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ATTORNEY

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January 17, 2014

Ms. Ingrid Ferrell, Executive Secretary  
West Virginia Public Service Commission  
201 Brooks St.  
P.O. Box 812  
Charleston, WV 25323

RECEIVED  
14 JAN 21 AM 9:21  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Re: Case No. 13-1384-PSWD-PC  
Town of Grantsville and Mt. Zion PSD

Dear Ms. Ferrell:

Enclosed are the original and 12 copies of the Response of Town of Grantsville to Notice by Mt. Zion Public Service District of Termination of Operations and Maintenance Agreement and Petition to Reopen Case. I have also served copies of this Response on the PSD's attorneys and PSC Staff Attorney Keith Walker.

Please let me know if you need any additional information, or if you have any questions about the enclosed Response.

Very truly yours,

  
Loren B. Howley

Encl.

cc: Mayor Curt Garretson,  
Town of Grantsville  
James V. Kelsh, Esq.  
Keith Walker Esq.

STATE OF WEST VIRGINIA  
PUBLIC SERVICE COMMISSION  
CHARLESTON

Case No. 13-1384-PSWD-PC

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**RESPONSE OF TOWN OF GRANTSVILLE  
TO NOTICE BY MT. ZION PUBLIC SERVICE DISTRICT  
OF TERMINATION OF OPERATIONS AND MAINTENANCE AGREEMENT  
AND PETITION TO REOPEN CASE**

The Town of Grantsville ("the Town"), for its response to the Notice of the Mt. Zion Public Service District ("PSD") of Termination of Operations and Maintenance Agreement and Petition to Reopen Case, states as follows:

1. The Town states that the PSD did not have the right to file its pending Petition, inasmuch as the PSD assigned to the Town the sole authority for its operations pursuant to the parties' O&M Agreement and the Town did not authorize the PSD to file their pending petition. The Town further states that the PSD, as one party to the Operations and Maintenance ("O&M") Agreement, does not have the authority to unilaterally announce termination of the parties' O&M Agreement simply by filing a notice thereof, and that the Public Service Commission ("PSC") has the sole authority to approve a request for termination of the O&M Agreement.

2. In response to paragraph 1 of the PSD's petition, the Town states as follows:

(a) The Town admits that it has not replaced the PSD's former employees. The PSD's field employees have continued to work

for the PSD, but the Town's employees have also performed services for the PSD, including but not limited to answering customer calls, fixing leaks, reading meters, and addressing complaints by customers. The Town's chief water operator has conducted all necessary water testing for the PSD.

(b) The PSD's office manager has provided customer service to PSD customers when she is in the office, but she is often not in the office. The Town office employees, as well as the Town's Mayor and Recorder, have also provided customer service to PSD customers.

(c) The PSD's office manager has continued to issue bills, collect and deposit payments from customers into the PSD's bank account. The Town's office manager, as well as its Recorder, have also performed these same functions for the PSD's customers. The PSD has only one office employee, its office manager, who would not have been able to handle these functions without the assistance of the Town's office manager, who is in the office between 8:00 a.m. and 4:00 p.m. from Monday through Friday, and the Town Recorder, who is frequently in the office, since there were days when the PSD office manager was not in the office, due to sick leave or otherwise.

3. In response to paragraph 2 of the PSD's petition, the Town denies that its performance of services on behalf of the PSD hindered PSD operations.

(a) Several PSD customers have complained because the PSD was not correctly reading their meters with the PSD's electronic meter equipment. At times, PSD customer meters were filled with water, which obstructed a correct reading by the PSD's electronic equipment. The Town notes that at least 10 PSD customers each month complained that the PSD incorrectly read their meters because the PSD's electronic meter equipment did not record their meter information correctly. Because of all the problems with incorrect PSD meter readings, the Town's employees attempted to read all PSD customer meters manually, but the Town's employees were unfamiliar with the PSD meters and unable to keep up with the PSD meter readings. Therefore, the Town decided to manually read PSD meters only when a PSD customer complained that a bill based on a radio meter reading was too high.

