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November 13, 2023

Via Electronic Delivery

Chairman Herbert Hilliard
c/o Ectory Lawless
Tennessee Public Utility Commission
502 Deaderick Street, Suite 4
Nashville, TN 37243

Electronically Filed in TPUC Docket Room
on November 13, 2023 at 2:22 p.m.

Re: *Petition of Superior Wastewater Systems, LLC to Adopt an Alternative Regulatory Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(7). Docket No. 23-00069*

Dear Chairman Hilliard:

Please file the Rebuttal Testimony on behalf of John Powell and Superior Wastewater Systems, LLC in the referenced docket.

As required, an original and four copies of this filing will be sent via US Mail along with the executed Affidavit of Mr. Powell. Please contact me if you have any questions concerning this filing or require additional information.

Sincerely,

FARRIS BOBANGO PLC


By: Charles B. Welch, Jr.

Enclosures

Cc: John Powell

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

**PETITION OF SUPERIOR
WASTEWATER SYSTEMS, LLC TO
ADOPT AN ALTERNATIVE
REGULATORY MECHANISM
PURSUANT TO TENN. CODE ANN. §
65-5-103(D)(7)**

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DOCKET NO. 23-00069

**REBUTTAL TESTIMONY
of
JOHN POWELL**

ON BEHALF OF SUPERIOR WASTEWATER SYSTEMS, LLC

1 ***Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR THE***
2 ***RECORD.***

3 ***A1.*** My name is John Powell, and my business address is PO Box 40, Arrington, TN
4 37014.

5
6 ***Q2. ARE YOU THE SAME JOHN POWELL WHO PRESENTED PRE-FILED***
7 ***TESTIMONY IN THIS DOCKET?***

8 ***A2.*** Yes.

9
10 ***Q3. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?***

11 ***A3.*** The purpose of my rebuttal testimony is to respond on behalf of Superior
12 Wastewater Systems, LLC (“Superior” or “the Company”) to the direct testimony
13 of David Dittmore, filed on behalf of the Consumer Advocate Division of the
14 Tennessee Attorney General’s Office (“Consumer Advocate”) in this proceeding.

15
16 ***Q4. PLEASE SUMMARIZE YOUR RESPONSE TO MR. DITTEMORE’S***
17 ***DIRECT TESTIMONY.***

18 ***A4.*** It appears that Mr. Dittmore has first imagined several flaws in Superior’s
19 proposed ARM Petition. He then goes on to discuss his proposals to remedy
20 these supposed flaws. As I will point out, for the most part Mr. Dittmore’s
21 concerns are either misplaced or not relevant to this Docket.

22

1 ***Q5. PLEASE BRIEFLY DESCRIBE THE COMMENTS AND***
2 ***RECOMMENDATIONS THAT MR. DITTEMORE HAS EXPRESSED IN***
3 ***HIS TESTIMONY.***

4 ***A5.*** The comments and recommendations addressed by Mr. Dittemore are laid out
5 below in Table 1.

Table 1 – SWS ARM Comments and Recommendations Expressed in David Dittemore’s Testimony		
Item	Testimony Page	Description
Comment 1	6-7	SWS Prior Use of Escrow Funds
Comment 2	7-8	Burden of Proof in a Future Rate Case
Recommendation 1	9	Provision of Annual Report
Recommendation 2	9-10	Payroll Expenditures to John Powell
Recommendation 3	10	Source & Support for GDP-IPD Rate
Recommendation 4	11	True-up Adjustments to the GDP-IPD Rate
Recommendation 5	11-12	ARM Term Limit
Recommendation 6	12	Burden of Proof in a Future Rate Case
Recommendation 7	13	Compliance Audit Limitations
Recommendation 8	13	Symmetrical ARM Calculations
Recommendation 9	13-14	ARM Should not be Transferable

6 I will discuss each one of Mr. Dittemore’s comments and recommendations.
7 However, before I begin, I do want to point out that the ARM methodology
8 proposed by Superior only addresses rate adjustments to consider a conservative
9 measure of inflation. Our proposed ARM does not seek to guarantee any return
10 on investment, or a return of actual operating expenditures that is provided to
11 other utilities with a Commission approved ARM.

12

13 ***Q6. PLEASE ADDRESS MR. DITTEMORE’S COMMENT 1 REGARDING***
14 ***SWS’S PRIOR USE OF ESCROW FUNDS.***

1 **A6.** This issue is being considered in the Commission Staff's ongoing compliance
2 audit in Docket No. 21-00086. While the Staff has yet to issue its formal
3 compliance audit report, the Commission has already allowed the Consumer
4 Advocate to intervene in that Docket. As a result, it seems to me to be
5 inappropriate for the Consumer Advocate to ask for some type of prejudgment of
6 those issues in this ARM proceeding. I would therefore recommend that the
7 Commission reject the claims in Comment 1 to Mr. Dittemore's testimony.

