CHARLES TOWN UTILITY BOARD
AGENDA

WEDNESDAY, APRIL 30, 2025

Special Meeting | **661 South George Street, Charles Town, WV 25414** | **4:00 PM**

CALL TO ORDER

1. **APPROVAL OF MINUTES**

2. **PUBLIC COMMENT**
   This portion of the agenda is designed for members of the general public to share thoughts on items of interest in the community. By law, Board members may ask clarifying questions or discuss procedural matters but are not permitted to discuss the policy merits of any issue unless it is scheduled for discussion.

   The public is invited to attend this meeting in person or via webcast (www.ctubwv.com- Board Meeting - Meeting Agendas and Minutes 2025) or by accessing the following zoom link:
   https://us06web.zoom.us/j/89394173086?pwd=a7KaM4OBxxPONLnNxwTl4oEV1ERmXz.1

   Meeting ID: 893 9417 3086
   Passcode: 370535
   (301)715-8592

3. **UNFINISHED BUSINESS**
   a. 25-0079-W-PC - Sidewinder Service Agreement for Mountain Pure Development
      04-07-2025 Final DRAFT to PSC.pdf
      PSC Final Joint Staff Memorandum.pdf
      PSC Order Extension.pdf

4. **INFORMATION ONLY**
   Next Meeting - May 14, 2025 at 4:00 P.M.

5. **ADJOURNMENT**

CHARLES TOWN UTILITY BOARD

Wednesday, April 30, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

25-0079-W-PC - Sidewinder Service Agreement for Mountain Pure Development

Attachments:

04-07-2025 Final DRAFT to PSC.pdf
PSC Final Joint Staff Memorandum.pdf
PSC Order Extension.pdf

Charles Town
Utility Board

661 S. George Street, Suite 101 Charles Town, WV 25414
Phone: (304) 725-2316 ♦ Fax: (304) 725-7150 ♦ Web: www.ctubwv.com

UTILITY BOARD

CHAIRMAN
City of Charles Town City Manager John Nissel

VICE CHAIRMAN
John Maxey

TREASURER
City of Ranson Mayor Duke Pierson

SECRETARY
Ashley Stottlemyer

Board Member Heidi Parker

Board Member Patrick Kratovil

UTILITY MANAGER
Kristen Stolipher

April 7, 2025

Ms. Karen Buckley, Executive Secretary
Executive Secretary Division
Public Service Commission of West Virginia
201 Brooks Street
Charleston, West Virginia 25301

Re: Case 25-0079-W-PC
City of Charles Town
Revised Agreement with Sidewinder Enterprises, LLC.

Dear Ms. Buckley:

Please find attached the revised Agreement by and between the Charles Town Utility Board and Sidewinder Enterprises, LLC. Two corrections were requested by PSC staff for clarification based on the 1st Data Request. Subsequently, the agreement has been revised to include Sections 2.06 with regard to necessary rights-of-way, real property and easements as well as Section 5.04 which specifically states that the Developer has waived the right to receive an estimate of the cost of the extension.

Should you require any additional information, please feel free to contact me.

Sincerely,

Kristen Stolipher
Utility Manager

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and effective this _____ day of _____, 2025, by and between the **CITY OF CHARLES TOWN, by and through the CHARLES TOWN UTILITY BOARD,** (hereinafter, "CTUB") **and SIDEWINDER ENTERPRISES, LLC** (hereinafter, "Developer").

WHEREAS, the City of Charles Town, by and through CTUB operates a combined water and sewer system pursuant to the provisions of Chapter 8, Article 20 of the Code of West Virginia and has been authorized by the Public Service Commission of West Virginia to develop a water supply system throughout areas within Jefferson County, West Virginia, including certain areas near the Village of Middleway in Middleway District of Jefferson County; and

WHEREAS, the DEVELOPER is planning to develop certain lands within the Middleway District of Jefferson County for commercial and industrial purposes; and,

WHEREAS, the planned development of the DEVELOPER'S property is contingent upon DEVELOPER having proper water treatment and distribution facilities for a potable water supply for the development of its property; and,

WHEREAS, the DEVELOPER has identified a source of water on its property that it intends to use for a raw water supply and to make available to CTUB for treatment and sale of potable water to CTUB's utility customers; and,

WHEREAS, CTUB desires to obtain a water source for treatment and sale to DEVELOPER and to the other customers; and,

WHEREAS, the DEVELOPER is willing to bear the expense of making public certain water treatment and distribution facilities available to CTUB, as well as for ultimate distribution by CTUB to its customers;

