

**March 4, 2024**

**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**

This matter came before Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner Kenneth C. Hill, and Commissioner John Hie of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, during a hearing held on January 16, 2024 via WebEx,<sup>1</sup> for consideration of the *Petition of Superior Wastewater Systems, LLC to for a Certificate of Convenience and Necessity to Amend Its Existing Service Territory in Williamson County, Tennessee* (“*Petition*”) filed by Superior Wastewater Systems, LLC (“Superior,” “Company,” or “Utility”) on July 6, 2023. In its *Petition*, Superior requests the Commission’s approval of an amendment to the Company’s Certificate of Public Convenience and Necessity (“CCN”) in order to provide residential wastewater service to a designated area of service near Triune in Williamson County, Tennessee.

<sup>1</sup> This matter was requested to be set by Superior due to pressing contractual deadlines. As the Commission's regularly scheduled January 2024 Commission Conference was not convened, the Commission was unable to obtain a physical quorum. Therefore, the hearing in this matter was convened electronically via WebEx with a quorum of the panel.

## **BACKGROUND AND PETITION**

Superior is a limited liability company organized under the laws of the State of Tennessee with a principal place of business located on Mullens Road in Arrington, Tennessee.<sup>2</sup> The Company holds a CCN to provide wastewater services within designated service areas in the State of Tennessee. In its *Petition*, Superior seeks to expand its service area to provide wastewater services to a designated territory in Williamson County encompassing “a portion of the Town of Arrington west of Triune, the special character areas of Triune north of Interstate 840, and a portion of College Grove east of Triune in Williamson County along Highway 96” (collectively, “Triune Service Area”).<sup>3</sup>

In support of its *Petition*, the Company filed maps showing the location of the Triune Service Area, documents demonstrating the corporate structure and management experience of the Company, and letters from government entities and utility providers indicating that such entities do not provide wastewater service to the Triune Service Area.<sup>4</sup> Upon completion of construction of the system, it will serve both residential and commercial lots covering 5,997.25 acres in three (3) phases.<sup>5</sup>

The Company also filed the testimony of John Powell, President of Superior.<sup>6</sup> Mr. Powell testifies that he is both the owner and president of Superior and that his responsibilities include the day-to-day operations, permitting, long-term planning, review of expenditures, managing system maintenance, establishing contracts, resolving customer issues, and evaluating proposals for plant

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<sup>2</sup> *Petition*, Exh. 1.1 (July 6, 2023).

<sup>3</sup> *Id.* at Attach. 1, John Powell, Pre-Filed Direct Testimony, p. 2.

<sup>4</sup> *Id.* at Exhs. 1.7, 1.2, 1.5, and 2.1.

<sup>5</sup> *Id.* at Exh. 1.10; *See also* Superior Wastewater Systems, LLC Responses to Consumer Advocate Letter Filed July 20, 2023 Re Minimum Filing Requirements Set Forth in TPUC Rule 1220-04-13-.17 Regarding CCN Amendments, p. 2 (August 7, 2023).

<sup>6</sup> *Id.* at Attach. 1, John Powell, Pre-Filed Direct Testimony. *See also* John Powell, Pre-Filed Supplemental Testimony (November 30, 2023).

upgrades and replacements.<sup>7</sup> Mr. Powell describes the proposed system as collecting wastewater and sewage from both residential and commercial customers, flowing to the treatment center plant with the assistance of strategically located pump stations, where treatment will employ technology from BioMicrobics. After treatment, the effluent will be sent to drip fields. Mr. Powell further testifies that the Triune Service Area is proximally close to the Company's existing service territory, allowing it to be served with relatively few incremental resources. Mr. Powell states that he believes the increase in customer base will provide Superior with a greater economy of scale.<sup>8</sup>

