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**Letter 1 of 2**

June 6, 2023

Ms. Ectory Lawless, Docket Clerk  
Tennessee Public Utility Commission  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243  
[Tpuc.docketroom@tn.gov](mailto:Tpuc.docketroom@tn.gov)  
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*Via Email ~ Confirmation by U.S. Mail*

Electronically Filed in TPUC Docket  
Room on June 6, 2023 at 12:47 p.m.

RE: Staff Assisted Rate Case for Superior Wastewater Systems, LLC  
Docket 22-00087

Superior Wastewater Systems Proposal to Recover Rate Case Costs

Dear Ms. Lawless:

This law firm represents Superior Wastewater Systems, LLC.

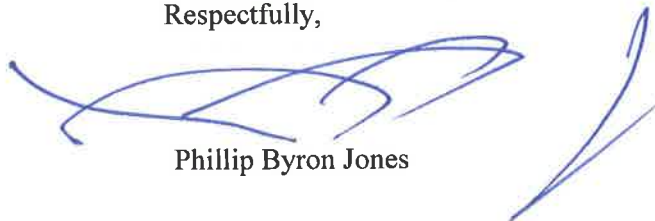
On its behalf, we file the **public version** of the attached:

- Proof of Legal, Regulatory, Administrative and Delay Costs; and,
- Brief related to Delay Costs.

By separate letter, we are sending our ***Confidential*** papers to you, and the various other attorneys involved, and request that this information NOT be placed on the Commission's website.

Please contact me if you have any questions.

Respectfully,



Phillip Byron Jones

PBJ/sj

Encl. (original + 4 copies)

cc: Ryan McGehee  
Mason Rush

8426.07.002

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

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

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**SUPERIOR WASTEWATER SYSTEMS, LLC's  
BRIEF IN SUPPORT OF  
REQUEST FOR LEGAL, REGULATORY, ADMINISTRATIVE AND DELAY COSTS**

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On February 27, 2023, the Commission heard this matter in its regularly scheduled conference. At the conclusion of the hearing, the Commission approved an increase in revenues of \$78,086 as recommended in the Joint Petition filed by Superior Wastewater Systems, LLC ["Superior"].

In addition, the Commission approved a Motion by Superior to recover its Rate Case Expenses, holding as follows:

*With regard to the motion for approval of deferred and recovery of rate case expense filed by the joint petitioners of January 11, I move that the motion be granted in part. I find that it is reasonable to defer consideration of rate case expense in order for the parties to fully present evidence of such expense. Because additional evidence is required to determine the total amount of rate case expense incurred due to the procedural progression of this matter, the amount to be recovered and the period of recovery will be determined upon consideration of proof to be filed by the parties.<sup>1</sup>*

By filing on April 12, 2023, Superior aggregated its incremental claim for legal, regulatory, administrative and delay costs, which was summarized in that document as follows:

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<sup>1</sup> Transcript of Proceedings, Docket No. 22-00087, February 27, 2023, page 62.

<b>Item</b>	<b>Amount</b>
Legal Costs of Farris Bobango PLC	\$19,378
Regulatory Costs of William H. Novak	13,400
Administrative Costs of Superior Wastewater	5,060
Delay Costs	29,951
<b>Total Costs</b>	<b>\$67,789</b>
Projected Customers	350
<b>Cost per Customer</b>	<b>\$193.68</b>
Recovery Period (Months)	18
<b>Proposed Surcharge</b>	<b>\$10.76</b>

This Brief addresses, with specificity, Superior's request for "delay costs" of \$29,951.

### **The Recovery of \$29,951 in "Delay Costs"**

The Party Staff opposes Superior's request for "Delay Costs," suggesting that there is no precedent for it and that there is no legal basis for it. The Consumer Advocate likewise opposes any such award. However, an award for Delay Costs is appropriate for the following reasons:

### **The Statutory Construct was Promulgated for Expediency**

First, Tennessee Code Annotated Section 65-5-103 concerns rate changes. Everything about that code section is worded to advance rate changes expediently.

