

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

January 23, 2024

IN RE:

PETITION OF SUPERIOR WASTEWATER
SYSTEMS, LLC FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO AMEND ITS
EXISTING SERVICE TERRITORY IN
WILLIAMSON COUNTY, TENNESSEE

DOCKET NO.
23-00051

ORDER GRANTING MOTION TO HOLD DOCKET IN ABEYANCE

This matter came before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) during a Status Conference held on December 19, 2023, for consideration of the *Motion of Tennessee Wastewater Systems, Inc. to Hold Proceedings in Abeyance* (“TWSI’s Motion”) filed on December 1, 2023. Tennessee Wastewater Systems, Inc. (“TWSI”) asks the proceedings in this docket be held in abeyance pending the outcome of a lawsuit filed by Superior Wastewater Systems, LLC (“Superior”) in Williamson County Chancery Court.

TWSI’s Motion

In *TWSI’s Motion*, TWSI asks that the proceedings in this docket be held in abeyance while Superior and TWSI litigate a related matter in Williamson County Chancery Court. Superior sued TWSI in Williamson County Chancery Court seeking enforcement of a Settlement Agreement entered into with TWSI in previous Commission dockets that settled the issues in those dockets and would prohibit TWSI from intervening in matters before the Commission related to the service area at issue in the settled dockets. According to TWSI, “[i]n light of Superior’s lawsuit, the case should be held in abeyance until the court has ruled. It would be unfair to Tennessee Wastewater

and a waste of significant time and resources of the Commission to spend months litigating this dispute only to have the court later rule that Tennessee Wastewater has no right to participate.”¹ According to TWSI, there is no harm in waiting for the Chancery Court’s decision because although Superior maintains there is immediate need for the service, its plans indicate that the construction will be divided into four (4) sections and will take place over a period of three (3) to ten (10) years.² TWSI maintains that since it is their service area, they should have the right of first refusal to provide the wastewater service.³ Since no one has sought service from TWSI, TWSI asserts it has had no reason to evaluate whether it can meet the reasonable needs of the customer as described in Tenn. Code Ann. § 65-5-203 or whether to permit another utility to provide the service.⁴ TWSI states that Superior has asked to have TWSI pay the litigation costs Superior incurs during the proceeding before the Commission. However, Superior argues before the Commission that this docket should not be held in abeyance and wants to continue accruing litigation costs before the Commission even though there is a possibility the Chancery Court may rule that TWSI must withdraw from this docket.⁵ TWSI argues Superior should not be allowed to continue to litigate before the Commission, which will likely be “litigious, protracted, and expensive” and then have TWSI pay those costs.

RESPONSE IN OPPOSITION TO MOTION TO HOLD PROCEEDINGS IN ABEYANCE

In its *Response in Opposition to Motion to Hold Proceedings in Abeyance* (“*Superior’s Response*”) filed by Superior on December 8, 2023, Superior asks that *TWSI’s Motion* be denied. According to Superior, there is a present need for service in the Milcrofton service area that has

¹ *TWSI’s Motion*, p. 1 (December 1, 2023).

² *Reply of Tennessee Wastewater in Support of Motion of Motion to Hold Proceedings in Abeyance*, pp. 5-6 (December 15, 2023).

³ *Id.* at 7.

⁴ *Id.*

⁵ *Id.*

already gone unmet due to TWSI's intervention and delaying the proceedings further would cause months, perhaps years, before those individuals could receive service.⁶ Superior maintains that litigating in Chancery Court and before the Commission would not be costly, time-consuming, or duplicative. Superior argues there are threshold legal issues in this docket that when resolved would bring clarity to future dockets before the Commission, and these threshold issues can be resolved much sooner than the Chancery Court case.⁷ Therefore, Superior asserts that denying *TWSI's Motion* would allow the Milcrofton residents to receive service faster and is in the public interest.⁸ Superior maintains it 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."⁹ Superior denies that litigation before the Commission would be protracted and sets forth a couple of different possibilities in which the matters in the docket could be resolved relatively quickly.¹⁰ Superior does admit that if TWSI prevails on both of these issues then the matters before the Commission may become protracted and costly. Superior maintains TWSI has already delayed this matter long enough, and the Milcrofton landowners seeking service should not be required to wait longer than necessary when Superior is ready to invest funds necessary in a centralized system capable of serving those customers as well as the other parcels requested in Superior's *Petition*.¹¹