(b) The PSD did not issue its customer bills in a timely manner. The PSD's office manager claimed that her computer crashed on at least three separate occasions and that she would lose all the data if her computer was ever turned off; she posted a sign on her computer that stated "this computer must stay on at all times." At the November 2013 meeting of the Town Council, the Town was advised that the PSD office manager was waiting on about 75 customer meter readings before she would be able to send out bills. The Town's own billing system has functioned smoothly for years, with very few complaints.

4. In response to paragraph 3 of the PSD's petition, the Town acknowledges that the O&M Agreement, which was drafted under duress when the PSD was in an emergency situation, needs to be renegotiated and revised. At the time the O&M Agreement was made, the PSD's bondholder advised the Town's attorney that the O&M Agreement should include certain provisions to satisfy the bondholder's requirements, but the O&M Agreement could be renegotiated after the current crisis had abated. Since then, both the Town and the PSD have been overwhelmed with the PSD's many problems, and simply have not got around to this task. The Town notes that the bondholder has not complained that this task has not been accomplished.

(a) The Town has assisted the PSD with collection of revenue from its customers and deposited the revenue in the PSD's separate account. The Town has paid the PSD's employees with PSD funds from the PSD account. The Town has used the remaining available PSD revenues to pay down the PSD's debts due its creditors.

(b) The Town has charged and collected the amount due from the PSD for water it sold to the PSD, each month. Because the PSD did not have sufficient funds to continue to operate, pay its existing creditors, and pay the expenses incurred in order to resolve its crisis situation caused by many years of mismanagement, the Town had to advance payment of many expenditures for the PSD.

The Town has also charged the PSD for reimbursement of the additional expenses incurred in order to keep the PSD in operation, but to date it has only collected \$1,000 of the amount due.

Attached as Exhibit A is an accounting of the Town's invoices for reimbursement of costs incurred so the PSD could continue to operate, other than the usual bills for water the Town sold to the PSD. Some of these claims relate to costs advanced to Amtower Auto Parts, Hardman's Supply, Erlewine Concrete Company and Town of Grantsville Water Department, for parts needed to repair PSD equipment, and to USA Bluebook and the United States Postal Service, for office supplies and postage used solely by the PSD. The Town has not claimed any reimbursement for the value of its employees' time spent on PSD business, nor for the use of its office and office utilities.

The claim for payment to attorney Erica Brannon relates to her representation of the PSD in the civil action in which two creditors had already obtained a default judgment, followed by seizure of all the PSD's bank account funds pursuant to a suggestee execution. That situation was the proximate cause of the PSD's inability to continue its operations, hence the boil water advisory issued to all its customers, before the O&M Agreement was implemented. The Town advanced the retainer needed to hire an attorney so that the civil action could be reopened and the PSD could get back sufficient funds to resume operations. Attorney

Erica Gunn was able to negotiate the return of a substantial portion of bank funds to the PSD, along with an agreement between the PSD and the plaintiff creditors to pay the balance still due on the plaintiff creditors' claims with a payment schedule that the PSD can afford.

The claim for reimbursement of attorney fees paid to Loren B. Howley relates only to legal services performed in order to get the PSD out of its crisis. This included meetings with public officials at the time of the crisis, negotiation and drafting of the O&M Agreement, representation in this action before the PSC to obtain approval of the O&M Agreement, advice to the Mayor and Town Council regarding the O&M Agreement and the PSD's legal problems, assistance to engage an attorney to represent the PSD in the lawsuit that led to its immediate crisis as described above and oversight of that case. It should be noted that Loren B. Howley will be submitting additional bills to the Town for legal services in this case, such as the preparation of this response to the PSD's petition. Therefore, the Town's claims for reimbursement due from the PSD will increase.

