

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

March 4, 2024

IN RE:	)	
	)	DOCKET NO.
PETITION OF SUPERIOR WASTEWATER	)	23-00069
SYSTEMS, LLC TO ADOPT AN ALTERNATIVE	)	
REGULATORY MECHANISM PURSUANT TO	)	
TENN. CODE ANN. § 65-5-103(d)(7)	)	

---

ORDER APPROVING INITIAL ANNUAL RATE REVIEW MECHANISM FOR  
SUPERIOR WASTEWATER SYSTEMS, LLC

---

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Clay R. Good, and Commissioner Kenneth C. Hill of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on December 11, 2023, to consider the *Petition of Superior Wastewater Systems, LLC to Adopt an Alternative Regulatory Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(7)* (“*Petition*”) filed by Superior Wastewater Systems, LLC (“Company” or “Superior”) on September 11, 2023.

**PETITION AND RELEVANT BACKGROUND**

Superior is a small wastewater public utility serving approximately 350 customers in Williamson County, Tennessee.<sup>1</sup> The Company’s *Petition* requests, pursuant to Tenn. Code Ann. § 65-5-107(d)(7), an alternative rate adjustment mechanism to adjust rates annually based upon the twelve-month change in the Gross Domestic Product Implicit Price Deflator (“GDP-IPD”)

---

<sup>1</sup> *Petition*, p. 1 (September 11, 2023).

index on September 30<sup>th</sup>.<sup>2</sup> Superior anticipates that its annual rate review mechanism (“ARRM”) will be filed on or before November 30<sup>th</sup> of each year. According to Superior, its request is made in order to assist the Commission in its exercise of rate regulation and to reduce the burden and cost of general rate case filings to customers.<sup>3</sup> Superior requests to make its first ARRM filing on or before November 30, 2023, using the twelve months ended September 30, 2023, as the base period. The rates established in that proceeding would be effective for wastewater service provided on and after January 1, 2024.

In support of its *Petition*, the Company filed the pre-filed direct testimony of John Powell, Owner and President of Superior.<sup>4</sup> According to Mr. Powell, the Company’s proposal comports with the Tenn. Code Ann. 65-5-103(d)(7), which allows the Commission to approve “other methodologies” as the basis of an alternate regulatory rate adjustment mechanism.<sup>5</sup> For 17 years, the Company charged a monthly base charge of \$24.98 with an escrow charge of \$10.13. In Commission Docket No. 22-00087, the Commission approved an increase in the base charge to \$44.21. Mr. Powell testified that customers were understandably upset by such a sizable increase in their rates. According to Mr. Powell, the Company postponed filing a rate case because of the difficulty and costs of preparing a rate case, which, in turn, necessitated the Company using escrow funds to remedy its cash shortfall.<sup>6</sup> Mr. Powell testified that the pandemic and other delays contributed to the Company’s Commission Staff-assisted rate case not being heard until February of 2023.

---

<sup>2</sup> *Id.* at 2-3.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> John Powell, Pre-Filed Direct Testimony, p. 1 (September 11, 2023) (incorporated within *Petition* filing).

<sup>5</sup> *Id.* at 2.

<sup>6</sup> *Id.* at 3.

In its *Petition*, Superior sought approval to annually update rates based on changes in the GDP-IPD index.<sup>7</sup> The Company's proposal required Superior to make a filing by November 30<sup>th</sup> of each calendar year calculating the percentage increase in the GDP-IPD Index from the 3<sup>rd</sup> quarter of the current year to the 3<sup>rd</sup> quarter of the previous year. The percentage change in the index would be applied to Superior's existing base service charge in order to arrive at new base rates, effective January 1<sup>st</sup> of the following year.<sup>8</sup> The proposed tariff provided specific guidelines on the source and calculations of the GDP-IPD and specifies the GDP-IPD will only be applied to the current base rate and not applied to the escrow or bond rate or temporary surcharges or refunds. The newly adjusted base rate would be effective for service provided on or after January 1.

