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December 19, 2013

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Ingrid Ferrell  
Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

**HAND DELIVERY**

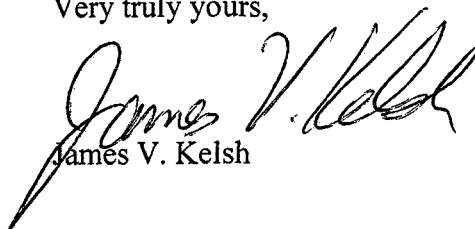
04:45 PM DEC 19 2013 PSC EXEC SEC DM

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

Dear Ms. Ferrell:

Enclosed for filing in the above referenced matter, please find the original and 12 copies of the *Notice of the Mt. Zion Public Service District of Termination of Operations and Maintenance Agreement and Petition to Reopen Case*.

Very truly yours,



James V. Kelsh

JVK/kay  
Enclosure

cc: Ms. Patty Cottrell  
Loren Howley, Esq.  
Keith Walker, Esq.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

CASE NO. 13-1384-PSWD-PC

TOWN OF GRANTSVILLE and MT. ZION PUBLIC SERVICE DISTRICT  
Petition for consent and approval of an Operations and Maintenance  
Agreement between the Town and Mt. Zion Public Service District

**NOTICE OF THE MT. ZION PUBLIC SERVICE DISTRICT OF  
TERMINATION OF OPERATIONS AND MAINTENANCE  
AGREEMENT AND PETITION TO REOPEN CASE**

COMES NOW, the Mt. Zion Public Service District ("District"), by counsel, James V. Kelsh and Roger Hanshaw of Bowles Rice, LLP, to notify the Commission and the Town of Grantsville ("Town") of Termination of the Operations and Maintenance Agreement ("O&M Agreement") approved by the Commission's September 27, 2013 order ("Order") in this matter, and to reopen this case, and in support thereof states the following:

1. Since the issuance of the Order, neither the Town nor the District have acted in conformance with the O&M Agreement.

Specifically:

a. The District has continued to have its employees perform field maintenance on the District's water and sewer systems, with the exception of some water testing.

b. The District's office manager has provided customer service to the District's customers.

c. The District's office manager has continued to issue bills and collect and deposit payments from customers into the District's bank accounts.

2. The Town's efforts to provide operation and maintenance services have hindered the efficient delivery of services. Specifically:

a. The District's water customer have radio-read meters while the Town's customers have manual read meters. The Town attempted to read the District's meters manually, until the delay resulting from this approach became apparent and the Town permitted District employees to use District equipment to radio-read meters.

b. The Town uses a different billing software system from that employed by the District. The Town insisted that the District issue bills using the Town's software system. This was attempted in September, 2013, until the issuance of the bills was so delayed that the Town permitted the District to use District software to issue bills. In October, 2013, due to the Town's insistence on using its software and difficulties in the conversion process and the Town's lack of assistance with the conversion process, no bills were issued. In November, 2013, bills were issued using the Town's software, however many of these bills contained errors regarding the meter reading date. These errors have resulted in the filing of five formal complaints against the District since November, 19, 2013. Further, the Town's software system does not facilitate retrieval of customer data as readily as the District's system.

3. The financial terms of the O&M Agreement are vague and unworkable. Specifically:

a. Section 3 of the O&M Agreement states: "For the services provided under this Agreement, the Town shall charge and collect from each customer the PSD's tariff rate for water and sewer service. Charges for repairs and replacements shall be in addition to the tariff rate and shall be on a time and materials basis at the PSD's cost." If the first sentence of §3 means that the Town gets paid for O&M services all of the revenue generated by the District's customers, that approach would leave no funds for the District to pay its employees and contractors, or debt service. With respect to the second sentence in §3, logically, the District could never generate revenue sufficient to pay charges for repairs and replacement if those charges are in addition to revenue received from application of the District's tariff rate.

b. The O&M Agreement is unworkable in that there is no specified fee for the services provided by the Town. A fee of no specified amount is incapable of being cost-justified. The District and the Commission have no financial data to evaluate the reasonableness of the Town's charges.

c. The District has a case pending before the Commission to change its water and sewer rates, Case No. 13-1439-PSWD-19A. The vagueness of the Town's charges for O&M charges make it very difficult to determine what changes may need to be made to the District's rates to enable it to meet its expenses and bond coverage requirements.

