

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

**IN RE:** )  
 )  
**PETITION OF SUPERIOR WASTEWATER )**  
**SYSTEMS, LLC TO AMEND EXISTING )**  
**SERVICE TERRITORY IN WILLIAMSON ) Docket No. 23-00051**  
**COUNTY )**

**RESPONSE IN OPPOSITION TO  
MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

Tennessee Wastewater Systems, Inc.’s (“TWSI’s”) Motion to Hold Proceedings in Abeyance should be denied. There is a present need for service within the disputed Milcrofton service area, which was first formally requested in February. That need has already gone unserved for the five months since Superior Wastewater Systems, LLC (“Superior”) filed its Petition, due in large part to TWSI’s intervention. A stay until the parties’ lawsuit has been resolved would result in further delay of many months, if not years, before those individuals can receive service. Such a delay is not in the public interest. Nor would simultaneous litigation of the Williamson County lawsuit and TWSI’s pending objection necessarily be as costly, time-consuming, or duplicative. To the contrary, there are threshold legal issues which would both (i) provide clarity on important legal issues that regularly recur before the Commission, thereby precluding future disputes and (ii) quickly and efficiently dispose of TWSI’s claims long before the pending lawsuit will be resolved, resulting in quicker service to residents of Milcrofton. Both results are also in the public interest. Superior respectfully requests that TWSI’s Motion be denied.

**ARGUMENT**

TWSI’s Motion spends curiously little time addressing why a stay is either appropriate or necessary. Instead, it primarily consists of arguments regarding (i) the nature of Superior’s Petition

in this case, (ii) the nature of the parties' past dealings, and (iii) the merits of Superior's pending lawsuit against TWSI. TWSI's arguments are wrong on all three points.<sup>1</sup> Ultimately, however, none of these issues is relevant to the matter at hand (namely, the request for a stay), so the myriad flaws in TWSI's arguments need not be addressed at length at this time.

Turning to the purported grounds for a stay, TWSI relies on two arguments. Neither argument has merit.

**A. Holding this proceeding in abeyance would be a disservice to the many individuals within the Milcrofton service area who have already had to wait many months for sewer service.**

First, TWSI claims there is no harm accompanying a stay, both (i) because there has allegedly been no request for service within the Milcrofton service area and (ii) because Superior's proposed system allegedly will not serve the Milcrofton service area. Both assertions are wrong.

As to requests for service, TWSI relies on the fact that no property has directly contacted TWSI for service. This is completely irrelevant. As set forth in Superior's Petition and in its

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<sup>1</sup> For example, as to Superior's Petition, TWSI first suggests that the Petition serves no legitimate purpose because no landowner "has submitted a specific proposal for a commercial or residential development." (Abeyance Motion at 2.) This criticism, however, does nothing more than reveal TWSI's fundamental misunderstanding of the nature of Superior's Petition—as explained in Superior's recently filed supplemental response to Staff Request 3.3, Superior is seeking permission to build a centralized system that would serve the entire area, not a project-specific system to serve a given development. As such, the system is intended to (among other things) service existing properties in their current condition, and the absence of a specific development proposal is irrelevant.

Similarly, TWSI also claims (without support) that Superior "intends to use [its] monopoly control of the requested service area to force any customer who needs wastewater service to pay unregulated, monopolistic, "market rates" to access the only drip field in the Triune area." (Abeyance Motion at 3.) As set forth in the recently filed Supplemental Testimony of John Powell, however, the amount of these capital cost charges will be approved by the Commission and charged at a rate set forth in Superior's tariff.