8
9 ***Q7. PLEASE ADDRESS MR. DITTEMORE'S COMMENT 2 REGARDING***
10 ***SWS'S BURDEN OF PROOF IN A FUTURE RATE CASE.***

11 **A7.** Mr. Dittemore appears to believe that the Commission acceptance of an ARM for
12 Superior in this Docket should somehow increase our burden of proof in a future
13 rate case. I disagree with Mr. Dittemore's conclusion here. First, as I mentioned
14 previously, our proposed ARM is designed to only provide Superior with a
15 conservative rate adjustment for inflation – there is no adjustment for any increase
16 in earnings or recovery of new costs. Secondly, I know of no similar burden of
17 proof requirement that has ever been placed on any other Tennessee utility solely
18 because they received ARM approval from this Commission. Finally, it has
19 always been my understanding that the burden of proof in a traditional rate case is
20 always placed on the utility. As a result, it is unclear to me as to exactly what
21 newfound burden of proof Mr. Dittemore is claiming that Superior should have to
22 meet. I would therefore recommend that the Commission reject the claims in
23 Comment 2 to Mr. Dittemore's testimony.

1

2 ***Q8. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 1***
3 ***REGARDING THE INCLUSION OF SUPERIOR'S ANNUAL REPORT IN***
4 ***THE ARM TARIFF FILINGS.***

5 ***A8.*** On November 6, 2023, Superior made our tariff filing in this Docket to comply
6 with the terms expressed in our ARM Petition and to give the Commission
7 adequate time to properly review this filing. This tariff filing included the
8 relevant pages from our annual report to support our existing operating expenses,
9 operating income and number of customers. Superior will always provide these
10 particular pages from our Annual Reports in future ARM tariff filings. However,
11 I don't see the need to include our entire annual report within the ARM tariff
12 filings since the other pages would not be relevant. I would therefore recommend
13 that the Commission reject the requirements contained in Recommendation 1 to
14 Mr. Dittmore's testimony.

15

16 ***Q9. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 2***
17 ***REGARDING PAYROLL DISCLOSURES FOR JOHN POWELL.***

18 ***A9.*** It appears that Mr. Dittmore is not making this recommendation as part of the
19 ARM Petition, but "...to confirm that Plant in Service and Operating Expenses
20 are not skewed due to unreasonable compensation levels." I disagree with Mr.
21 Dittmore's recommendation. First, as I mentioned earlier, the ARM
22 methodology proposed by Superior only addresses rate adjustments to consider a
23 conservative measure of inflation – there is no adjustment for increased costs.

1 Therefore, if I were to increase my own personal compensation charges to
2 Superior, it would not be reflected in the ARM adjustment. Furthermore, my
3 compensation charged to Superior is already reflected in our annual report to the
4 Commission. I would therefore recommend that the Commission reject the
5 requirements contained in Recommendation 2 in Mr. Dittimore's testimony.
6

7 ***Q10. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 3***
8 ***REGARDING THE SOURCE AND SUPPORT FOR THE GDP-IPD***
9 ***RATES.***

10 ***A10.*** On November 6, 2023, Superior made our tariff filing in this Docket to comply
11 with the terms expressed in our ARM Petition and to give the Commission
12 adequate time to properly review this filing. This tariff filing included the source
13 pages from the Bureau of Economic Analysis website supporting the Gross
14 Domestic Product-Implicit Price Deflator ("GDP-IPD") rates. Superior will
15 always provide these particular pages in future ARM tariff filings. As a result of
16 Superior's tariff filing, and our commitment to provide this same documentation
17 in future tariff filings, Mr. Dittimore's Recommendation 3 should be disregarded.
18

19 ***Q11. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 4***
20 ***REGARDING A TRUE-UP FOR ADJUSTMENTS TO THE GDP-IPD***
21 ***RATE.***

22 ***A11.*** Because of the timing required to first obtain the GDP-IPD rates and then to make
23 an ARM tariff filing available for review for implementation on January 1st of

1 each year, Superior will always use the initial rate published on the Bureau of
2 Economic Analysis website. However, as noted by Mr. Dittmore, these GDP-
3 IPD rates are sometimes revised by the Bureau of Economic Analysis at a later
4 date. Although not addressed in our Petition, Superior does agree that any GDP-
5 IPD revisions should be properly reflected in the ARM calculation for the
6 subsequent year. To carry out this revision, in the subsequent ARM filing,
7 Superior will recalculate what its revenue should have been if the final GDP-IPD
8 rate had been known in the previous ARM filing, and then make this revenue
9 adjustment to the subsequent ARM filing. I would therefore recommend that the
10 Commission accept the requirements contained in Recommendation 4 to Mr.
11 Dittmore's testimony.

12
13 ***Q12. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 5***
14 ***REGARDING AN ARM TERM LIMIT.***

15 ***A12.*** In this section of his testimony, Mr. Dittmore recommends a five-year term for
16 the ARM proposed by Superior because it is "...unique among the ARM's
17 previously adopted by the Commission." I disagree with this recommendation.
18 As I mentioned previously, Superior's proposed ARM is designed to only provide
19 a conservative rate adjustment for inflation – there is no adjustment for any
20 increase in earnings or recovery of new costs as found in the ARM provisions of
21 other utilities. Despite this more conservative approach to an ARM procedure,
22 Mr. Dittmore uses this opportunity to recommend an incremental burden for
23 Superior with additional ARM restrictions.