NOW, THEREFORE, for and in consideration of the covenants and agreements set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, CTUB and the DEVELOPER agree:

ARTICLE I

DESIGN

Section 1.01. Owner has acquired by deed of record in the Jefferson County Clerk's Office in Deed Book 1256, Page 360, land in Middleway District, Jefferson County, West Virginia ("Development"). The Development is comprised of five (5) separate parcels of real estate, identified in the Jefferson County tax records as Map 22, Parcels 3.01, 9, 32, 34 and Map 22B, Parcel 19.02. The DEVELOPER intends to drill and construct up to three (3) groundwater wells to supply the development. The DEVELOPER also has access to existing water rights as detailed in Deed Book 1271, Page 212 that will also be used to supply the Development. The DEVELOPER hereby agrees to employ qualified professional engineers to design a raw water transmission pipeline to a water treatment plant to be constructed by the DEVELOPER, and a water main of sufficient length and capacity to provide finished metered water service to the DEVELOPER'S property ("Project"). The location of the wells, the proposed raw water line, the proposed treatment plant, and the proposed finished water line are identified on Exhibit 1 attached to this Agreement. The design of the Project shall be developed solely at the DEVELOPER'S expense and shall be designed to meet all applicable State, Federal and local regulations.

Section 1.02. CTUB shall have the right to inspect and approve, prior to the start of construction under this Agreement, the design and specifications of the Project, to ensure that the Project satisfactorily meets its objectives, is in accordance with all applicable regulations and the terms of this Agreement, minimizes leakage, and is designed using sound engineering standards. CTUB may reasonably require such revisions of said plans and specifications as it reasonably feels are necessary before giving its approval to the Project. The DEVELOPER must receive prior approval of CTUB in writing before submitting Project plans to the West Virginia Bureau of Health. CTUB shall sign all permit applications for the Project.

Section 1.03. The DEVELOPER shall, at its own expense, submit the plans and specifications to the appropriate State, Federal, and local agencies having jurisdiction over the Project for their approval. The DEVELOPER shall make such changes as are reasonably required by said agencies, at the DEVELOPER'S expense.

ARTICLE II

CONSTRUCTION AND INSPECTION

Section 2.01. The DEVELOPER will construct all of the facilities comprising the Project, including but not limited to, the raw water main, the water treatment plant, the finished water mains, trunk lines, pumping facilities and other necessary appurtenances. The DEVELOPER shall obtain, at its own expense, all necessary permits, authorizations and approvals of State, Federal, and local agencies during the construction phase and shall make such changes as are required by said agencies during this phase. The DEVELOPER shall obtain all necessary rights-of-way and take all other such actions, including but not limited to, legal action, as are necessary to complete the facilities, at the DEVELOPER'S own expense. CTUB shall take such actions as are permitted by law to aid in obtaining the necessary easements on land not owned by the DEVELOPER, including, but not limited to, legal action. The cost of any said action by CTUB shall be borne by the DEVELOPER.

Section 2.02. CTUB shall bear no financial or other responsibility for the construction of the DEVELOPER'S Project. However, CTUB shall have the right to inspect and approve, prior to the implementation of service under this Agreement, the construction of the DEVELOPER'S Project to insure that water will be satisfactorily distributed to the Development in accordance with applicable regulations and the terms of this Agreement, and that the Project is being constructed using sound engineering and construction standards, and using materials in compliance with CTUB'S standards and specifications.

Section 2.03. The DEVELOPER will be required at its expense to conduct pressure tests and water quality and safety tests in accordance with the laws of the State of West Virginia and the regulations of the State Bureau for Public Health. In conjunction with the testing and prior to placing it in service, the Project will be cleaned, flushed and disinfected in accordance with applicable standards and methods of the American Water Works Association and the West Virginia Bureau for Public Health (WVBPH).

Section 2.04. The DEVELOPER shall provide to CTUB a complete set of plans for the facilities and continually update these plans through the design and construction of the Project. Upon completion of construction, the DEVELOPER shall provide to CTUB reproducible mylars of "as built" plans for the Project.

Section 2.05. At all times during the construction of said facilities, the DEVELOPER shall maintain sole ownership of said facilities.

