

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 8, 2023

IN RE:)	
)	
PETITION OF SUPERIOR WASTEWATER)	DOCKET NO.
SYSTEMS, LLC FOR A CERTIFICATE OF)	23-00051
CONVENIENCE AND NECESSITY TO AMEND ITS)	
EXISTING SERVICE TERRITORY IN)	
WILLIAMSON COUNTY, TENNESSEE)	

**ORDER GRANTING, IN PART AND DENYING, IN PART MOTION FOR EXPEDITED
PROCEDURAL SCHEDULE, DENYING MOTION IN LIMINE, AND GRANTING
PETITION TO INTERVENE FILED BY TENNESSEE WASTEWATER SYSTEMS, INC.**

This matter is before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) to consider the *Motion for Expedited Procedural Schedule* filed by Superior Wastewater Systems, LLC (“Superior” or the “Company”), the *Petition of Tennessee Wastewater Systems to Intervene* (“*Petition to Intervene*”) filed by Tennessee Wastewater Systems, Inc. (“TWSI”), and the *Motion in Limine of Superior Wastewater Systems, LLC* (“*Motion in Limine*”).

RELEVANT BACKGROUND

Superior filed its *Petition of Superior Wastewater Systems, LLC to Amend Existing Service Territory in Williamson County* (“*Petition*”) on July 6, 2023. Superior seeks to amend its Certificate of Public Convenience and Necessity (“CCN”) to serve approximately 5,997.24 acres in the Triune and surrounding areas in Williamson County.

SUPERIOR’S MOTION FOR EXPEDITED PROCEDURAL SCHEDULE

Superior filed its *Motion* on July 24, 2023, seeking an expedited procedural schedule in

this matter. According to the Motion, “[a]s the population of the proposed service area grows exponentially, the demand for residential housing and commercial services has become overwhelming; The development of residential and commercial parcels necessarily requires infostructure (sic) construction including wastewater service facilities.”¹ Superior states it seeks to “expedite the consideration of the petition and to enter an order for a procedural schedule prescribing a deadline for interventions, discovery and pre-filed testimony and setting a target hearing date.”² The Hearing Officer recognizes the need to move the docket forward expeditiously. However, the Hearing Officer finds that due to the unique nature of the docket, including, but not limited to, the large service area being requested, the docket cannot be rushed in a manner that would diminish Commission Staff’s ability to conduct a thorough review of the *Petition*. The Hearing Officer concluded that expediting all of the steps requested in the *Motion* must be denied, but the Hearing Officer agreed to expedite the filing of interventions, which would assist in moving the docket forward more quickly. On August 2, 2023, the Hearing Officer issued a *Notice of Filing Deadline* requesting that any interested party seeking to intervene in the proceedings do so by August 24, 2023.³

TWSI’S PETITION TO INTERVENE AND SUBSEQUENT FILINGS

In its *Petition to Intervene* filed on August 24, 2023, TWSI states Superior has petitioned the Commission to expand its service territory to include several parcels in the Triune area, as well as two outlying parcels “which fall within TWSI’s certificated Milcrofton Utility District service territory.”⁴ Therefore, TWSI asserts that its “legal rights, duties, privileges, and other legal

¹ *Motion*, p. 1 (July 23, 2024).

² *Id.*

³ The Hearing Officer clarified in the *Notice* that the request for a deadline for interventions should not be interpreted as granting the *Motion*.

⁴ *Petition to Intervene*, p. 1 (June 3, 2019).

interests related to the provision of wastewater service within its certificated territory will be directly affected by the Commission's determinations in this docket.”⁵

Superior filed *Response of Superior Wastewater Systems, LLC to the Petition of Tennessee Wastewater Systems, to Intervene* (“*Superior's Response*”) on August 29, 2023. Superior asserts TWSI “has not installed any utility infrastructure necessary to serve the 2 parcels in question and there is no property available to TWSI, for the construction of wastewater drip fields in this area necessary to provide wastewater service.”⁶ In addition, Superior cites Commission Rule 1220-04-13-.09(7) that requires written notice of completion to be filed with the Commission within three (3) years after receiving a CCN. According to Superior, TWSI has not provided service within twenty-six (26) years and “any claims now made by TWSI regarding the ‘certificated service territory’ to the 2 unserved parcels should be dismissed.”⁷ Further, Superior asserts the two parcels TWSI identifies are not actually in the Milcrofton Territory and therefore and not actually included in TWSI's CCN authority.⁸ Superior concludes that it is ready to begin construction of the wastewater system infrastructure for the area described in its *Petition* and asks that TWSI's *Petition to Intervene* be denied or in the least, be limited to the two parcels in TWSI's service area.⁹

On August 30, 2023, TWSI filed *Reply of Tennessee Wastewater Systems, Inc.* (“*TWSI's Reply*”) clarifying that the Sanford parcel on 4833 Murfreesboro Road is in TWSI's Milcrofton service territory and it incorrectly identified the parcels in its *Petition to Intervene*. TWSI states neither the property owner nor Superior have contacted TWSI about providing service. In addition,

⁵ *Id.* at 2.

