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Charles Town City Council
Charles Town Utility Board
101 E. Washington Street
Charles Town, WV 25414

Re: ROXUL MAIN LINE EXTENSION

Dear Council and Utility Board:

This letter is written on behalf of Jefferson County Vision, Inc., an entity that represents concerned Jefferson County citizens regarding the construction and operation of the Rockwool facility.

It is necessary for the Charles Town Utility Board, Mayor and City Council to carefully review and consider the recent request of Roxul for a main extension under the provisions of the West Virginia Public Service Commission ("PSC") Sewer Rule 5.5 (150 CSR 05). The following discussion is intended to facilitate a review of that request and is not intended to be legal advice to any of the recipients. It is important for each acting entity to obtain its own legal opinions.

Rule 5.5 was adopted by the PSC to establish the guidelines that utilities and prospective customers must follow when a request is made by a customer or group of customers for a new utility service to be provided by an extension of the utility's existing main.

Despite representations to the contrary, Rule 5.5 does not create a binding obligation that the utility must provide an extension in all circumstances. The rule specifically states that "[e]xtensions shall be made in all cases in which the public convenience and necessity require the service, construction problems are not unusual or burdensome, and the extension appears to be economically feasible." (Rule 5.5.b.) If any of these considerations are not met, the utility would be justified in refusing to provide the extension. The rule further provides that "[f]or any proposed extension of mains, a reasonable relationship should exist between the per customer investment to serve new customers and the per customer investment to serve old customers." The rule provides the appropriate process for the utility to calculate its initial share of the cost of the extension, the customer's initial share and the utility's obligation to make future refunds to the customers for each new customer added to the extension over a ten-year period.

These factors will be discussed more specifically herein:

A. The customer making the request for an extension must be in the service area of the utility.

Since Charles Town is providing service outside of its municipal boundaries, its service territory is not geographically limited to its boundaries. Instead, its service area will generally depend upon the location of its existing system in relationship to the location of the new customer or customers requesting service. There is not a predetermined answer to the question of service area; rather, the answer will depend upon the unique facts of each request for service, depending in large part on the utility's expected cost to provide service, the expected revenues, capacity restraints, the nature of the discharge and other service obligations.

B. The extension need not be made if the proposed service would be contrary to the "public convenience and necessity."

The West Virginia Supreme Court of Appeals has determined that "convenience and necessity" refers to that of the public generally as distinguished from the interests of a particular individual. *Sexton v. Public Service Commission*, 423 S.E.2d 914, 921 (1992). In deciding whether to make a main extension, the convenience and necessity of the public generally would include, but not be limited to the following considerations:

- Does the proposed extension serve the interests of existing customers?
- Will it have a negative impact upon the revenues of the utility?
- Will it have an adverse impact upon existing rates?
- Does the utility have sufficient treatment capacity for the discharge expected from the new customer or customers?
- Does the discharge from the proposed new customer impose excessive costs for the utility to treat or could it harm the existing treatment facility? For example, the Charleston Sanitary Board has an approved tariff on file with the PSC that allows the Board to refuse service to a customer with harmful discharge. Please see Attachment hereto.

These questions regarding the adequacy of service should consider not only the need to provide adequate service to existing customers but also to future customers that the utility is obligated to serve or could be reasonably expected to serve. Please note: When Charles Town acquired the Jefferson County PSD and Ranson facilities, Charles Town obligated itself to satisfy the service obligations of those systems by making improvements to both systems and extending service. However, as set forth in the Purchase Agreement between the PSD and the City, and approved by the Council on March 1, 2018:

10.2 Extension of Service. The Purchaser shall, at all times in the future, continue to operate the District Water System and District Sewer System in a

professional and businesslike manner and will provide potable water and sanitary sewer service to all areas of the County subject only to the limitations in the Utility Board Act, provided, however, that the Purchaser is only willing to extend water or sewer service when such extension of service is technically and economically feasible. The determination as to the technical and financial feasibility of an extension of water or sewer service will be in the sole discretion of the Purchaser, provided, however, the Purchaser specifically agrees and affirms that the rules and regulations of the PSC, as presently existing or as may be modified in the future, specifically including, but not limited to, 150 W.V. CSR 7.5.5 and 150 W.V. CSR 5.5.5., regulate the provision of public utility service to unserved customers by public utilities and the right of an individual or party seeking service to bring an action at the PSC to enforce such rules and regulations.