Section 2.06. The DEVELOPER shall, with the cooperation and support of CTUB, obtain all necessary rights-of-way, real property, easements and take all other such actions, including but not limited to, legal action, as are necessary to complete the Sewer Collection System, at the DEVELOPER'S own expense. CTUB shall, at the request of the DEVELOPER, take such actions as are permitted by law to aid in obtaining the necessary rights of way, real property or easements on land not owned by the DEVELOPER, including, but not limited to, legal actions. The cost of said actions requested by the DEVELOPER, including amounts paid to property owners for the required real estate and easements as well as all litigation costs and taken by CTUB shall be borne by the DEVELOPER.

ARTICLE III

TRANSFER OF OWNERSHIP

Section 3.01. Upon completion of the construction of the Project, the DEVELOPER shall obtain such State, Federal, and local certifications, authorizations, or approvals as required, at DEVELOPER'S expense. After said certifications, authorizations or approvals are obtained, and the facilities are completed in all respects, the DEVELOPER shall provide CTUB written notice of said completion. As used in this and subsequent Sections, "completed in all respects" includes, but is not limited to, the Project being physically complete, all engineers, materialmen, contractors and subcontractors of the DEVELOPER being paid for their work on said system, all legal disputes regarding the Project being resolved, and no outstanding liens or potential liens on said system existing.

Section 3.02. Upon receipt of the written notice described in Section 3.01, CTUB shall have 45 days to inspect the Project and all of its associated facilities and conduct any additional tests, at CTUB'S expense, as CTUB feels are appropriate and necessary to determine that the Project is functioning in accordance with the design plans. Not later than 45 days after receipt of the DEVELOPER'S notice hereunder, CTUB shall provide to the DEVELOPER, in writing, a list of changes, repairs, or additions which CTUB believes are necessary to place the DEVELOPER'S Project in good and proper working condition, and a list of other actions which the DEVELOPER must take so that the Project is complete in all respects. The DEVELOPER, at its own expense, shall make said changes, repairs and additions and take said actions which are directed by CTUB. Once said changes, repairs and additions have been made and actions taken, the DEVELOPER will provide

CTUB with an additional written notice as set forth in Section 3.01 and CTUB shall have the same rights as it had upon receipt of the initial notice.

Section 3.03. If, after receipt of the notices set forth in Section 3.01 and upon CTUB'S determination that the DEVELOPER has completed the changes, repairs and additions and actions which as directed by CTUB under Section 3.02, and CTUB further determines that the DEVELOPER'S Project is in good and proper working condition, that no other changes, repairs, or additions are necessary, and that the Project is completed in all respects, the DEVELOPER shall deliver, and CTUB shall accept, ownership of the Project, including rights-of-way, and all real property and easements (including those easements referenced in Section 1.01 and shown on Exhibit 1) necessary for the ownership, operation and maintenance of the Project. The transfer of ownership of the Project shall occur fifteen (15) days after the expiration of CTUB'S right of inspection and testing, set forth in Section 3.02 unless such transfer is delayed to a later mutually agreeable date.

Section 3.04. Upon completion of the construction of the Project, the DEVELOPER shall lease to CTUB the site upon which the water treatment facilities are located, and convey, free of all liens and encumbrances, the raw water transmission line, finished water mains for domestic service and the water treatment plant. The Lease shall be for a term of one hundred (100) years at an annual rental rate of one dollar ($1.00).

ARTICLE IV

OPERATION OF WATER WELLS

Section 4.01. DEVELOPER shall pump water from the wells for CTUB to treat and sell to its customers, an amount sufficient to serve the DEVELOPER'S potable supply requirements on the Development plus an additional amount to serve 200 equivalent dwelling units (EDUs). The DEVELOPER'S requirements on the Development and customers served by the additional amount shall be collectively referred to herein as "CTUB Customers". For purposes of this Agreement an equivalent dwelling unit shall be equal to 150 gallons per day. Any increase in the allocation to CTUB shall be subject to agreement by CTUB and DEVELOPER.

Section 4.02. DEVELOPER agrees that if it intends to seek a third party to operate and maintain its wells and pumping facilities necessary to supply raw water to its Development, it will offer to CTUB the right of first refusal to contract with the DEVELOPER for such operation and maintenance.

Section 4.03. DEVELOPER further agrees that in the event it should decide to discontinue operation of the wells or seek to transfer ownership to the wells and facilities necessary to supply raw water to its Development, it will offer to CTUB the right of first refusal to purchase said wells and facilities.