4. The District has issued bonds to the U.S. Department of Agriculture ("USDA").

5. When a debtor of the USDA enters into an O&M agreement, such an O&M agreement is required to meet certain criteria. See Attachment A. The O&M Agreement would need to be entirely redrafted in order to meet the requirements of the USDA.

6. The financial crisis which generated the operation crisis which lead to the O&M Agreement has abated. The District strongly believes that it can provide better, more efficient, and more orderly service to its customers directly using its personnel and equipment rather than through the O&M Agreement.

7. By this filing, the District notifies the Commission and the Town of the termination of the O&M Agreement, as required by the Order.

8. The District requests the assistance of the Staff of the Commission to determine the amount which the Town should be paid for the services which the Town has provided to the District under the O&M Agreement. The District has not received an invoice from the Town for O&M Services yet. The District will pay from its funds legal fees of an attorney selected by the Town to represent the District in a civil matter. Since the Commission approved the O&M Agreement, the Town has not repaired any District facilities, has not connected any new customers, or disconnected any customers; consequently the District believes that the Town's charges for services should be minimal. Town personnel represented at a Town meeting that the Town would not charge the District for work performed by Town employees during normal working hours.

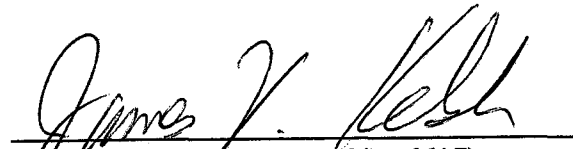
9. The District intends to continue to operate in the same manner as it has since the PSC approved the O&M Agreement until the 90 day period expires. Upon expiration of that period and the formal termination of the O&M Agreement, the District will remove its

computer and files from the Town's offices and resume providing billing services from the District's office.

WHEREFORE, the District prays that the Commission reopen this matter for the limited purpose of determining the amount which the District should pay the Town for services provided under the O&M Agreement.

Mt. Zion Public Service District

By Counsel

  
James V. Kelsh (State Bar No. 6617)  
Robert Hogan (State Bar No. 5979)  
Bowles Rice LLP  
600 Quarrier Street  
Charleston, West Virginia 25301  
(304) 347-1135  
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# ATTACHMENT A

**Minimum Suggested  
Contents of Management Agreements**

1. Manage and operate the project subject to the operating and employment procedures adopted by the owner.
2. Operate facility based on the annual budget and fee schedule adopted by the owner.
3. Set out the handling of funds. All reserve, depreciation, debt payment, and surplus funds should be transferred to the owner on at least a monthly basis.
4. Provide for monthly and annual reports to the owner covering appropriate financial and operational statistics and inspection of books and records by owner and government.
5. Set out the responsibilities for maintenance.
6. Set out the amount and type of insurance, including fidelity bond or employee dishonesty bonds.
7. Provide for reasonable limits on expenditures for emergency repairs to the facility.
8. Set out the term of the agreement and compensation of the manager including specific positions included in that fee.
9. Set out the remedies for default of the agreement.
10. Require operation in accordance with all Federal, State and local government requirements.
11. Require the manager to comply with all requirements related to the Federal financial assistance as if it were the recipient of the assistance.
12. Set out responsibilities for obtaining and maintaining all necessary licenses, certifications, and accreditations as may be necessary to operate, maintain, or manage the project.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**CASE NO. 13-1384-PSWD-PC**

**TOWN OF GRANTSVILLE and MT. ZION PUBLIC SERVICE DISTRICT**

**Petition for consent and approval of an Operations and Maintenance  
Agreement between the Town and Mt. Zion Public Service District**

**CERTIFICATE OF SERVICE**

I, James V. Kelsh, counsel for Mt. Zion Public Service District, do hereby certify that a copy of the foregoing "*Notice of the Mt. Zion Public Service District of Termination of Operations and Maintenance Agreement and Petition to Reopen Case*" has been served this 19th day of December, 2013, upon the following in the manner indicated:

**HAND DELIVERY:**

Keith Walker, Esq.  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

**VIA U.S. MAIL:**

Loren B. Howley, Esq.  
Counsel, Town of Grantsville and Mt. Zion PSD  
Post Office Box 580  
Grantsville, West Virginia 26147

  
\_\_\_\_\_  
James V. Kelsh, Esq.