior Wastewater Systems, LLC (“Superior” or “Company”) and TPUC Staff (“Party Staff”) (collectively, the “Joint Parties”). In the *Joint Petition*, the Parties seek Commission approval of an increase of rates and charges for the purpose of recovering the Company’s costs of providing wastewater services.

BACKGROUND AND *JOINT PETITION*

Superior¹ is a public utility providing wastewater services to approximately 342 residential customers in the Company’s designated service territory in Williamson County, Tennessee. The

¹ Superior was originally certificated as King’s Chapel Capacity, LLC and submitted notice of the Company’s name change to Superior in Docket No. 19-00015. *See* Acknowledgement Receipt of Notification of Name Change, Docket No. 19-00015 (July 17, 2019).

Company has not increased its service rates since the Company's tariffed service rates were approved by the Commission by order dated January 3, 2006.²

On September 9, 2022, Superior and Party Staff filed a *Joint Petition* requesting an increase to Superior's rates and charges, alleging that the Company's revenues and revenue projections are not sufficient to allow Superior to recover its reasonable operating costs and a fair and reasonable net operating income under the Company's current rates.³ Along with the *Joint Petition*, the Joint Parties filed a proposed tariff and the Pre-Filed Direct Testimony of Company witness, John Powell, and Party Staff witnesses, Craig Cox, Cole McCormick, and Joe Shirley.

Among the issues addressed, the Joint Petitioners proposed elimination of the \$84.00 annual Access Fee from its tariff. Mr. Powell testifies that the fee, to be charged for each property parcel for which a tap to the system is available, has never been charged because of the minimal time between when a sewer tap is provided and when the home becomes occupied.⁴ Cole McCormick testifies on behalf of Party Staff that since the annual access fee has not been applied to customers of the Company because of the operating nature of the Company, the access fee should be removed from the proposed tariff while reserving the Company's ability to request a fee for future developments.⁵

The Consumer Advocate Division in the Office of the Tennessee Attorney General ("Consumer Advocate") filed a *Petition to Intervene* on October 25, 2022. The Hearing Officer

² *Joint Petition*, pp. 1-2 (September 9, 2022). See also *In re: Petition of King's Chapel Capacity, LLC for a Certificate of Convenience and Necessity to Serve an Area in Williamson County, Tennessee Known as Ashby Community*, Docket No. 04-00335, *Order Approving Petition for CCN* (January 3, 2006).

³ *Joint Petition*, p. 3 (September 9, 2022). The Commission filed a Notice on September 6, 2022 designating the following TPUC Staff employees as Party Staff: Ryan McGehee, Senior Counsel; Cole McCormick, Utilities Consultant; Craig Cox, Financial Regulatory Analyst; Patsy Fulton, Utility Rate Specialist; Joe Shirley, Director, Utility Audit and Compliance Division; and David Foster, Director, Utilities Division. *Notice of Designation of Staff Participating as a Party* (September 6, 2022).

⁴ John Powell, Pre-Filed Direct Testimony, p. 2 (September 9, 2022). See also Transcript of Hearing, p. 97 (February 27, 2023).

⁵ Cole McCormick, Pre-Filed Direct Testimony, p. 3 (September 9, 2022).

entered an *Order Granting the Petition to Intervene Filed by the Consumer Advocate* on November 21, 2022. The Consumer Advocate filed the Pre-Filed Direct Testimony of David N. Dittmore on January 4, 2023. Mr. Dittmore testifies that the tariff should include language requiring the collection of access fees from all lot owners whose lots are either developed or for sale and that the Company's revenue should reflect an imputation of access fee charges to be applied to developed lots in Superior's service territory.⁶

The parties engaged in discovery which ultimately led the Consumer Advocate to file a Motion to Compel seeking responses to discovery requests related to the Company's management and use of its escrow account.⁷ The Hearing Officer denied the Motion to Compel by order dated February 6, 2023, ruling that the Consumer Advocate's intervention as a party in a separate docket concerning a Commission Staff audit of the Company's escrow account, provides the Consumer Advocate opportunity to participate in discovery on the escrow account. As a result, the Consumer Advocate filed a letter stating that matters relating to the escrow account will no longer be pursued by the Consumer Advocate in the present docket, leaving only matters relating to access fees as the only contested issue.⁸

The Joint Petitioners submitted Pre-Filed Rebuttal Testimony of John Powell and Joe Shirley in which the witnesses provided additional testimony concerning access fees. In his Pre-Filed Rebuttal Testimony, Mr. Shirley states that the Consumer Advocate's proposed language on assessment of annual access fees is inconsistent with existing tariffs approved by the Commission for other wastewater companies, which require that the customer have access to the wastewater system before being assessed the fee. He further explains that Superior's business plan is to

⁶ David N. Dittmore, Pre-Filed Direct Testimony, pp. 8-14 (January 4, 2023).

