

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

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

SUPPLEMENTAL TESTIMONY

OF

DAVID N. DITTEMORE

June 30, 2023

1 **I. Background**

2 **Q1. PLEASE STATE YOUR NAME AND OCCUPATION FOR THE RECORD.**

3 **A1.** My name is David N. Dittmore. I am a self-employed consultant working in the utility
4 regulatory sector.

5 **Q2. ARE YOU THE SAME DAVID N. DITTEMORE WHO PREVIOUSLY FILED**
6 **TESTIMONY IN THIS DOCKET ON JANUARY 4, 2023?**

7 **A2.** Yes.

8 **Q3. ON WHOSE BEHALF ARE YOU APPEARING?**

9 **A3.** I am appearing on behalf of the Consumer Advocate Division of the Tennessee Attorney
10 General's Office ("Consumer Advocate").

11 **II. Purpose of Testimony**

12 **Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 **A4.** The purpose of my testimony is to support the position of the Consumer Advocate
14 concerning the recovery of costs proposed by Superior Wastewater Systems, LLC
15 ("Superior") in this docket. First, I state the position of the Consumer Advocate on
16 Superior's recovery of legal, regulatory, and administrative costs, which are the rate case
17 expenses. I then discuss the request for what Superior refers to as "delay costs" and
18 recommend that the Tennessee Public Utility Commission ("TPUC" or the "Commission")
19 deny this request.

1 **III. Superior's Proposed Recovery**

2 **Q5. WHAT IS SUPERIOR SEEKING IN ITS PROPOSED RECOVERY?**

3 **A5.** Superior's proposed recovery consists of \$19,378 in legal costs, \$13,400 in regulatory
4 costs, and \$5,060 in administrative costs. This aggregate amount of \$37,838 constitutes
5 the rate case expense as calculated by Superior. However, Superior also seeks \$29,951 in
6 "delay costs." The request for delay costs should be considered separately from actual rate
7 case expenses, as it represents a theoretical amount of what Superior believes is lost
8 revenue based on the timeline of this docket. The total amount of recovery sought by
9 Superior is \$67,789.

10 **IV. Rate Case Expense**

11 **Q6. PLEASE STATE THE POSITION OF THE CONSUMER ADVOCATE ON**
12 **SUPERIOR'S RATE CASE EXPENSES.**

13 **A6.** The Consumer Advocate is not contesting Superior's proposed rate case expenses, minus
14 the proposed delay costs.

15 **Q7. DO YOU HAVE A RECOMMENDATION REGARDING THE COLLECTION OF**
16 **RATE CASE COSTS IF IN FACT THE COMMISSION GRANTS THE**
17 **REQUESTED RELIEF?**

18 **A7.** Yes. I recommend the balance of approved rate case costs in the amount of \$37,838 be
19 recovered from ratepayers over a five-year period, applied as an additional charge on their
20 bill.

1 V. "Delay Costs"

2 **Q8. HAS THIS COMMISSION EVER AWARDED "DELAY COSTS" RESULTING**
3 **FROM THE CONSUMER ADVOCATE'S INTERVENTION?**

4 **A8.** No, not to my knowledge.

5 **Q9. HAVE YOU EVER SEEN ANY OTHER REQUEST FOR "DELAY COSTS" IN**
6 **YOUR EXPERIENCE IN THE UTILITY REGULATORY SECTOR?**

7 **A9.** No. This request is entirely novel.

8 **Q10. PLEASE STATE THE CONSUMER ADVOCATE'S POSITION ON SUPERIOR'S**
9 **PROPOSED "DELAY COSTS."**

10 **A10.** The Consumer Advocate is adamantly opposed to the recovery of Superior's "delay costs"
11 for the reasons set out in the Consumer Advocate's initial response as well as its legal
12 brief.¹ In summary, the Consumer Advocate sees no legal theory, policy, or factual basis
13 that could support cost recovery.