Mr. Powell provided a sample calculation on the workings of the ARRM that determined the difference (as a percentage) between the GDP-IPD index value at 3<sup>rd</sup> Quarter 2021 to that of 3<sup>rd</sup> Quarter 2022. The percentage is applied to the existing base service charge to arrive at the new base rate. The difference between revenues calculated at the existing base rate and the new base rate is calculated to determine the total revenue adjustment. The total revenue adjustment is added to the net operating income at current rates to determine the pro forma net operating income, which can be compared to the required net operating income.<sup>9</sup> In support of the Company's request, Mr. Powell testified that the Texas Public Service Commission has adopted a similar provision for an annual rate adjustment for small water and wastewater utilities.<sup>10</sup>

Mr. Powell provided an example of GDP-IPD to set rates versus the rate increase that was approved in Commission Docket No. 22-00087. Based upon his calculations, Mr. Powell determined that the Company's initial rates would have increased to \$37.09 per the GDP-IPD,

---

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* at 6-7.

<sup>10</sup> *Id.* at 8.

which Mr. Powell conceded would not have completely covered the cost of service for the Company but would have been a conservative adjustment.<sup>11</sup> Mr. Powell asserted that approval of the ARRM will not remove any rights of the utility to petition for removal of the ARRM or the authority of the Commission to order suspension of the ARRM pending a review of rates in a traditional rate case setting. The Company's request is limited to approval of an ARRM for the territories currently served by Superior which are the Ashby Communities, Hill & Roberts Parcels, Fox Parcel, and Taliaferro Road Parcel.<sup>12</sup>

#### **POSITION OF THE CONSUMER ADVOCATE**

On November 1, 2023, pursuant to a procedural schedule, Mr. David N. Dittmore filed pre-filed testimony on behalf of the Consumer Advocate. In his testimony, Mr. Dittmore stated that the adoption of the GDP-IPD as an inflation index is appropriate, although he noted there are other measurements and indices that could be explored in the future.<sup>13</sup> Mr. Dittmore indicated support for the Company's proposal conditioned upon nine additional requirements he recommended.<sup>14</sup> Mr. Dittmore opined that upon approval of this mechanism, customers will likely incur a small annual rate increase, and the Company's base rates will be de-linked from its actual costs of operations. However, Mr. Dittmore testified that the Company's earnings can be monitored by the Consumer Advocate and the Commission through the submission of its annual report.<sup>15</sup>

Mr. Dittmore's support of the Company's proposal also hinged upon the timely resolution of Commission Docket No. 21-00086, wherein the Company's use of escrow funds is subject to

---

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> David N. Dittmore, Pre-Filed Direct Testimony, pp. 3-4 (November 1, 2023).

<sup>14</sup> *Id.* at 4-6.

<sup>15</sup> *Id.* at 5.

an audit.<sup>16</sup> While Mr. Dittemore generally agreed with Mr. Powell's assertion that the ARRM does not change or alter the Commission's authority over rates and the Company may petition for a rate increase through a traditional method, Mr. Dittemore stated that the Company must demonstrate extraordinary circumstances which necessitate an increase in base rates.<sup>17</sup> Further, Mr. Dittemore testified that any intervening party requesting to terminate the ARRM should be able to demonstrate material harm to the ratepayers if the ARRM continues.<sup>18</sup>

Mr. Dittemore supported the Company's proposal with the addition of nine conditions or requirements that should be adopted and implemented with approval of the proposed ARRM. First, the Company should provide its most recent annual report with each ARRM filing to allow the Consumer Advocate to have ready access to the information. Second, the amount of Mr. Powell's payroll charges, to include compensation and benefits charged from affiliated companies to capital projects and operating & maintenance expense, should be identified to assess the overall reasonableness of the Company's financial results. Third, supporting documentation should be provided confirming the GDP-IPD rate and identifying whether the GDP-IPD data represents the initial release of GDP data, the Bureau of Economic Analysis' ("BEA") first update, or the BEA's second update.

Fourth, any adjustments to the September 30<sup>th</sup> GDP-IPD data issued after the Company's annual ARRM filing will be identified along with any over-/under-recovery included with the subsequent ARRM. Further, any revisions to the GDP-IPD data used in a prior year's ARRM filings should be calculated and applied in the next year's ARRM filing. Mr. Dittemore provided an example of how this calculation should be made.<sup>19</sup> Fifth, the ARRM should be approved for a

---

<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> *Id.* at 7.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 11.

five-year period with subsequent submissions reevaluated by the Commission. According to Mr. Dittemore, the proposed ARRM is unique to existing ARRMs; therefore, a reevaluation recommending either continuation, modification, or termination should occur during the mechanism's fifth year.