1
2 Further, I'm not certain as to exactly what Mr. Dittemore believes that a five-year
3 ARM re-evaluation would reveal since it would only show historical inflation
4 adjustments and how our rates have been adjusted for that inflation. I would
5 therefore recommend that the Commission reject the requirements contained in
6 Recommendation 5 in Mr. Dittemore's testimony.
7

8 ***Q13. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 6***
9 ***REGARDING THE BURDEN OF PROOF IN A FUTURE RATE CASE.***

10 ***A13.*** Here, Mr. Dittemore repeats his earlier testimony that is described in Comment 2
11 regarding a heightened burden of proof for Superior in a future rate case. As
12 stated earlier, I disagree with this recommendation. The ARM that I've proposed
13 for Superior only provides a conservative annual adjustment for inflation – it does
14 not provide an adjustment to earnings or recovery of new costs. As a result, there
15 eventually will come a time when the Company must file a traditional rate case to
16 appropriately recover its costs. Our proposed ARM certainly lessens – but does
17 not eliminate – the need for that future rate case. I would therefore recommend
18 that the Commission reject the claims in Recommendation 6 in Mr. Dittemore's
19 testimony.
20

21 ***Q14. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 7***
22 ***REGARDING COMPLIANCE AUDIT LIMITATIONS.***

1 **A14.** In this section, Mr. Dittemore repeats his earlier testimony that is described in
2 Comment 1 regarding the Commission Staff’s ongoing compliance audit in
3 Docket No. 21-00086. Without providing any specific examples, Mr. Dittemore
4 expresses his concern that the “Consumer Advocate should not be hindered by the
5 adoption of the proposed ARM mechanism in responding to any issues that may
6 arise in TPUC Docket No. 21-00086.” Since the Consumer Advocate has already
7 intervened in Docket No. 21-00086, I fail to see how they have been hindered
8 because of this ARM Docket. I would therefore recommend that the Commission
9 disregard the claims in Recommendation 7 in Mr. Dittemore’s testimony.

10

11 ***Q15. PLEASE ADDRESS MR. DITTEMORE’S RECOMMENDATION 8***
12 ***REGARDING SYMMETRICAL ARM CALCULATIONS.***

13 **A15.** Mr. Dittemore’s concerns in this recommendation appear to address the
14 possibility that the year-over-year GDP-IPD rates could theoretically result in a
15 negative number. On November 6, 2023, Superior made our tariff filing in this
16 Docket to comply with the terms expressed in our ARM Petition and to give the
17 Commission adequate time to properly review this filing. This tariff filing
18 included the ARM formula that was outlined in our Petition and my own direct
19 testimony. Superior will always use this same formula to calculate the ARM –
20 even if it produces a negative amount. In fact, I would look forward to the
21 opportunity to lower the ARM rates to our customers because it would indicate a
22 downward trend of inflation and decreased costs of providing all goods and
23 services. Because our ARM formula already provides for both positive as well as

1 potentially negative adjustments, I would recommend that the Commission
2 disregard the claims contained in Recommendation 8 to Mr. Dittimore's
3 testimony.

4
5 ***Q16. PLEASE ADDRESS MR. DITTEMORE'S RECOMMENDATION 9***
6 ***REGARDING THE TRANSFERABILITY OF SUPERIOR'S ARM***
7 ***MECHANISM.***

8 ***A16.*** Mr. Dittimore's concern here relates to the potential for Superior to be acquired
9 by another entity and whether the ARM mechanism would also transfer. I can
10 certainly say that Superior is not considering a sale or transfer to any other party.
11 In fact, we are currently planning to expand our existing operations to the Triune
12 area. However, if Superior were to consider a sale or transfer of our utility
13 property, then it is my understanding that we would be required to file a petition
14 with the Commission in a new docket. It appears to me that such an acquisition
15 docket would be the best place for the Commission to decide whether the ARM
16 mechanism should transfer to a new owner. I would therefore recommend that
17 the Commission reject the claims contained in Recommendation 9 to Mr.
18 Dittimore's testimony.

19
20 ***Q17. MR. POWELL, PLEASE SUMMARIZE YOUR REBUTTAL***
21 ***TESTIMONY.***

22 ***A17.*** I recommend that the Commission accept the requirements contained in
23 Recommendation 4 to Mr. Dittimore's testimony regarding the potential true-up

1 for any subsequent GDP-IPD rate revisions. I recommend that the remainder of
2 Mr. Dittmore's comments and recommendations be either rejected or
3 disregarded.

4

5 ***Q18. DOES THIS COMPLETE YOUR TESTIMONY?***

6 ***A18.*** Yes, it does.