- The statute states that the Commission "shall" give the investigation preference over other matters pending before it and "shall" decide the matter as "speedily" as possible.
- The statute provides that in the event a matter is delayed, that a utility may go ahead and place the proposed increase, in effect, if the matter was not adjudicated at the expiration of six (6) months from the date filed of any such increase.
- If the Commission finds, at any time during the initial three (3) months suspension period, that an emergency exists or that the utility's credit or operations will be materially impaired or damaged by the failure to permit the rates to become effective during the 3-month period, the Commission may permit all or a portion of the increase to become effective immediately.

Hence, the Legislature enacted the statute carefully to avoid delays.

Second, the request for a rate increase was not to expand Superior's profits but instead, to stop the continuation of its losses, as it had not obtained a rate increase in years. Simply stated, Superior had no cash flow as a result of the dated rates. As a result, equity investments had to be made into Superior simply to sustain it.

Third, the 6-month provisions set out in the statute concern *traditional* rate increase cases. Superior's rate increase case was not a traditional rate increase case. Instead, Superior's request was a staff assisted case. Superior initially started work with TPUC's staff in early 2022. Formal filings were not made until the fall of 2022, only because of push back and countless inquiries by the Consumer Advocate. Superior was entitled to its rate relief on October 11, 2022. Instead, it had to wait until February 27, 2023. That delay was solely as a result of the unprecedented intervention of the Consumer Advocate.

Fourth, since 2015, there have been six (6) staff assisted rate increase cases, including this one. Superior's case is the only staff assisted case that was contested by the Consumer Advocate. Thus, it was the unprecedented actions of the Consumer Advocate that caused this non-traditional (staff-assisted) case to be delayed. This was made evident by the opening arguments of TPUC's staff at the hearing held February 27, 2023. Mr. McGehee (for TPUC's staff) stated as follows:

*Today I represent the party staff, and we did the work on behalf of Superior Wastewater to come up with what we believe is a just and reasonable rate.*

*There is a reason for staff-assisted rate cases like this. It's a little bit unusual, but from time to time, the staff has members carved out, walled off, and they roll up their sleeves, and they go through the company books, the invoices, do some digging, and they forecast rates. And the reason for [staff-assisted] cases is to save small utilities and their customers the expense of a [traditional] rate case because rate cases can be very expensive for small utilities, especially one with a small customer base.*

*In the past, we haven't had contested staff-assisted rate cases.* (Emphasis added.)

Fifth, Superior's Petition, which was filed in early September of 2022, took almost 6 months to resolve even though it should have been an uncontested hearing. Accordingly, it was the unprecedented actions of the Consumer Advocate (in contesting a staff-assisted case for a small utility), that caused Superior to suffer delays. Superior has quantified those delay costs at \$29,951.

In connection therewith, Superior has submitted invoices, affidavits and other records to support its claim to recover legal fees, regulatory fees, administrative fees, and delay costs. The delay costs were quantified by (1) taking the revenue deficiency approved by TPUC (\$78,086); (2) dividing that \$78,086 by 365 days; and (3) then multiplying that number by the delay period of 140 days (October 10, 2022 – February 27, 2023).

### **CONCLUSION**

For the reasons set forth herein, Superior requests that it be awarded its legal fees, regulatory fees, administrative costs and delay costs.

Respectfully submitted,




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*Attorneys for Superior Wastewater Systems, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on this the 6<sup>th</sup> day of June, 2023, as follows:

<u>Addressee</u>	<u>Method(s) of Service</u>
<b>Mr. Ryan McGehee</b> Tennessee Public Utility Commission 502 Deaderick St. Nashville, TN 37243  <i>Attorney for TPUC Staff</i>	<input checked="" type="checkbox"/> Email <a href="mailto:Ryan.mcgehee@tn.gov">Ryan.mcgehee@tn.gov</a>
<b>Mr. Mason C. Rush, Asst. AG</b> <b>Ms. Karen H. Stachowski, Sr. Asst. AG</b> Office of the Tennessee Attorney General Consumer Advocate Division PO Box 20207 Nashville, TN 37202	<input checked="" type="checkbox"/> Email <a href="mailto:Mason.rush@ag.tn.gov">Mason.rush@ag.tn.gov</a>  <input checked="" type="checkbox"/> Email <a href="mailto:Karen.stachowski@ag.tn.gov">Karen.stachowski@ag.tn.gov</a>



**Phillip Byron Jones, Esq.**

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