Section 4.04. If DEVELOPER desires to sell one or more of its parcels to a West Virginia Public Service Commission (WV PSC) regulated utility, then (a) DEVELOPER shall provide CTUB with a signed term sheet for such sale and (b) CTUB shall have the right to elect to purchase such parcel(s) on the terms and conditions set forth in such term sheet by giving DEVELOPER written notice within ten (10) days after CTUB's receipt of such term sheet. If CTUB fails to exercise such right to purchase or if CTUB thereafter fails to consummate such purchase for any reason whatsoever, then CTUB shall have no further rights under this Section 4.04.

Section 4.05. If DEVELOPER or DEVELOPER's assignees fails to perform its express maintenance and repairs obligations set forth in this Agreement and if such failure continues for a period of thirty (30) days (or such longer period so long as DEVELOPER or DEVELOPER's assignee is diligently prosecuting to cure the maintenance and repair obligations), then CTUB may, as its sole right, undertake such maintenance and repair in which event CTUB shall have rights to perform such maintenance at DEVELOPER's cost.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Section 5.01. CTUB represents and warrants that the execution, delivery, and performance of this Agreement by CTUB will have been duly authorized, and this Agreement by CTUB will have been duly authorized, and this Agreement constitutes a valid and binding obligation of CTUB enforceable in accordance with its terms.

Section 5.02. The DEVELOPER represents and warrants that the facilities will be designed and constructed in accordance with CTUB'S specifications, and in a proper workmanlike manner using sound principles of engineering and construction. The DEVELOPER hereby warrants the DEVELOPER'S work on said treatment, pumping facilities, storage facilities and other necessary appurtenances for one (1) year unless otherwise determined by Manufacturer Warranty from the date the facilities are placed into operation. All underground pipe in the Project will be accepted by CTUB "as is" at the time of the transfer of ownership of the Project.

Section 5.03. The DEVELOPER agrees that after transfer of ownership of the Project, or any portion thereof, to CTUB, the DEVELOPER shall pay to CTUB monthly the applicable rates established in the City of Charles Town's Water Tariff for portable water consumed by DEVELOPER. Additionally, the DEVELOPER agrees to pay a transmission fee per thousand gallons of water conveyed through the raw water transmission line monthly to cover operation and maintenance costs of the raw water transmission line in accordance with the following rates:

Up to 250,000 gallons	$0.35 per 1,000 gallons
250,000 to 500,000 gallons	$0.17 per 1,000 gallons
500,000 to 750,000 gallons	$0.12 per 1,000 gallons
Over 750,000 gallons	$0.09 per 1,000 gallons

The transmission fee will be effective upon the date of transfer of ownership. At the end of the first three (3) year period, and subsequently every three (3) years thereafter, CTUB has the right to perform a rate evaluation to ensure that the transmission fee is adequate to cover Operation and Maintenance costs of the raw water transmission line and appurtenances. The DEVELOPER shall have the right to review and comment upon any findings made by CTUB as a result of the rate evaluation.

Section 5.04. The DEVELOPER waives the right to receive an estimate of the cost of the extension.

ARTICLE VI

SUBSEQUENT CONNECTIONS

Section 6.01. The DEVELOPER shall construct one metered water service for the Development. Future subdivision or off-sale of a portion of the Development may require the construction of additional metered connection(s), including public main and/or service line extension(s) thereto, in accordance with the requirements of the Public Service Commission of West Virginia Rules and Regulations for the Government of Water Utilities, 150CSR7. Nothing in this Agreement shall be construed to require CTUB to be responsible for fees relating directly to DEVELOPER's customers.

Section 6.02. The DEVELOPER shall insure that each additional CUSTOMER connection connected to CTUB'S facilities located on the Development shall have a water meter installed prior to connection to CTUB's public water system. Said water meter, and its installation, must be approved by CTUB.

Section 6.03. The DEVELOPER hereby agrees that in the event that the DEVELOPER transfers any portion of the DEVELOPER'S property in the Development, or the ownership of the wells and facilities necessary to supply raw water to its Development, as referred to in Sections 4.02 and 4.03, to any individual, corporation, or other entity, the DEVELOPER shall require, as a term of said transfer, that said individual, corporation, or other entity assume the obligations of this Agreement.