14 **Q11. HAS PARTY STAFF MADE A RECOMMENDATION REGARDING THE**
15 **REQUEST FOR DELAY COSTS?**

16 **A11.** Yes, Party Staff has likewise stated that there is no factual basis or legal authority for the
17 delay costs, and therefore opposes this aspect of Superior's proposed recovery.²

18 **Q12. DO YOU AGREE WITH THE POSITION OF THE PARTY STAFF?**

¹ See Consumer Advocate's Response to Superior Wastewater Systems, LLC's Proposed Recovery of Costs, TPUC Docket No. 22-00087 (May 5, 2023); Consumer Advocate's Response Brief in Opposition to Superior Wastewater Systems, LLC's Request for "Delay Costs", TPUC Docket No. 22-00087 (June 30, 2023).

² See generally Party Staff's Objection to Recovery of "Delay Costs" as Part of Rate Case Expense Recovery, TPUC Docket No. 22-00087 (May 5, 2023).

1 **A12.** Yes. These alleged costs are not related to recoverable rate case expense and raise
2 significant policy concerns.

3 **Q13. WHAT SPECIFIC POLICY CONCERNS DO YOU HAVE REGARDING THE**
4 **REQUEST FOR “DELAY COSTS”?**

5 **A13.** First, an award of “delay costs” would constitute retroactive ratemaking in violation of the
6 Filed Rate Doctrine. This doctrine has been articulated by one court as follows:

7 The filed rate doctrine serves a two-fold purpose. First, it protects the
8 regulatory agency’s primary jurisdiction to determine the reasonableness of
9 rates charged by regulated industries. Second, the doctrine ensures that
10 regulated companies charge only those rates which the agency has
11 approved. Thus, courts lack authority to impose or enforce a different rate
12 than that approved by the regulatory agency because the agency possesses
13 primary jurisdiction to resolve such issues. The doctrine also prohibits
14 agencies from *retroactively* substituting a new rate, even if the prior
15 approved rate was unreasonably high or low.³

16 The United States Supreme Court has also held retroactive ratemaking is not permitted:

17 Not only do the courts lack authority to impose a different rate than the one
18 approved by the Commission, but the Commission itself has no power to
19 alter a rate retroactively. When the Commission finds a rate unreasonable,
20 it “shall determine the just and reasonable rate ... to be *thereafter* observed
21 and in force.”⁴

22 It is a well-established principle of ratemaking that rates are set prospectively. Yet, what
23 Superior is asking the Commission to engage in a textbook example of retroactive
24 ratemaking. This is evident in that Superior calculates its alleged delay costs as the revenue
25 it would have collected based on an October 2022 effective date of rates not approved until
26 it would have collected based on an October 2022 effective date of rates not approved until

³ *SWKI-Seward W. Cent., Inc. v. Kansas Corp. Comm’n*, 408 P.3d 1006 (Kan. Ct. App. 2018) (internal citations omitted).

⁴ *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981).

1 February of 2023. For this reason alone, the Commission should deny the request for delay
2 costs.

3 Second, an award of delay costs would be wholly contrary to the purpose of the Consumer
4 Advocate's chartering statute, Tenn. Code Ann. § 65-4-118, which gives the Consumer
5 Advocate both the "the duty and authority to represent the interests of Tennessee
6 consumers of public utilities services."⁵ An award of delay costs would function as a
7 penalty for the Consumer Advocate carrying out its statutory duty.

8 **Q14. DOES THIS COMPLETE YOUR TESTIMONY?**

9 **A14.** Yes. However, I reserve the right to incorporate any new data or information that may
10 subsequently become available.

⁵ TENN. CODE ANN. § 65-4-118(b)(1).

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AT NASHVILLE, TENNESSEE**

IN RE:

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

Docket No. 22-00087

AFFIDAVIT

I, David Dittemore, on behalf of the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Supplemental Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.

David N. Dittemore

DAVID N. DITTEMORE

Sworn to and subscribed before me

This 27th day of June, 2023.

Terra Allen

NOTARY PUBLIC



My Commission Expires: January 31, 2027.