In the PSC Order approving said purchase, it is noted that "Charles Town was willing to extend water or sewer service when, in Charles Town's sole discretion, it was technically and economically feasible to do so." PSC Case Nos. 17-0915-PSWD-PC and 18-0006-PSD-C, Commission Order, 6-26-18, P.3. **As such, Charles Town does not have an absolute legal obligation to provide every extension upon request.**

C. The extension need not be made if there are unusual or burdensome construction problems.

This exception is relatively straight forward. The city engineers, or utility engineers, in their review of the project and its estimated costs, should identify and describe any unusual or burdensome construction problems.

D. The extension need not be made if it is not economically feasible.

The economics of a particular extension depends upon a number of factors that would include, but not be limited to the following:

- What are the estimated costs of the extension? The cost estimate should include all costs associated with the extension, including any modifications to the existing plant, permits, etc.
- What is the expected net revenue from the customer making the request? This not only serves to determine the utility and customer share of project costs but also the future viability of the project considering operation and maintenance and other costs of the extension compared to expected future revenues.
- What is a reasonable estimate of additional customers that may connect to the extension? This estimate creates a cost to the utility by requiring refunds to the

original customer for a ten-year period for each new customer added to the extension. It also increases operating expenses associated with these new customers.

- What is the expected growth or demand beyond the proposed extension? If the extension is made and the utility service area expanded, the utility will likely face future requests for additional extensions.
- What are the estimated costs, and potential rate impacts, associated with reasonably expected future growth on the system?

E. The requested extension “must be made from the proposed service area to the nearest point of connection of the utility system having sufficient capacity to provide service at maximum demand.” (Rule 5.5.e.2).

The city engineers must identify that point and determine the City’s cost estimate using that point. If that point does not presently exist, the question becomes can the system be reasonably modified to accommodate the request and at what cost? Should existing or future customers, the system or any discharge points cause damage due to over-capacity issues, the City may incur liability.

F. In considering the reasonableness of the utility’s costs, the PSC rule provides that “the patronage or demand will be of such permanency as to warrant the capital expenditure involved.” (Rule 5.5.e.4.)

The utility and the customer must execute a Main Line Extension Agreement. (Rule 5.5.e.2). If the customer is a large commercial or industrial entity, the agreement should include provisions regarding future demand and use to help safeguard the utility’s investment and its ability to cover future operating costs.

G. In calculating net revenues, the rule provides that that net revenues are gross revenues minus the excess usage leak adjustment rate approved for the utility less any revenue-based taxes. If the excess leak adjustment rate fails to include all of the incremental costs of serving a new customer, the utility can file a formal application with the PSC for a determination of the proper amount to be deducted from gross revenues to arrive at an appropriate determination of net revenue. (Rule 5.5.e.4.E.).

It should also be noted that the sewer tariff contains a capital improvement fee of \$1,127 for each single-family residence connected and constructed pursuant to a building permit issued

after August 20, 2004. There is no specified fee in the tariff for industrial waste. Instead, the tariff provides that "sewer department shall determine the Residential Usage Equivalent in consultation with its consulting engineer." The sewer tariff contains a surcharge for users with B.O.D. excess (Biochemical Oxygen Demand) in addition to base sewer charges. Since the nature of the Roxul discharge is unknown, it is not known whether this surcharge, in addition to base rates, would apply.

In conclusion, Charles Town is not obligated to provide the Roxul extension. Careful consideration of the foregoing factors must be given in light of the proposed project. If this consideration leads the City to the conclusion that the requested extension is not in the interests of the utility and its customers, it should be denied.

Very truly yours,



Christopher P. Stroeck, Esq.

Attachment A - provision in the tariff of the Charleston Sanitary Board

THE SANITARY BOARD OF THE CITY OF CHARLESTON

RATES - For Sewage that does not contain industrial waste:

\$14.26 per thousand gallons in excess of 2,000 gallons used per month.

(I,C) RATES- For Sewage that contains industrial waste:

Where the character of sewage from any manufacturing or industrial plant, building or premises is such that it imposes a burden upon the sewer system in addition to the burden imposed by domestic sewage entering the sewer system, the Sanitary Board may compel the owner, tenant or occupant of such manufacturing or industrial plant, building or premises to treat such sewage in such manner as shall be specified by the Sanitary Board before discharging into the sewer system. In the absence of such treatment sufficient to remove such additional burden, the charges for treatment of such sewage shall be as follows: Monthly Service Charge

Volumetric Treatment Charge

Biochemical Oxygen Demand (BOD) Charge

Total Suspended Solids (TSS) Charge

\$10,000.00

\$6.50 per thousand gallons \$0.65 per pound

\$0.50 per pound

When an industrial user is to be served, a preliminary study of its waste, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the Sanitary Board, should not be introduced into the sewer system, need not be handled by it. The

results of this preliminary study will be used to determine the feasibility of the proposed sewer service.