ARTICLE VII
OPERATION OF FACILITIES

Section 7.01. DEVELOPER shall operate and maintain the wells at its expense and shall pump water to the treatment plant for CTUB to treat and sell to its customers. CTUB shall operate and maintain the raw water main and the treatment plant at its expense and in accordance with all federal, state and local regulatory requirements. The water treatment plant will be designed in accordance with the WVBPH requirements. In the event that the source water is determined to be Ground Water Under the Direct Influence of Surface Water, the plant will meet all WVBPH requirements. CTUB shall not make any construction modifications to the raw water transmission main and shall not shut down the raw water transmission main for any purpose without prior notice to the DEVELOPER other than in the event of an emergency that poses imminent risk of injury to persons, material damage to property or cessation of the operation of the facilities, as determined solely by CTUB, that necessitates raw water transmission main shut down.

Section 7.02. Except as provided in Section 5.02, after transfer of ownership to CTUB of the Project, CTUB shall be responsible for the costs of any and all operations and maintenance changes, as well as capital changes and upgrades to all federal, state and local governmental regulations. CTUB has the right, at its sole expense to expand the capacity of the treatment plant when such expansion may be necessary for public use provided that (a) CTUB performs Phase I and Phase II environmental assessments to prove that the expansion of the capacity (including the drilling of new wells) will not impair the quality of the existing water wells, (b) such expansion would not limit the yield or capacity of water products with respect to DEVELOPER's customers ; and (c) nothing herein shall preclude DEVELOPER from producing water from other wells on other

properties that DEVELOPER now or in the future may own. Should the DEVELOPER require expansion of the plant for dedicated use, assessment of Capacity Improvement Fees may apply.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01 Nothing in this Agreement shall be construed to make CTUB liable or responsible for any obligations of the DEVELOPER.

The DEVELOPER hereby agrees to save and indemnify and keep harmless CTUB against all liability claims and judgments or demands for damages arising from accidents to persons or property occasioned by the DEVELOPER, his agents or employees, and against all claims or demands for damages arising from accidents to the DEVELOPER, its agents or employees, whether occasioned by said DEVELOPER or his employees or by CTUB or its employees or any other person or persons and the DEVELOPER will defend any and all suits that may be brought against CTUB on account of any such accidents and will make good to, and reimburse CTUB for any expenditures that CTUB may make by reason of such accidents.

The DEVELOPER hereby agrees to save and indemnify and keep harmless CTUB from all claims, demands, causes of action, or suits of whatever nature arising out of the labor and materials used by the DEVELOPER and his contractors or subcontractors, and from all laborers', materialmen's and mechanics' liens upon the system or upon the property upon which the system is located arising out of the labor and materials used by the DEVELOPER and his contractors or subcontractors, and the DEVELOPERS shall keep the system and said property free and clear of all liens, claims, and encumbrances.

Section 8.02. To the extent permitted by law, CTUB hereby agrees to save and indemnify and keep harmless the DEVELOPER against all liability claims and judgments or demands for damages arising from accidents to persons or property occasioned by CTUB, its agents or employees, and against all claims or demands for damages arising from accidents to CTUB, his agents or employees, whether occasioned by said CTUB or its employees or by DEVELOPER or its employees or any other person or persons and CTUB will defend any and all suits that may be brought against DEVELOPER on account of any such accidents and will make good to, and reimburse, DEVELOPER for any expenditures that DEVELOPER may make by reason of such accidents.

Section 8.03. CTUB will not reimburse the DEVELOPER for the cost of installation or any other cost associated with the construction of the Project. The DEVELOPER expressly waives

any right to reimbursement under the Public Service Commission of West Virginia Rules and Regulations for the Government of Water Utilities, 150CSR7, Rule 7.5.5, Extension of Mains, a copy of which is attached hereto as Exhibit A and made a part hereof, and understands that CTUB'S extension of service outlined in this Agreement herein shall be construed as an exemption to Rule 7.5.5 Extension of Mains. The DEVELOPER will collect reimbursement through appropriate pricing of real estate within its development.

Section 8.04. Upon transfer of ownership to CTUB, nothing in this Agreement shall be construed to provide the DEVELOPER with any ownership or other interest in the facilities, which will become the exclusive property of CTUB.

Section 8.05. This Agreement constitutes the entire agreement between CTUB and the DEVELOPER with respect to the matters addressed and may be amended only in a subsequent writing executed by both parties.

Section 8.06. This Agreement shall be binding on all successors and assigns and may not be assigned by either party without the prior written consent of the other party.

Section 8.07. The article and section headings in this Agreement are merely for the convenient reference of the parties and shall not affect the meaning or interpretation of this Agreement.

Section 8.08. Except as required by law, neither party shall make any public disclosure with respect to this Agreement without prior written notice to, and consultation with, the other party. All documents and information exchanged between the parties in connection with this Agreement shall be kept confidential and shall be disclosed to only those individuals whose assistance in the preparation and consummation of the Agreement is in good faith deemed essential.