Sixth, should the Company request a traditional rate case during the five-year period, it must demonstrate extraordinary circumstances necessitating the request. The purpose of the ARRM is to reduce regulatory costs of a traditional rate case; therefore, Mr. Dittemore concluded that the Company should not be allowed to abandon the ARRM without demonstrating extraordinary circumstances.<sup>20</sup> Seventh, if the Commission approves an alternative regulatory mechanism for the Company prior to the resolution of Docket No. 21-00086 (escrow and bond cost compliance audit), this approval shall not hinder or limit the Consumer Advocate's ability to make recommendations regarding or respond to issues arising from that outstanding docket.

Eighth, should the GDP-IPD index value drop, the Commission should clearly state the Company will reduce rates accordingly. Finally, Mr. Dittemore testified that because the Company's proposal is being evaluated based on the Company's current status, any approved ARRM should not be transferable to an acquiring entity.

## **REBUTTAL TESTIMONY**

Mr. Powell filed rebuttal testimony on behalf of the Company on November 13, 2023. Mr. Powell testified that the Company's proposal is to adjust rates based on a conservative measure of inflation that does not guarantee any return on investment.<sup>21</sup> Mr. Powell rejected the Consumer Advocate's position that the Company's ongoing audit and escrow compliance rules issues in Docket No. 21-00086 should be resolved prior to any approval of an ARRM. Mr. Powell argued

---

<sup>20</sup> *Id.* at 12.

<sup>21</sup> John Powell, Pre-Filed Rebuttal Testimony, p. 2 (November 13, 2023).

that the Consumer Advocate has been granted intervention; therefore, determinations made in Docket No. 21-00086 are unnecessary and unrelated to this docket.<sup>22</sup> Further, Mr. Powell contended that the proposal of the Consumer Advocate to require the Company to demonstrate extraordinary circumstances as a precondition for its next rate case is contrary to previous Commission ARRM approvals for other regulated utilities and creates a new burden of proof for a rate case.<sup>23</sup>

Next, Mr. Powell addressed each of the Consumer Advocate's nine recommendations or conditions for approval. First, Mr. Powell stated that the tariff filing in this docket and in subsequent ARRM filings will include the relevant pages from its annual report supporting existing operating expenses, operating income, and the number of customers with future ARRM filings. Mr. Powell asserted however, that the remainder of the report is irrelevant, and that the full recommendation should not be required.<sup>24</sup>

Next, according to Mr. Powell, the proposed ARRM only considers a conservative measure of inflation and any adjustment in Mr. Powell's compensation will not be reflected in the ARRM. As such, the Company's position was that the submission of Mr. Powell's compensation charged from affiliated companies to capital projects and operating and maintenance expense is not necessary. With respect to the Consumer Advocate's third recommendation, Superior previously committed to provide in this docket and in future ARRM filings the source pages from the BEA website supporting the GDO-IPD rates.<sup>25</sup>

Concerning the Consumer Advocate's fourth recommendation, Superior will use the initial rate published on the BEA website for all future ARRM filings. However, Superior agreed with

---

<sup>22</sup> *Id.* at 2-3.

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.* at 4.

<sup>25</sup> *Id.* at 5.

Mr. Dittmore's recommendation that any subsequent revisions to the GDP-IPD used for adjusting its base rates should be reflected in the ARRM calculation. Therefore, any future ARRM filing will determine what the revenue would have been had the subsequently adjusted GDP-IPD rate been used in the previous ARRM filing; this adjustment will be included in the subsequent ARRM filing.<sup>26</sup>

With respect to the Consumer Advocate's fifth recommendation requiring a five-year term limit on the ARRM, Mr. Powell rejected the recommendation based on the mechanism's use of a conservative adjustment.<sup>27</sup> Mr. Powell contended that the Consumer Advocate's sixth recommendation calls for imposing a heightened burden of proof beyond that placed on other utilities for a future rate case.<sup>28</sup> Mr. Powell rejected the Consumer Advocate's seventh recommendation that the Company's ongoing audit and escrow compliance issues in Docket No. 21-00086 be resolved prior to approval of an ARRM. Mr. Powell stated that the Consumer Advocate has been granted intervention; therefore, any type of determination in the 21-00086 docket is unnecessary and unrelated to this docket.<sup>29</sup>

