



Public Service Commission

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March 8, 2019

Kristen M. Stolipher
Assistant Utility Manager
Charles Town Utility Board
108 West Congress Street
Charles Town, West Virginia 25414

Re: Charles Town Utility Board
Extension of Sewer Utility Service to Rockwool

Dear Ms. Stolipher:

I have reviewed your email to Public Service Commission Staff Engineer Jonathan Fowler and read press articles stemming from the March 4, 2019 Charles Town City Council meeting. This letter provides an informal opinion regarding two statements included in the West Virginia Department of Environmental Protection (WVDEP) Responsiveness Summary dated March 1, 2019, regarding a public hearing and public comments on modification of WV/NPDES Permit No. WV0022349.

The information provided in this response is not to be construed as an advisory or binding opinion of the Public Service Commission (Commission). The Commission does not provide those sorts of opinions. This letter, instead, represents my informal opinion as General Counsel to the Commission. I am not, however, authorized to speak on behalf of the Commissioners. This letter does not bind the Commission or its Staff in any future cases at the Commission or in any other forum.

In item fourteen of its Responsiveness Summary, the WVDEP responded to commenters who questioned whether Charles Town Utility Board (CTUB) was required to provide sewer service to Rockwool. The WVDEP indicated that (1) where feasible, the Commission may require CTUB to provide domestic sewer service to Rockwool and (2) it was their understanding that the Commission has not mandated CTUB to accept non-domestic wastewater from Rockwool.

The Commission has not mandated that CTUB extend service to Rockwool

Although the Commission has not mandated CTUB to provide any sewer utility service to Rockwool, CTUB is a public utility and has an obligation to provide utility

service. At the moment, the Commission has no case pending before it alleging that CTUB is refusing to extend service in violation of Commission rules or to meet its obligation to provide service as a public utility.

Public utility obligations regarding extension of sewer service

The CTUB is a public utility providing sewer service; therefore, the extension of sewer service provided by the CTUB is governed by the Rules for the Government of Sewer Utilities, 150 C.S.R. 5 (Sewer Rules). The Sewer Rules state that every public utility has a public service obligation to extend its mains, its plant and facilities to serve new customers. Sewer Rule 5.5 et seq. The WVDEP references to domestic and non-domestic wastewater implies that the service extension provisions of the Sewer Rules are different for commercial/industrial applicants for service and residential applicants for service. The manner in which sewer service is extended may be different for customers who produce industrial waste, but that does not eliminate the obligation to provide utility service to industrial customers who apply for service.

The Sewer Rules set forth specific steps that a utility is to take upon receiving a request for sewer utility service. A public utility is required to provide an estimate of the costs to provide service and other information on Sewer Form No. 5 (**attached**). If the applicant for service is willing to pay the customer share of the costs as calculated by the Sewer Rules, the utility must provide that service.

If a utility refuses to extend service, it must be prepared to show that the refusal is reasonable, i.e., an extension is physically impossible because there is no treatment capacity or it does not have the capability to treat the sewage that will be produced. Even in those circumstances, however, the utility has the obligation under the Sewer Rules to provide the applicant with an estimate of the costs to upgrade its facilities in order to make service available. Depending on the type of material that an industrial facility would deliver to a sewer treatment facility, there could be a need for special processing at the treatment plant or pre-treatment on the industrial site that should be considered by the sewer utility. The Commission understands, however, that special processing would not be required for the Rockwool wastewater because it will be comparable to standard domestic sewage.

Commission proceedings regarding service extension

As a municipal utility, CTUB is not required to obtain permission from the Commission to accept grants, borrow money or issue bonds to fund an upgrade or extension project. CTUB also does not need to obtain a certificate of convenience and necessity from the Commission in order to upgrade or extend its sewer system. If debt service for a project results in a need to increase utility rates, CTUB, as a locally rate

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regulated utility, may raise rates by municipal ordinance and, after the passage of Senate Bill 234 in 2015, customers have no avenue for appeal to the Commission.

If a supplier of sewer service is unwilling to provide service, an applicant for sewer service may file a formal complaint with the Commission. If the applicant challenges the utility cost estimate or share of the cost to be borne by the applicant or if the applicant believes the utility is unreasonably refusing to extend service, the Commission is empowered to address that complaint. Depending on the individual facts and circumstances of a specific case, Commission adjudication of a complaint may result in an order that a public utility extend service.

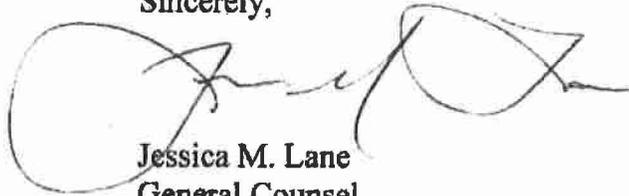
Alternate mainline extension agreement

If, after consultation with the utility, an applicant for service believes it could accomplish an extension more quickly or in a more cost-effective manner, the Sewer Rules provide that the applicant may enter into an alternate mainline extension agreement with the utility. Under an alternate mainline extension agreement, the applicant would normally construct the extension to the specifications of the utility and then transfer ownership of the facilities constructed by the applicant to the utility upon completion.

Finally, the WVDEP statements seem to imply that a public utility is not required to comply with the service extension provisions of the Sewer Rules unless the Commission has mandated it to do so. That is not the case. The obligation of a public utility, including a municipal utility, to comply with the public utility service extension provisions of the Sewer Rules is ongoing.

Please feel free to contact me at telephone number 304-340-0450 (or email me at jlane@psc.state.wv.us) if you have any questions regarding my informal opinion. Please feel free to share a copy of this letter with the Charles Town City Council.

Sincerely,



Jessica M. Lane
General Counsel

Enclosure: Sewer Form No. 5

Sewer Form No. 5
(Sewer Rule 5.5.e.2.)

Form for use in determining cost estimate to extend sewer service

Date _____

The following estimate is in response to a request to extend the Utility's sewer facilities approximately _____ feet along _____ to serve a customer or customers who desire sewer service.

Cost Estimate

Sewer line (-- inch PVC) _____	feet @ \$ _____/foot = \$ _____
Excavation/installation _____	feet @ \$ _____/foot = \$ _____
Materials (fittings, valves, stone, etc.)	= \$ _____
Permits/rights-of-way (Health, Highways, etc.)	= \$ _____
Restoration (seeding, gravel, etc.)	= \$ _____
Related cost (engineering, legal, etc.)	= \$ _____
	TOTAL = \$ _____

Cost Share of Customers and Utility

A. Total estimated cost of extension \$ _____

B. Utility Share: (estimated total net revenue per customer calculated pursuant to Rule 5.5.e.4.) \$ _____ per customer
x _____ customers = \$ _____

C. Customer share: estimated cost to be paid by customers (A-B) = \$ _____

Conditions

If the potential customers shall deposit with the Utility, in advance, the total sum of \$ _____, (customers share from "C" above), a tap fee of \$ _____ per customer, and a \$ _____ security deposit per customer, the Utility will apply for the necessary permit applications and begin construction as soon as possible.

If the actual cost to construct the extension is less than the estimated cost, the Utility will refund the difference to the original depositors. If the actual cost exceeds the estimated cost the Utility will bill the depositors for the difference.

The customers will be required to sign an application for service and/or a users agreement when the tap fees and deposits are made.

This main line extension estimate is made in accordance with Sewer Rule 5.5 of the *Rules for the Government of Sewer Utilities*.