Superior asserts that the proposed system is unlike other systems operated by Superior and other wastewater utility service providers in that most systems utilize a Recirculating Sand Filtration ("RSF") system. However, the proposed system will employ a new BioMicrobic ("BM") system that will allow for not just the treatment of wastewater, but also raw sewage. In addition, the BM system will allow the continual inspection of treatment from the bottom to the top of the process, which is not possible with RSF systems. The use of an equalization tank in the BM system allows the system to treat wastewater on a consistent basis during any 24-hour period. The BM treatment system along with the Company's drip system will allow Superior to regulate the water flow in and out of the entire treatment system. In contrast, RSF systems only treat wastewater on demand as it enters the treatment process and then is sent to drip fields. Finally, Superior asserts that the proposed system is a regional centralized system model, as opposed to the traditional decentralized wastewater systems, with capacity to provide service to all lots and parcels identified

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<sup>7</sup> *Id.* at Attach. 1, pp. 1-2.

<sup>8</sup> *Id.* at Attach. 1, pp. 2-4.

in the Triune Service Area.<sup>9</sup> In addition, Superior provided evidence of its intent to provide wastewater service to the entire area requested in its *Petition*.<sup>10</sup>

Tennessee Wastewater Systems, Inc. (“TWSI”) submitted a request to intervene on August 24, 2023. TWSI’s intervention is based upon two outlying parcels on the western portion of the Superior’s requested Triune Service Area that fall within TWSI’s currently certificated Milcrofton Utility District service territory.<sup>11</sup> TWSI refers to these two (2) parcels as the “Sanford Parcels,” as both are owned by Greg Sanford.<sup>12</sup> The Hearing Officer granted the intervention by order filed on December 8, 2023.<sup>13</sup>

Superior requested that the proceedings be bifurcated so that its request to serve the Eastern portion of the Triune Service Area, which contains none of the Sanford Parcels on which TWSI’s intervention is based, could be considered without delay that may be associated with TWSI’s intervention. TWSI had no opposition to the bifurcation of the docket. Therefore, the Hearing Officer entered an order dividing the original docket into a docket for the Western portion of the Triune Service Area, including the Sanford Parcels, to be adjudicated in the originally filed Docket No. 23-00051, and designating the Eastern portion of the Triune Service Area, for which no parties have intervened, for adjudication in the instant docket (“*Bifurcation Order*”).<sup>14</sup> The *Bifurcation Order* included a map that designated the area of the Eastern portion of the Triune Service Area to

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<sup>9</sup> Superior Wastewater Systems, LLC’s Supplemental Response to TPUC Staff’s 3<sup>rd</sup> Discovery Request (December 7, 2023).

<sup>10</sup> Superior Wastewater Systems, LLC Responses to the Commission Staff’s Third Discovery Request Filed November 16, 2023, p. 8 (November 28, 2023).

<sup>11</sup> *Petition of Tennessee Wastewater Systems to Intervene*, p. 1 (August 24, 2024).

<sup>12</sup> *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, *Reply of Tennessee Wastewater Systems, Inc. to the Filing Made by Superior Wastewater Systems, LLC on August 20, 2023 Opposing Superior’s Petition to Intervene* (August 30, 2023).

<sup>13</sup> *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.* (December 8, 2023).

<sup>14</sup> *Order Bifurcating Docket* (December 8, 2023).

be adjudicated in the current docket (“Triune Service Area East”). A copy of the Triune Service Area East map is attached to this order as Exhibit 1 and incorporated herein.

### **THE HEARING**

A Hearing in this matter was held before the voting panel of Commissioners during the specially scheduled Conference convened by the hearing panel on January 16, 2024, as noticed by the Commission on January 3, 2024. Participating in the Hearing were:

Superior Wastewater Systems – Erik C. Lybeck, Esq., Sims|Funk, 3322 West End Ave., Suite 200, Nashville, Tennessee; and John Powell, President, P.O. Box 40, Arrington, Tennessee.

During the Hearing, John Powell, President of Superior, presented testimony on behalf of the Company and adopted and summarized his Pre-Filed Direct and Supplemental Testimony. Mr. Powell was subject to questions from the voting panel of Commissioners and Commission Staff. Members of the public were given an opportunity to offer comments, at which time, no comments were submitted.