⁶ *Superior's Response*, p. 1 (August 29, 2023).

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.*

TWSI argues that it has been providing service within the Milcrofton territory since 1997 and Commission Rules do not require that the holder of the CCN provide service to every parcel within the service territory.¹⁰ TWSI reiterates the parcels are within its service territory, and it has a legal right to intervene in this docket.

SUPERIOR'S *MOTION IN LIMINE*

On September 1, 2023, Superior filed its *Motion in Limine*, asking that the Commission determine that *TWSI's Reply*, which is really a second request for intervention is untimely and should not be considered as part of the record in this docket. Further, the Commission should dismiss TWSI's request for intervention.¹¹ Superior asserts TWSI's original *Petition to Intervene* has no merit because it referred to parcels not actually in its service territory and TWSI's attempt to correct its mistake did not meet the deadline set forth in the *Notice of Filing Deadline*.¹² In addition, Superior asserts that *TWSI's Reply* was filed without permission from the Hearing Officer as required by Commission Rule 1220-01-02-.06. Superior also asserted that "[i]n the interest of judicial economy, the Commission should take notice that TWSI and Superior have previously entered into an agreement which effectively settles any and all disputes between the parties concerning Superior's right to expand its wastewater system."¹³ According to Superior, the agreement and settlement have previously been considered by the Commission in Docket Nos.04-00335 and 05-00062 and the expansion in this docket is consistent with the terms of the Agreement and the Commission's disposition of the two previous dockets.¹⁴

¹⁰ *TWSI's Reply*, p. 1 (August 30, 2023).

¹¹ *Motion in Limine*, p. 1 (September 1, 2023).

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *Id.*

FINDINGS AND CONCLUSIONS

On September 12, 2023, the Hearing Officer convened a Status Conference with Superior and TWSI to discuss the *Petition to Intervene* and subsequent filings. During the Status Conference, the parties argued their respective positions. The Hearing Officer was not persuaded by Superior's arguments in *Superior's Response* or its *Motion in Limine*. The Hearing Officer finds that the *Settlement and Mutual Release Agreement* ("Settlement Agreement") entered in Docket No. 04-00335 provides that Williamson County Chancery Court will have jurisdiction over any disputes or claims arising under the *Settlement Agreement*. In addition, there is litigation currently pending in Williamson County Chancery Court between the parties over the terms of the *Settlement Agreement*. For these reasons, the Hearing Officer declines to make any determination at this time with regard to the terms of the *Settlement Agreement*.

The Hearing Officer agrees with Superior's argument that pursuant to Commission Rule 1220-01-02-.06(3), TWSI should have sought the Hearing Officer's approval prior to filing *TWSI's Reply*. However, Replies are often allowed by the Hearing Officer and TWSI stated a different interpretation of Commission Rules since it was filing a Reply regarding an Intervention. Therefore, the Hearing Officer will allow *TWSI's Reply*.

The Hearing Officer finds that even though the *Petition to Intervene* initially referred to the wrong two parcels as being in its Milcrofton service area, the fact remains that two parcels for which Superior seeks a CCN are indeed within TWSI's service area. Further, the *Notice of Filing Deadline* allowed for filings beyond the deadline for good cause. Therefore, the Hearing Officer concludes that TWSI's *Petition to Intervene* was timely filed. Based on the foregoing reasons, the Hearing Officer determines the *Motion in Limine* should be **DENIED**.

Under Tenn. Code Ann. § 65-2-107, "All persons having a right under the provisions of

the laws applicable to the commission to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the commission may upon motion allow any interested person to intervene and become a party to any contested case.” Along with its own statutes and rules, contested case proceedings before the Commission are governed by the provisions of Tenn. Code Ann. § 4-5-101, *et seq.*, known as the Tennessee Uniform Administrative Procedures Act (“UAPA”). Tenn. Code Ann. § 4-5-310 establishes the following criteria for considering petitions to intervene, it reads in part:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

(b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

Similarly, TPUC Rule 1220-01-02-.08 directs that requests for intervention before the Commission be made and considered as follows:

(1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.

(2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.

- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.

Upon due consideration, the Hearing Officer concludes that since two of the parcels Superior seeks to serve are within TWSI's service territory, the legal rights, duties, privileges, immunities or other legal interest of TWSI may be determined in this proceeding. Further, the *Petition to Intervene* was timely-filed and should not impair the interests of justice or the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer concludes that TWSI's *Petition to Intervene* should be granted.

IT IS THEREFORE ORDERED THAT:

1. *The Motion for Expedited Procedural Schedule* is granted in part, and denied, in part.
2. *The Motion in Limine of Superior Wastewater Systems, LLC* is denied.
3. *The Petition of Tennessee Wastewater Systems to Intervene* is granted.
4. Tennessee Wastewater Systems, Inc. may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.


Monica Smith-Ashford, Hearing Officer