The Town has been making a conscientious effort to assist the PSD in the resolution of its immediate crisis, and to help the PSD overcome the problems created by years of mismanagement. As noted above, the Town has not billed the PSD for its employees' ~~services or any portion of the expenses of the office now shared by~~

the PSD. The PSD has only paid the Town \$1,000 towards reimbursement of the costs advanced by the Town to date, and as of January 17, 2014 the PSD owes the Town a balance of \$11,443.35 on these claims. The Town did not insist on immediate payment of its claims for reimbursement from the PSD because it recognized that the PSD has other important bills, many of which are extremely old, and it understood that it would have until expiration of the O&M Agreement in September 2014 to collect the money due the Town.

It is unclear how the PSD could afford to engage the services of James Kelsh and Robert Hogan, its attorneys in this case, since the Town did not approve that expenditure and the Town has legal control over the PSD's business pursuant to the O&M Agreement.

(c) It is also unclear how the PSD could file a petition for approval of a rate increase without the Town's authorization and input, although the PSD obviously has done so. Any increase in the PSD's rates must necessarily be sufficient to enable the PSD to reimburse the Town for its costs incurred for the sole benefit of the PSD, as listed in the attached Exhibit A, as well as the anticipated additional costs that will be incurred by the Town.

5. In response to paragraph 4 of the PSD's petition, the Town acknowledges that the PSD has issued bonds to pay for loans from the USDA, which is the bondholder.

6. In response to paragraph 5 of the PSD's petition, the



Town admits that the USDA advised the Town that the parties' O&M Agreement to be renegotiated to meet certain requirements imposed by it as bondholder. As explained in paragraph 4 above, the USDA advised the Town's attorney that the O&M Agreement could be renegotiated after the PSD was no longer in crisis.

7. In response to paragraph 6 of the PSD's petition, the Town states that the PSD's financial crisis has been somewhat ameliorated but is not yet abated. Although there has been an agreement reached with the creditors who obtained default judgment against the PSD and seized its assets, the PSD does not yet have sufficient funds to pay the Town, let alone its numerous other creditors. Despite the PSD's belief that it can provide better, more efficient and more orderly customer service, the PSD has not yet demonstrated that its employees can complete the monthly meter readings and billing in an accurate and timely manner. This may be partly due to the fact that the PSD has only one meter reader, who has another full-time job and either cannot or does not timely read all meters, and one office employee, who is not always in the office during business hours and who insists on using an unreliable computer that crashes if it is unplugged.

8. In response to paragraph 7 of the PSD's petition, the Town disputes that the PSD can unilaterally terminate the O&M Agreement merely by filing a Notice of Termination with the PSC, asserts that the PSC has sole authority to determine if the O&M

Agreement should be terminated early, and further states that there is not good cause to terminate the O&M Agreement early. Furthermore, the Town disputes that the PSD has the legal authority to file its pending petition, inasmuch as the Council of the Town, which has the sole authority to manage the PSD's business at this time, voted in December 2013 against allowing the PSD to do so because the PSD cannot afford to do so at this time. The PSD has incurred substantial legal expenses by filing its pending petition, which is an additional expense that the PSD's ratepayers can not afford to absorb at this time.

9. The Town incorporates by reference the allegations in paragraph 4 above for its response to paragraph 8 of the PSD's petition.

10. The Town incorporates by reference the allegations in paragraph 8 above for its response to paragraph 9 of the PSD's petition.

11. The Town further states that, if the PSC finds that the PSD is not capable of effective management of its own operations at this time, it would be helpful to both parties if the PSC would enter an Order to provide the parties with clarification of each party's authority to hire and fire employees, authorize expenditures, and operate the PSD's business for the duration of the term of the O&M Agreement.

12. The Town further states that, if the PSC finds that

the PSD is capable of effective management of its own operations at this time and grants the PSD's petition for early termination of the O&M Agreement, the Town is entitled to an Order requiring the PSD to (a) timely pay the Town for all water it purchases from the Town, and (b) timely reimburse the Town for costs advanced, including both the costs itemized on the list attached as Exhibit A and also all additional such costs when billed.