### **STANDARD FOR COMMISSION APPROVAL**

A public utility is not permitted to begin construction or operation of a new utility service without first obtaining a CCN from the Commission, as set forth in Tenn. Code Ann. § 65-4-201(a), which states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a

municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.<sup>15</sup>

Additionally, in order to obtain a CCN to provide wastewater service, TPUC Rule 1220-04-13-.17 (1) provides:

Any public wastewater utility requesting a Certificate of Public Convenience and Necessity (“CCN”) in accordance with Tenn. Code Ann. §§ 65-4-201, et seq., shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann. § 65-4-201, and these rules.<sup>16</sup>

The rule further establishes minimum information filing guidelines for applications for new or expanded CCNs.<sup>17</sup>

### **FINDINGS AND CONCLUSIONS**

In its *Petition*, Superior has asked the Commission to amend its CCN to include the Triune Service Area East in Williamson County, Tennessee, alleging that the Company possesses the managerial, technical, and financial capability to provide service to the subdivision and store. Based on a review and consideration of the pleadings, the Pre-Filed Testimony, and the entire administrative record, the voting panel made the following findings and conclusions:

The panel found that the Triune Service Area East is not currently connected to a wastewater treatment facility operated by any other municipal utility, utility district, or other private wastewater utility. No other utility is seeking to serve the Triune Service Area East. However, the map of the Triune Service Area, while excluding certain parcels and areas that are served by other public utilities or are

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<sup>15</sup> Tenn. Code Ann. § 65-4-109 (2022).

<sup>16</sup> Tenn. Comp. R. & Regs. 1220-04-13-.17.

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

not on septic systems, includes a number of parcels in the proposed service area that have not requested to be served by the system proposed by Superior. In addition, the Company indicates a buildout of the system in phases that estimate completion in ten (10) years. As Commission Rules require wastewater utilities to provide notice that the system is fully operational within three (3) years of the granting of a CCN, the Commission considers whether wastewater services will be readily available to potential customers within the authorized service territory to be a key factor in the determination of whether to grant a CCN.

The Commission, in recent years, has not received CCN applications requesting new wastewater systems to serve broad service territories containing multiple parcels and landowners that may or may not be included in current plans for development. Indeed, applications for a CCN for new wastewater systems involve decentralized systems that serve a defined development or subdivision. In 2005, the Commission's predecessor, the Tennessee Regulatory Authority ("TRA"), determined as a matter of policy, that, "the reasonable needs of the public are better served where the first public utility to be authorized by the TRA to extend its service area to a particular location has a present and actual intent to provide service to the location, rather than an apparent desire to "lock up" an area or otherwise remove the area from further regulatory oversight."<sup>18</sup> Therefore, the Commission must examine and determine the public need in order to determine whether Superior's application should be approved.

The Triune Service Area is not connected to any system providing wastewater or sewer services. The Triune Service Area is experiencing significant growth and is in need of a public sewer system to support the provisioning of essential services, as well as other businesses and services that are vital to

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<sup>18</sup> *In re Petition of On-Site Systems, Inc., to Amend its Certificate of Convenience and Necessity*, Docket No. 03-00329, Consolidated with *In re: Petition of Tennessee Wastewater Systems, Inc. to Expand its Service Area to Include an Area Known as Sevier County*, Docket No. 04-00045, *Initial Order Approving in Part, and Denying in Part, Petition to Amend Certificate of Convenience and Necessity* (February 4, 2005).

the continued growth and development of the area.<sup>19</sup> The Williamson County Mayor also provided information that a public sewer system in the area would be beneficial in light of the County's future plans to expand recreation and safety services to the area.<sup>20</sup> Williamson County amended its zoning ordinance to allow nontraditional wastewater treatment and disposal systems to serve properties within the Triune Character Area, as such systems would be appropriate to facilitate the development of the area consistent with the Triune Special Area Plan. The zoning ordinance amendment also permits failed septic systems to be connected to the nontraditional wastewater and disposal systems.<sup>21</sup> Superior's *Petition* includes requests for service from ten (10) property owners for development on their properties.<sup>22</sup> Several parcels have site plans that cannot go forward through the planning process until wastewater service is established. Other parcels do not have existing site plans. While these ten (10) property owners do not represent all of the parcels requesting wastewater service in the Triune Service Area, these property owners are spread throughout the Triune Service Area, and it is expected that additional property owners will request such service as the growing area continues to develop.<sup>23</sup>

There is sufficient evidence in the docket that no municipal utility, utility district, or other private wastewater utility provides wastewater services to the Triune Service Area East. While TWSI intervened to contest granting a CCN for the Western portion of the originally proposed territory, there are no interventions in the bifurcated docket concerning the Eastern portion of the proposed territory.