⁷ *Consumer Advocate's Motion to Compel* (December 21, 2022).

⁸ Letter to Chairman Herbert H. Hilliard Re: Outstanding Issues from Mason Rush, Consumer Advocate (February 9, 2023).

develop lots in stages, selling lots to homebuilders relatively quickly, resulting in an average of about seven (7) months from the time collection lines are installed until the property is sold to the final homeowner. This timeline makes the revenue collected from the proration of access fees minimal and immaterial when excluding the costs associated with administering the fee.⁹

Superior submitted the affidavit of John Powell indicating the Company's compliance with TPUC Rule 1220-04-01-.05. Mr. Powell certifies that customers were provided a copy of a summary of proposed changes on September 9, 2022 in the same manner that each individual customer receives a bill for services.¹⁰ A copy of the customer notice was also provided along with Mr. Powell's affidavit.¹¹ In response to the customer notice, the Commission received a number of written comments from customers of the Company that were filed in the docket.

The Joint Parties filed a *Motion for Approval of Deferral and Recovery of Rate Case Expense* ("Motion for Deferral") on January 11, 2023. The *Motion for Deferral* requests that the Commission defer the issue of rate case expense and allow the Company to recover its reasonable rate case expense in a rider to be determined at the conclusion of proceedings.¹² The Consumer Advocate filed a response arguing that the *Motion for Deferral* should be denied because the Company "mistakenly attributes any delay solely to the intervention of the Consumer Advocate" and because the Company failed to provide any evidence of an estimate of additional rate case expenses the Company will incur in the proceeding.¹³

THE HEARING

The Hearing on the *Joint Petition* was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on February 27, 2023, as noticed by the

⁹ Joe Shirley, Pre-Filed Rebuttal Testimony, pp. 10-19 (January 30, 2023).

¹⁰ Customer Notice Affidavit of John Powell (September 9, 2022).

¹¹ *Id.*

¹² *Motion for Approval of Deferral and Recovery of Rate Case Expense* (January 11, 2023).

¹³ *Consumer Advocate's Response to Motion for Approval of Deferral and Recovery of Rate Case Expense* (January 18, 2023).

Commission on February 17, 2023. Participating in the Hearing were the following parties and their respective counsel:

Superior Wastewater Systems, LLC – Charles B. Welch, Jr. Esq., Farris Bobango, PLC, 414 Union Street, Suite 1105, Nashville, TN 37219.

Consumer Advocate Division in the Attorney General’s Office – Mason Rush, Esq. and Vance Broemel, Esq., Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202-0207.

Tennessee Public Utility Commission Party Staff – Ryan McGehee, Esq., Tennessee Public Utility Commission, 502 Deaderick Street, 4th Floor, Nashville, Tennessee 37243.

The panel heard testimony from Party Staff witness, Joe Shirley, who summarized his Pre-Filed Direct and Rebuttal Testimonies and presented an overview the Pre-Filed Direct Testimony of Cole McCormick and of the Pre-Filed Testimony of Craig Cox along with his schedules and workpapers attached as exhibits. Mr. Cox and Cole McCormick were made available by Party Staff for questions from the Commission. John Powell testified on behalf of Superior. The Consumer Advocate presented witness testimony from David Dittmore.¹⁴ Each of the witnesses were subject to questions and cross-examination, as well as questions from the Commission. The panel solicited comments from the public, but no member of the public sought to be heard.¹⁵

CRITERIA FOR ESTABLISHING JUST AND REASONABLE RATES

The Commission has jurisdiction to set the rates of public utilities operating in the State of Tennessee.¹⁶ In pertinent part, Tenn. Code Ann. § 65-5-101 provides:

(a) The Tennessee public utility commission has the power after hearing upon notice, by order in writing, to fix just and reasonable individual rates, joint rates, tolls, fares, charges or schedules thereof....

In addition, Tenn. Code Ann. § 65-5-103 states, in part:

¹⁴ Transcript of Hearing, pp. 83-120 (February 27, 2023).

¹⁵ *Id.* at 128.

¹⁶ Tenn. Code Ann. §§ 65-4-101(6); 65-4-104; 65-5-101, *et seq.*

(a) When any public utility shall increase any existing individual rates, joint rates, tolls, fares, charges, or schedules thereof, or change or alter any existing classification, the commission shall have power either upon written complaint, or upon its own initiative, to hear and determine whether the increase, change or alteration is just and reasonable. The burden of proof to show that the increase, change, or alteration is just and reasonable shall be upon the public utility making the same. In determining whether such increase, change or alteration is just and reasonable, the commission shall take into account the safety, adequacy and efficiency or lack thereof of the service or services furnished by the public utility.