The Company also disagreed with the eighth recommendation. Mr. Powell asserted that Superior would continue to use the ARRM formula outlined in this proceeding whether calculations result in a positive or a negative amount.<sup>30</sup> Finally, should Superior consider a sale or transfer of the utility, the acquisition docket before the Commission would be the proper docket for considering the issue of transferring the ARRM to the new owner. Therefore, Mr. Powell testified the ninth recommendation should be rejected. In summary, Mr. Powell agreed with the

---

<sup>26</sup> *Id.* at 5-6.

<sup>27</sup> *Id.* at 6-7.

<sup>28</sup> *Id.* at 7.

<sup>29</sup> *Id.* at 2-3, 7-8

<sup>30</sup> *Id.* at 8-9.



Consumer Advocate’s recommendation to include any revenue true-up adjustment in the following year’s filing necessary to account for changes in the GDP-IPD value made after adjusting the Company’s base rates. Mr. Powell asserted that the remainder of Mr. Dittmore’s recommendations should be denied.<sup>31</sup>

## **THE HEARING**

The hearing in this matter was noticed by the Commission on December 1, 2023, and held during the regularly scheduled Commission Conference on December 11, 2023. Appearances were made by the following:

Superior Wastewater Systems, LLC. – Charles B. Welch, Jr. Esq., Farris Bobango PLC, 414 Union Street., Suite 1105 Nashville, Tennessee 37219.

Consumer Advocate Division – Victoria B. Glover, Esq., Consumer Advocate Division of the Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee, 37219.

Mr. Powell presented testimony on behalf of the Company. Mr. Dittmore participated telephonically due to unforeseen circumstances and testified on behalf of the Consumer Advocate.<sup>32</sup> Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

## **FINDINGS & CONCLUSIONS**

Based on the presentations of the parties and the evidentiary record, the panel unanimously found that the proposed annual rate review mechanism complied with statutory requirements and voted unanimously that the *Petition* be approved. The panel further concluded, at this time and under the facts and circumstances of this docket, that the nine additional requirements

---

<sup>31</sup> John Powell, Pre-Filed Rebuttal Testimony, p. 9 (November 13, 2023).

<sup>32</sup> Transcript of Commission Conference, p. 9, 14 (December 11, 2023).

recommended by the Consumer Advocate should not be adopted because they would serve to complicate the mechanism without providing measurable benefits or increased accountability.

The Company's proposal is novel in Tennessee; however, approval here does not limit the Commission's ability to monitor, modify, or otherwise terminate the Company's mechanism if doing so is in the public interest. Superior's annual reports are public records. Superior has committed to providing the necessary backup information with each ARRM filing to support the Company's calculations. The Company has further committed to adjusting rates based on the positive or negative outcome of the calculation. With respect to the GDP-IPD update true-up mechanism agreed to by the parties, the panel concluded that the administrative and regulatory costs of a true-up for a utility of Superior's size and customer base outweigh the benefit of the presumably nominal adjustments that could be expected.

In addition, the panel found the annual rate review mechanism to be in the public interest by: (1) providing Superior with a better opportunity to collect sufficient funds to recover operating expenses in subsequent years and, in turn, provide customers with reliable wastewater services; (2) providing an opportunity for the Commission to annually review Superior's rates and financial condition; and (3) mitigating the need for more frequent rate cases that often result in high legal expenses which are recovered from customers.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Superior Wastewater Systems, LLC to Adopt an Alternative Regulatory Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(7)* filed by Superior Wastewater Systems, LLC on September 11, 2023, is granted.

2. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

3. Any party aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

**FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:**

**Chairman Herbert H. Hilliard,  
Vice Chairman David F. Jones,  
Commissioner Robin L. Morrison,  
Commissioner Clay R. Good, and  
Commissioner Kenneth C. Hill concurring.**

None dissenting.

**ATTEST:**

A handwritten signature in dark ink, appearing to read "Earl Taylor" with a stylized flourish or initials "abh" to the right.

---

**Earl R. Taylor, Executive Director**