FINDINGS AND CONCLUSIONS

Commission Rule 1220-01-02-.22 provides:

⁶ *Superior's Response*, p. 1 (December 8, 2024).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ Briefly, these potential avenues to resolve the docket quickly include a determination by the Commission that TWSI does not have the right to exclude other providers from providing service to the entire Milcrofton service area, or by TWSI withdrawing its objection if it does not have the capacity to serve the parcels at issue. *See Id.* at 5-6.

¹¹ *Id.* at 6-7.

In any contested case the Commission or the Hearing Officer:

- (1) May determine that there is no genuine issue as to any material fact. In reaching such determination, the Commission or Hearing Officer may, in its discretion, hear and determine all or any part of a case, without hearing oral testimony;
- (2) May, on its own motion or the motion of any party, allow amendments, consolidate cases, join parties, sever aspects of the case for separate hearings, permit additional claims or contentions to be asserted, bifurcate or otherwise order the course of proceedings in order to further the just, efficient and economical disposition of cases consistent with the statutory policies governing the Commission; and
- (3) Shall afford all parties an opportunity to be heard after reasonable notice before exercising these general procedural powers.

The Hearing Officer finds that the decision in the case being litigated in the Williamson County Chancery Court potentially impacts this docket. Although Superior suggests potential outcomes that may result in a speedy disposition in the docket, there is no way to determine the length of time or route the proceedings in this docket may take, and as TWSI states, the proceedings are likely to be litigious, protracted, and expensive. Further, Superior has asked in Chancery Court that its legal expenses before the Commission be paid by TWSI. The Hearing Officer finds it would be unfair for TWSI to be required to proceed with this docket when the Chancery Court may rule it should not be allowed to participate and that it must pay Superior's legal expenses. In addition, the Hearing Officer bifurcated this docket by Order issued December 8, 2023, which allowed the majority of the parcels Superior requested to serve in its *Petition*, including the portion where the proposed centralized wastewater system is to be constructed, to proceed forward as Docket No. 23-00085.¹² In fact, Docket No. 23-00085 was approved by the Commission on January 17, 2024. Based on these findings, the Hearing Officer concludes that to

¹² See *In Re: Petition of Superior Wastewater Systems, LLC for a Certificate of Convenience and Necessity to Amend Its Existing Service Territory in Williamson County, Tennessee (Request for the Eastern Portion of Related Petition in Docket No. 23-00051)*, Docket No. 23-00085, *Order Bifurcating Docket* (December 8, 2023).

further the just, efficient, and economical disposition of this docket, *TWSI's Motion* should be granted, and this docket should be held in abeyance pending the outcome of the related Williamson County Chancery Court case or until further action by the Commission or Hearing Officer.

IT IS THEREFORE ORDERED THAT:

1. The above-captioned matter is held in abeyance until the conclusion of the related Williamson County Chancery Court case, *Superior Wastewater Systems, LLC f/k/a King's Chapel Capacity, LLC v. Tennessee Wastewater Systems, Inc*, Case No. 23CV-53047, or until further action by the Hearing Officer or Tennessee Public Utility Commission.

2. The parties shall keep the Hearing Officer updated on the status of *Superior Wastewater Systems, LLC f/k/a King's Chapel Capacity, LLC v. Tennessee Wastewater Systems, Inc*, Case No. 23CV-53047.

3. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Public Utility Commission.


Monica Smith-Ashford, Hearing Officer