

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

**IN RE: JOINT PETITION OF SUPERIOR
WASTEWATER SYSTEMS, LLC, AND
TPUC STAFF (AS A PARTY) TO INCREASE
RATES AND CHARGES**

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Docket No. 22-00087

**PARTY STAFF’S OBJECTION TO RECOVERY OF “DELAY COSTS” AS PART OF
RATE CASE EXPENSE RECOVERY**

Pursuant to discussions with the parties and the hearing officer in this docket, the Party Staff of the Tennessee Public Utility Commission (“Party Staff”) herein, submits an objection to a portion of the rate case expenses that Superior Wastewater Systems, LLC (“SWS” or “Company”) seeks to recover. In summary, the Party Staff opposes recovery of \$29,951 in “delay costs.”

Procedural History

On September 9, 2022, the Company and the Party Staff filed the *Joint Petition* (“*Joint Petition*”) in this Docket for an increase to Superior Wastewater’s rates and charges for the purpose of recovering the Company’s costs of providing wastewater services to its customers and for authority to place such rates and charges into effect through a revised tariff. Specifically, the Parties determined that SWS was projected to experience a net operating loss of \$57,150 for the Twelve-Month Attrition Period Ending December 31, 2022, and that a rate increase of \$78,086

was needed to eliminate this revenue deficiency. The *Joint Petition* requested a hearing date of October 10, 2022.¹

This is a staff-assisted rate case in which members of the Commission are walled off as a party and perform an analysis of the Company's finances, records, and operations. The resulting rate study is used by the Party Staff to determine whether a rate increase is necessary, establishes a revenue requirement, and proposes what it considers is a just and reasonable rate using traditional rate-making methodologies. Staff-assisted cases are undertaken, when resources are available, to prevent small utilities from going years without updating their rates, but also to reduce the regulatory and rate case costs on the customers of small public utilities.² Indeed, one of the policy motivations behind staff assisted cases is to have little to no rate case expense to burden small customer bases. As such, the Party Staff's analysis and proposed revenue requirement **did not include any rate case expense** in the *Joint Petition*.³

On October 25, 2022, the Consumer Advocate Division of the Office of the Tennessee Attorney General (the "Consumer Advocate") intervened in this Docket. In what has become a standard custom in staff assisted rate cases, Party Staff conferred with the Consumer Advocate both prior to the filing of the *Joint Petition* and afterwards to share information and supporting workpapers and answer questions. In the past, the Consumer Advocate has not intervened in staff assisted rate cases. While the Consumer Advocate's intervention in a staff assisted rate case was not expected, Party Staff had no objection. As the docket proceeded, the filings in the record shows that aspects of the *Joint Petition*, the rate of development of lots in the Company's service area, and the audit of the Company's escrow account in Docket No. 21-00086, were explored and

¹ *Joint Petition*, p. 3 (September 9, 2022).

² Joe Shirley, Pre-Filed Rebuttal Testimony, pp. 5-6 (January 30, 2023).

³ *Id.* at 6.

subject to discovery and litigation. The Company incurred expense for legal representation, responding to discovery, preparing responsive pre-filed testimony and, ultimately, a contested hearing for which the revenue requirement in the *Joint Petition* did not contemplate.

Following a hearing on February 27, 2023, the Commission approved the *Joint Petition* as filed. Pursuant to the Commission's rate case order, the Commission found that the revenue requirement did not include recovery of expenses associated with responding to data requests from or litigating with any intervening party.⁴ The Commission deferred ruling on the amount of rate case expense until additional evidence could be taken.

On April 12, 2023, the Company filed *Proposed Recovery By Superior Wastewater Systems, LLC Of Its Incurred Incremental Legal, Regulatory, Administrative and Delay Costs Associated with the Intervention of the Consumer Advocate in this Docket* ("SWS's Proposed Rate Case Expense") listing a total cost of \$67,789.00. The Company seeks to recover this amount over a period of eighteen (18) months at a monthly amount of \$10.76 per customer.⁵

Party Staff Opposes The Recovery of \$29,951 in "Delay Costs"

A large portion of the rate case expense sought in *SWS's Proposed Rate Case Expense* relates to the Company's belief it was entitled to have the *Joint Petition* approved on October 10, 2022. As Party Staff understands the request, the Company seeks to recover "delay cost" as SWS believes the *Joint Petition* should have been approved on October 10, 2022, rather than be delayed until February 27, 2023, due to the Consumer Advocate's intervention. In other words, had it not been for the Consumer Advocate's intervention, the Company would have collected \$29,951 in revenues under the new rates if they were approved in October of 2022. However, the request in the *Joint Petition* for a hearing on October 10, 2022, and the early expectations of the Party Staff

⁴ *Order Approving Joint Petition*, p. 8 (May 1, 2023).

⁵ *SWS Proposed Rate Case Expense*, p. 2 (April 12, 2023).

and the Company for a quick resolution do not create any underlying legal authority or provide a factual basis that would support the Company's request for "delay costs."

Party Staff submits there is no basis in Tennessee law for the Company's request of "delay costs." The General Assembly has been very specific about when a proposed rate increase may go into effect. The Commission has up to nine months to complete its investigation of a proposed rate increase.⁶ If the Commission has not yet ruled after six months, a public utility could place the proposed rates into effect with specific statutory conditions to facilitate a refund of any proposed rate increase that is subsequently not allowed by the Commission.⁷ Thus, the only time a public utility could place proposed rates into effect would be six months after the petition has been filed if the Commission has not yet made a final decision.

Here, the hearing and the Commission's decision on February 27, 2023, was completed within six months of the filing of the *Joint Petition* on September 9, 2022. Under the facts in this docket, Party Staff submits there is no legal basis or sound policy rationale to award the Company revenue it believes it would have collected if rates had been approved in October of 2022.

Conclusion

The Party Staff opposes recovery of \$29,951 in "delay costs" in this docket. Rate case expense in this docket should be no more than \$37,838.

Dated this 5th day of May, 2023.

⁶ Tenn. Code Ann. § 65-5-103(a)

⁷ Tenn. Code Ann. § 65-5-103(b)(1) and (2).

Respectfully Submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail,

upon:

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This the 5th day of May, 2023.



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