As to the parties' past disputes and the merits of Superior's pending lawsuit, TWSI misstates several material facts. As set forth more fully in Superior's Complaint (Attachment 2 to the Abeyance Motion), TWSI and Superior agreed to a settlement agreement stating that TWSI would both (i) withdraw its objections to Superior's pending CCN application and (ii) withdraw any objections to amendments of the CCN application when "such amendment does involve a revision or change of the geographic area and number of customers to be served." TWSI's attempts to get out of the plain language of this fully integrated agreement by claiming it is a typo are contrary to the facts and the law. Superior is confident that the Court will enforce the parties' agreement as it was written and signed following vigorous and prolonged negotiation. Far from seeking to "have it both ways," Superior is simply asking TWSI to live up to its word and desist from further attempts to interfere in Superior's operations and expansion.

responses to Staff’s Discovery Requests, several specifically identified properties located within the Milcrofton service area have affirmatively requested immediate service from Superior.<sup>2</sup> The fact that they have not directly contacted TWSI (which, as Superior argues below, they were not required to do in any case) does not change the fact that there is a real and present demand for service within this area.<sup>3</sup>

As to the nature of Superior’s proposed system, TWSI argues that “the proposed new treatment facility and newly acquired drip fields are intended to serve customers in and around Triune, not customers located five miles to the west in the service territory of Tennessee Wastewater.” (Abeyance Motion at 6.) The only support given for this claim is the final sentence of Superior’s response to TPUC Staff Discovery Request 3.4, which TWSI reads in isolation of the rest of the response. TWSI’s reading of this sentence is incorrect, as becomes apparent when Superior’s Petition and discovery responses are examined in their entirety. For example, the very first sentence of the Discovery Request partially quoted by TWSI states: “It is Superior’s intent to provide wastewater service to the *entire area* requested in our Petition.”<sup>4</sup> Superior clearly intends to serve the entire area at issue, including the disputed portions of the Milcrofton service area. Further, as explained in Superior’s Supplemental Response to Staff Discovery Request 3.3, the boundaries requested in the Petition (included the disputed portions of the Milcrofton service area) “were determined by comparing the projected capacity of the proposed system with the estimated

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<sup>2</sup> See, e.g., Service Map, Exhibit 1.7 to Petition to Amend Existing Service Territory in Williamson County; see also February 15, 2023 Letter from Greg Sanford, Exhibit 1.11 to Petition to Amend Existing Service Territory in Williamson County; August 29, 2023 Letter from Greg Sanford, on file in Docket No. 23-00051 (reiterating his request for service and explaining that he does not wish to receive service from TWSI in any event).

<sup>3</sup> TWSI’s stance that there is no present need for service in the disputed portion of the Milcrofton service territory calls into question the legitimacy of its purported territory wide CCN to that entire area.

<sup>4</sup> Superior Wastewater Systems, LLC’s November 28, 2023 Responses to the Commission Staff’s Third Discovery Request Filed November 16, 2023, at p. 8.

demand of this area.”<sup>5</sup> Despite TWSI’s unfounded claims to the contrary, as demonstrated by the record, Superior is willing and able to commit the resources to build a centralized system able to provide immediate service to the entire area requested, including the disputed portion of the Milcrofton service area. The only hold up to providing this service is TWSI’s objection, which is based on legal formalities instead of any legitimate opposition.

The length of the delay caused by this objection also merits discussion. TWSI’s intervention has already contributed to a five-month delay since Superior filed its Petition seeking to serve this area. Although Superior intends to expedite matters as much as possible, the Williamson County lawsuit will require (at a minimum) document production and depositions before it could be even potentially resolved by dispositive motion. Even under the best of circumstances, this process will take several months. The delay could easily stretch into a year or more if, among other possibilities, the case involves (i) significant discovery disputes, (ii) going to trial, or (iii) prosecuting an appeal before a final judgment is reached. Moreover, because the Williamson County lawsuit addresses issues completely unrelated to the issues pending before the Commission, a judgment for TWSI in the Williamson County lawsuit would not moot any of the outstanding issues, which would then need to be litigated over the course of several more months. Such a prolonged and indefinite delay would be a disservice to the customers who have an immediate and expressed need for service in this territory.

**B. Allowing pending matters before the Commission to proceed on a parallel track to the Williamson County lawsuit will not be duplicative and need not necessarily be prolonged or expensive.**

In addition to understating the harm that would be caused by a stay, TWSI exaggerates the costs that would be incurred by allowing the issues pending before the Commission to proceed.

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<sup>5</sup> Superior Wastewater Systems, LLC’s December 7, 2023 Supplemental Response to the Commission Staff’s Third Discovery Request.