Finally, in determining the public need, the Commission must determine whether service will

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<sup>19</sup> See Letter To Chairman Herbert Hilliard Re: Support For The Triune Community's Petition Of Superior Wastewater Systems, LLC For A Certificate Of Convenience And Necessity Amendment To Provide Wastewater Services From Jack Johnson, Tennessee Senate Majority Leader (July 17, 2023); Letter To Chairman Herbert Hilliard Re: Support For The Triune Community's Petition Of Superior Wastewater Systems, LLC For A Certificate Of Convenience And Necessity Amendment To Provide Wastewater Services From Jake McCalmon, State Representative 63rd Legislative District (July 19, 2023).

<sup>20</sup> *Petition*, Exh. 2.1 (July 6, 2023).

<sup>21</sup> Superior Wastewater Systems, LLC Responses to the Commission Staff's Third Discovery Request Filed November 16, 2023, p.1, Attach. 3-1a & 3-1b (November 28, 2023).

<sup>22</sup> *Petition*, Exh. 1.11 (July 6, 2023).

<sup>23</sup> *Id.* at Attach. 1, p. 2.



be readily available to potential customers who are reasonably entitled to such service. Such consideration is aligned with the Commission's policy to deter an application that "locks up" a service territory without an immediate plan or obligation to serve the territory. The voting panel found that Superior's proposal to serve the Triune Service Area East includes a sufficient plan to make services readily available to potential customers within the requested service territory. The initial buildout of the central treatment and disposal plant, along with collection lines and drip fields, will allow for the provision of up to 125,000 gallons-per-day ("gpd") of initial treatment capacity. The initial construction is anticipated to begin during the first quarter of 2024, taking six (6) to eight (8) months to complete. The Company has available drip field capacity to allow for an increase of capacity to 300,000 gpd. Further, the Company has access to reserve drip fields that will allow for an additional 300,000 gpd of capacity. In addition, Superior intends to apply for a National Pollutant Discharge Elimination System permit that will further expand the system's dispersal capacity in the future.<sup>24</sup> Superior has stated its intent to provide wastewater service to the entirety of the Triune Service Area East.<sup>25</sup> Further, Superior has provided a proposed tariff describing the availability of wastewater services in the Triune Service Area East and setting forth the rates, terms, and conditions for new customers of every class to obtain service.<sup>26</sup> The voting panel found that the proposed tariff, along with the Company's statement of intent to provide service to the entirety of the proposed territory, furthers the public interest and indicates the public need by requiring the provisioning of services by Superior to all parcels within the proposed service territory upon the customer's consent to Commission-approved tariff rates, terms, and conditions.

Based upon the foregoing, the voting panel found that there is an immediate public need for

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<sup>24</sup> Superior Wastewater Systems, LLC Responses to the Commission Staff's Third Discovery Request Filed November 16, 2023, pp.7-8 (November 28, 2023).

<sup>25</sup> *Id.* at 8.

<sup>26</sup> John Powell, Pre-Filed Supplemental Testimony, Exh. 3 (November 30, 2023).

wastewater service in the Triune Service Area East, that no other utility is providing or plans to provide such wastewater service, and that Superior has a sufficient plan to make wastewater service readily available throughout the Triune Service Area East to potential customers in accordance with a general tariff subject to Commission approval. Therefore, the panel voted unanimously that there exists a public need to provide wastewater service to the Triune Service Area East as required by Tenn. Code Ann. § 65-4-201(a) and Commission Rule 1220-04-13-.17(1).