The Commission considers petitions for a rate increase, filed pursuant to Tenn. Code Ann.

§ 65-5-103, in light of the following criteria:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return;
2. The proper level of revenues for the utility;
3. The proper level of expenses for the utility; and
4. The rate of return the utility should earn.

Applying these principles and criteria, and upon consideration of the entire record, including all exhibits and the testimony of the witnesses, the panel made the following findings and conclusions.

FINDINGS AND CONCLUSIONS

Upon consideration of the pleadings, Pre-Filed Testimony, the entire administrative record, and the presentations of counsel of the parties at the Hearing, the panel found that the increased rates and charges proposed in the *Joint Petition* are necessary for Superior to continue providing quality wastewater service. The proposed rates and charges are just, reasonable, and in the public interest. Therefore, the panel voted unanimously to approve the *Joint Petition* as filed by Superior and Party Staff.

Specifically, the panel found that Superior's annual revenue increase of \$78,086 represents an overall 55% increase in the combined base rate plus escrow rate for residential customers. The provisions of the proposed rate increase are based upon:

1. An historical test period of the twelve-months ended December 31, 2021;
2. A forward-looking attrition period of the twelve-months ending December 31, 2022;
3. An Operating Margin Rate of 10%;
4. Total Attrition Period Operating Revenues of \$101,447;
5. Total Attrition Period Operating Expenses of \$158,597;
6. Gross Revenue Conversion Factor of 1.069519;
8. Revenue Deficiency of \$78,086.

The respective positions of the parties left issues related to access fees in dispute. The Joint Petitioners proposed elimination of the access fee, while the Consumer Advocate argued for inclusion of the access fee and imputation of access fee charges to be applied to developed lots in Superior's service territory. The panel found that whether to include an access fee is a matter of rate design, which is within the discretion of the Commission. The panel further found that the amount of revenue to be extracted from the base rate and recovered through an access fee is minimal and that expenses associated with administering the access fee would result in a small increase in the revenue deficiency. Therefore, the panel voted unanimously to remove the \$84.00 access fee from the tariff as requested by the Joint Petitioners.

In addition, this Commission has consistently held that in order to collect an access fee, a lot owner must have access to the wastewater system. Based upon this policy, the panel found that if it were to impute the additional revenue for collection of access fees, the maximum imputation should be \$1,372 as calculated by Party Staff rather than \$5,040 as asserted by the Consumer Advocate. Inclusion of \$1,372 of additional access fee revenue would have an inconsequential impact on the monthly base rate.¹⁷ Further, imputation of additional revenue for access fee

¹⁷ *Id.* at 18.

collection is inconsistent with the approval of removal of access fees from the tariff. Therefore, the panel voted unanimously not to impute any revenue for access fees.

The Commission recognized that a number of the Company's customers submitted written public comment expressing concern about the amount of the increase in response to the customer notice sent by the Company. While the Commission appreciates and understands the concerns of ratepayers, the panel found that the increase is necessary to adequately ensure that the Company recovers its expenses and remains a viable provider of wastewater service. In addition, the resulting rate is comparable to other wastewater companies serving the area. The panel found that the customer notice is compliant with Commission Rule 1220-04-01-.05 and that the rate design as proposed is a fair and reasonable method to achieve the forecasted revenue requirement.

With regard to the Joint Petitioner's *Motion to Defer*, the panel found that the revenue deficiency included certain rate case expense that did not include recovery of expenses associated with responding to data requests from or litigating issues with any intervening party. As such, the panel found that it is reasonable to defer consideration of rate case expense so that the parties may fully present evidence concerning such expense. Therefore, the voting panel voted unanimously to defer consideration on the recovery of rate case expense. Because additional evidence is required to determine the total amount of rate case expense, the panel voted unanimously to determine the amount of recovery and period of recovery upon consideration of proof to be submitted by the parties.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition* filed on September 9, 2022 by Superior Wastewater Systems, LLC and TPUC Staff as a Party is approved.
2. The rates and charges proposed in the *Joint Petition* are approved;

3. The proposed tariffs, submitted on September 9, 2022, are just and reasonable and are approved to be effective March 1, 2023.

4. No revenue shall be imputed for collection of access fees.

5. The request of Superior Wastewater Systems, LLC to remove the annual \$84.00 Access Fee from its tariff is approved.

6. The *Motion for Approval of Deferral and Recovery of Rate Case Expense* filed by Superior Wastewater Systems, LLC and TPUC Staff as a Party is partially granted, approving deferral of consideration of rate case expense and reserving for future consideration the amount of recovery and the period of recovery.

7. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order; and

8. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Herbert H. Hilliard,
Vice Chairman David F. Jones,
Commissioner Robin L. Morrison,
Commissioner Clay R. Good, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director