On this issue, TWSI merely asserts without support that the case is “likely to be litigious, protracted and expensive.” But there is no reason to believe this will necessarily be the case. To the contrary, this entire matter could be resolved quickly and efficiently before the Commission, without reference to the terms of the parties’ settlement agreement. Moreover, this resolution could be used as a vehicle for providing clarity on certain disputed legal issues, providing additional benefits to the Commission.

There are at least two plausible ways in which TWSI’s objection could be resolved quickly and efficiently as a matter of law by the Commission. First, the Commission could determine that the Order in Docket No. 97-01393 on which TWSI relies in making its objection does not actually provide TWSI the right to exclude other service providers from the entirety of the Milcrofton service territory. In the interest of brevity, Superior will not attempt to litigate this issue in its entirety in the context of this Motion. Suffice it to say, however, that this case is analogous in many ways to the issues presented in Docket 21-00053, which also involved an historic CCN Order that purported to include the right to serve undeveloped territory for which no current demand existed, which the Commission ultimately deemed unenforceable. A similar result could be reached in this case with minimum cost and expense, which would resolve the matter at a very early stage. At the very least, this proceeding could serve as a vehicle for the Commission to provide clarity on these issues, which may reduce future disputes on similar topics and save the Commission additional work in the long run.

Second, TWSI repeatedly states that it will withdraw its objection to another utility providing service to parcels within its claimed service territory if it determines that it is not able to meet the reasonable needs of the public. (Abeyance Motion at 2, 7.) As discussed above, Superior has come forward with a plan to provide service to all parcels contained within the requested area,

including the parcels located in the Milcrofton service area. Given TWSI's stated willingness to withdraw its objections in cases where it cannot provide service, this matter could potentially be resolved at minimum cost and delay by simply asking TWSI whether it has the capacity to serve the parcels at issue. If it does not, then its objection should be withdrawn regardless of the outcome of the Williamson County proceeding. (It also bears emphasis that, as mentioned above, neither of these issues are affected by the Williamson County lawsuit, which addresses separate issues. In other words, in the event Superior loses the Williamson County lawsuit, these issues will still need to be addressed, resulting in even further delays.)

If TWSI prevails on both these threshold issues (that is, if TWSI shows both that it has an enforceable interest in this territory and that it has a present ability and intent to serve the parcels at issue), then matters may well become litigious, costly, and protracted, as the issues that would then come into play (including the factors set forth in Tenn. Code Ann. § 65-4-202) will likely require discovery and testimony.

As set forth above, however, it is by no means a foregone conclusion that those issues must be reached. If, as Superior believes would be the case, TWSI is found to have either (i) no legal right to exclude Superior from this area or (ii) no present ability to serve the territory at issue, the issues that would require extensive discovery and testimony would become moot, and the objection could be promptly dismissed at minimal cost regardless of the outcome of the Williamson County litigation. Moreover, denying TWSI's Motion (at least until these threshold issues can be resolved) may also result in a much quicker resolution than awaiting the results of the lawsuit. A shorter delay, of course, would be in the public interest.

TWSI has already delayed this matter long enough. Landowners within the Milcrofton service area have already been awaiting service for several months. The public interest suggests

that they should not be forced to wait any longer than necessary, especially not when Superior stands ready, willing, and able to invest the funds necessary to build a centralized system capable of serving both those specific customers and all other parcels requested in its Petition.

As set forth above, this Commission can quickly and efficiently permit those customers to receive that service and dismiss TWSI's objection without either protracted litigation or an indefinite stay while the parties' lawsuit winds its way through the judicial system. Superior respectfully requests the opportunity to show the Commission that this matter may be quickly and efficiently resolved on administrative legal grounds. TWSI's Motion to Hold in Abeyance should be denied.

Respectfully submitted,

**Sims|Funk, PLC**

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### **CERTIFICATE OF SERVICE**

I certify that a true and correct version of the foregoing was served in PDF format by electronic mail to the following counsel of record on December 8, 2023:

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By:

A handwritten signature in blue ink, appearing to read "Eric Lybal", written over a light blue circular background.