The panel found that Superior has demonstrated that it possesses the requisite managerial, financial, and technical capabilities to provide wastewater service to Triune Service Area East. In addition, Superior is in good standing with the Commission and is in compliance with all Commission rules. Further, the Company proposes adding to its existing tariff to establish the products, services, terms, and conditions that will apply to the new customers in the Triune Service Area East. The rationale for the proposed rates is largely due to the costs associated with building a true sewage disposal system that is suitable for serving the mixed needs and scale of the Triune Service Area. The voting panel noted that these rates are separate from Superior's current existing rate schedules and that implementation of the Triune tariff rates will not directly impact the Company's existing customers. The panel determined that the proposed rates are fair, reasonable, and non-discriminatory.

Therefore, based upon these findings, the panel voted unanimously to grant the Company's *Petition*, contingent upon the filing of the following documents:

1. The deed and/or easements for all the land and ownership rights to the wastewater system within 15 days of being issued and before the first customer is connected to the wastewater system as set forth in contracts submitted by Superior with the Commission;
2. A final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation ("TDEC") within 15 days of issuance;

3. A copy of the as-built plans with signed certification by Superior indicating the wastewater system has been inspected and is approved to begin operation;

4. A copy of the signed plat, once the area of development is approved by the City and/or County government within 15 days of being issued and before the first customer is connected to the wastewater system;

5. A copy of the performance bond from the developer or builder of the wastewater system made payable to Superior to ensure the construction of the wastewater system. The performance bond(s) should be for an amount equal to or greater than the cost of the system as provided in contracts between builder, developer and/or Utility; and

6. Copies of all contracts between the Utility and all developers/builders of the system, including any affiliated companies.

The panel also directed the Company to file a report in this docket demonstrating its compliance with the filing requirements prior to providing wastewater service to Triune Service Area East. In the event the compliance report is not filed, the panel directed Superior to file within six (6) months from the date of this order, and every three (3) months thereafter until the installation is complete, a report on the status of providing wastewater service to Triune Service Area East, as well as the status of its compliance with each of the aforementioned filing requirements.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Superior Wastewater Systems, LLC to for a Certificate of Convenience and Necessity to Amend Its Existing Service Territory in Williamson County, Tennessee* filed by Superior Wastewater Systems, LLC is approved with regard to the Eastern portion of the proposed service area at issue in this docket, as indicated on the red outlined area of map attached hereto as Exhibit 1, contingent upon Superior Wastewater Systems, LLC filing the

following in this docket:

a. The deed and/or easements for all the land and ownership rights to the wastewater system within 15 days of being issued and before the first customer is connected to the wastewater system as set forth in contracts submitted by Superior Wastewater Systems, LLC with the Commission;

b. A final copy of the State Operating Permit issued by the Tennessee Department of Environment and Conservation within 15 days of issuance;

c. A copy of the as-built plans with signed certification by Superior Wastewater Systems, Inc. indicating the wastewater system has been inspected and is approved to begin operation;

d. A copy of the signed plat, once the area of development is approved by the City and/or County government within 15 days of being issued and before the first customer is connected to the wastewater system;

e. A copy of the performance bond from the developer or builder of the wastewater system made payable to Superior Wastewater Systems, LLC to ensure the construction of the wastewater system. The performance bond(s) should be for an amount equal to or greater than the cost of the system as provided in contracts between builder, developer and/or utility; and

f. Copies of all contracts between the Superior Wastewater Systems, LLC and all developers/builders of the system, including any affiliated companies.

2. Superior Wastewater Systems, LLC is directed to file a report in this docket demonstrating its compliance with the filing of the above referenced documents. If the required documentation is not filed within six (6) months of this order, then Superior Wastewater Systems, LLC is directed to file a report on the status of the provision of wastewater service to the Triune Service Area

East as well the status of the filing of required documentation. The compliance report shall be updated every three (3) months until installation of the wastewater system is complete.

3. Any person who is 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.

4. Any person who is 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:**

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

None dissenting.

**ATTEST:**

A handwritten signature in dark ink, appearing to read "Earl Taylor" followed by a smaller, less legible signature or initials.

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**Earl R. Taylor, Executive Director**