WHEREFORE, the Town requests that the PSC grant it the following relief:

A. Deny the PSD's request for approval of early termination of the parties' O&M Agreement, and provide the parties with clarification of each party's authority to hire and fire employees, authorize expenditures, and operate the PSD's business for the duration of the term of the O&M Agreement; or

B. In the alternative, if the PSC grants the PSD's request for approval of early termination of the parties' O&M Agreement, also (a) order the PSD to timely pay the Town for all water it purchases from the Town, and (b) require the PSD to timely reimburse the Town for costs advanced, including both the costs itemized on the list attached as Exhibit A and also all additional such costs when billed; and

C. Order the PSD to reimburse the Town and pay, within a reasonable time, the claims itemized on the list attached as

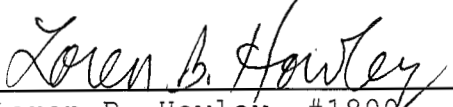
Exhibit A and also all additional such costs when billed; and

D. Order the PSD to reimburse the Town for the Town's attorney fees and costs incurred as a result of the Town's intervention to help the PSD address the crisis caused by years of mismanagement, resume operations and continue to operate under the O&M Agreement, including but not limited to legal services provided in this case; and

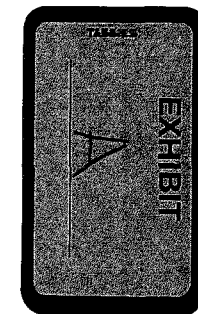
E. Award the Town such other relief as the PSC deems legal and proper.

TOWN OF GRANTSVILLE,

By counsel.

  
Loren B. Howley, #1800  
Attorney for Town of Grantsville  
P.O. Box 580  
Grantsville, WV 26147  
(304) 354-7037  
fax: (304) 354-6045  
email: howleylaw@frontiernet.net

Date	Payable Invoices of Mt. Zion PSD owe to the Town of Grantsville	Amount	Total
9/6/2013	Amtowner Auto Parts	\$ 78.46	\$ 78.46
9/16/2013	Erica Brannon, Att'y	\$ 5,000.00	\$ 5,078.46
9/16/2013	Hardman's	\$ 11.94	\$ 5,090.40
9/11/2013	Erlewine Concrete Company	\$ 166.40	\$ 5,256.80
9/27/2013	USABluebook	\$ 781.80	\$ 6,038.60
10/3/2013	TOG Water Department	\$ 92.25	\$ 6,130.85
12/4/2013	US Postal	\$ 276.00	\$ 6,406.85
12/19/2013	Mt. Zion Paid	-\$1,000.00	\$ 5,406.85
1/16/2014	Loren Howley	\$ 6,036.50	\$ 11,443.35
	<b>Total Due from Mt. Zion as 01/17/20113</b>	<b>\$ 11,443.35</b>	



STATE OF WEST VIRGINIA  
PUBLIC SERVICE COMMISSION  
CHARLESTON

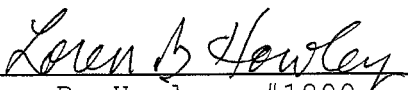
Case No. 13-1384-PSWD-PC

**CERTIFICATE OF SERVICE**

I, Loren B. Howley, attorney for the Town of Grantsville, certify that I have served a true copy of the attached Response of Town of Grantsville to Notice by Mt. Zion Public Service District of Termination of Operations and Maintenance Agreement and Petition to Reopen Case on the parties by sending by first-class mail a true copy of same, this 17<sup>th</sup> day of January, 2014, postage pre-paid, to the parties' attorneys at the following addresses:

James V. Kelsh, Esq.  
Robert Hogan, Esq.  
Bowles Rice LLP  
600 Quarrier Street  
Charleston, WV 25301  
*Attorney for Mt. Zion Public Service District*

Keith Walker, Esq.  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, WV 25301  
*Staff Attorney for Public Service Commission of WV*

  
Loren B. Howley, #1800  
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