Section 8.09. Any notices given between the parties hereto, desired or required to be given under this Agreement, shall be in writing and shall be deemed delivered (i) when hand delivered to a party; (ii) when delivered to United States Post Office if by certified or registered mail, return receipt requested, postage prepaid; or (iii) if by national prepaid, overnight delivery service when deposited with the overnight delivery company.

(a) If to DEVELOPER to:

SIDEWINDER ENTERPRISES, LLC
Attn:
4340 Von Karmen, Suite 380
Newport Beach, CA 92660

Copy to:

(b) If to CTUB to:

CHARLES TOWN UTILITY BOARD
Attn: Kristen Stolipher, Utility General Manager
661 S. George Street, Suite 101
Charles Town, WV 25414

Copy to:

Robert R. Rodecker, Esq.
707 Virginia Street East
Suite 1500
Charleston, West Virginia 25301

Section 8.10. The parties represent and warrant that the execution, delivery and performance of this agreement by them has been duly authorized and this agreement constitutes a valid and binding obligation of the parties in force full and accordance with its terms.

Section 8.11. Should any provision of this Agreement be found to be void or unenforceable, it shall be severable from the rest of the Agreement and the remaining terms shall be enforced as if the unenforceable term had not existed.

Section 8.12. This Agreement supersedes all prior agreements between DEVELOPER and CTUB or any of their respective affiliates (written or oral) relating to the subject matter, is intended as an entire and complete statement of the terms of the Agreement between the parties and may be amended or modified only by a written instrument executed by DEVELOPER and CTUB.

CITY OF CHARLES TOWN, by and through the CHARLES TOWN UTILITY BOARD

By:_____
Its: Chairman

ATTEST:

_____
Its Clerk

SIDEWINDER ENTERPRISES, LLC

By:_____
Its: _____

ATTEST:

_____
Its Secretary

EXHIBIT A

PUBLIC SERVICE COMMISSION RULE 7.4

Public Service Commission of West Virginia Rules and Regulations for the Government of Water Utilities, 150CSR7, Rule 7.5, Extension of Mains

6.14.10. Effective period. -- This Plan shall remain in effect until terminated by action of the utility declaring an end to the emergency condition or until terminated by order of the Commission, whichever comes first.

6.14.11. Effective date. -- This Plan shall take effect immediately upon adoption by the utility.

6.15. Resale of water.

6.15.1. A utility customer may not resell or cause to be resold water furnished by a public utility on approved rates or contracts unless the customer is engaged in the business of distributing water as a public utility.

§150-7-7. Utility Facilities; Service Pipes; Extension of System.

7.1. Adequacy of facilities.

7.1.1. Construction and maintenance of plant. -- A utility shall at all times construct and maintain its entire plant and system in such condition that it will furnish safe, adequate and continuous service.

7.1.2. Inspection of plant. -- A utility shall inspect its plant and facilities in such manner and with such frequency as is necessary to ensure a reasonably complete knowledge as to their conditions and adequacy at all times. Such inspections must comply with the requirements of the legally applicable Minimum Federal Safety Standards (Federal Occupational Health and Safety Administration) and the standards of the Bureau for Public Health and the Department of Environmental Protection (as applicable).

7.1.3. Records of conditions. -- Records necessary for the proper maintenance of the system and in accordance with the Bureau for Public Health and the Department of Environmental Protection (as applicable), and the Minimum Federal Safety Standards shall be kept of the conditions found. In special cases, a more complete record may be specified by the Commission.

7.1.4. Records of operation. -- A utility shall keep a record of the operation of its plant, which, so far as practical, shall show sufficient details of plant operation as is necessary to substantially reproduce the daily history of its operation. The utility shall also maintain the records in accordance with the requirements of the Minimum Federal Safety Standards and Bureau for Public Health and Department of Environmental Protection (as applicable).

7.1.5. Reports to Commission. -- A utility shall, upon request of the Commission, file with the Commission a statement regarding the condition and adequacy of its plant, equipment, and facilities, and of its operations and service in such form as the Commission may require.

7.1.6. Bureau for Public Health Standards. -- All extensions, service connections and modifications to a utility's plant must meet applicable design standards established by the West Virginia State Bureau for Public Health in addition to these rules.

7.1.7. Dead ends. -- A utility should avoid "dead ends" in the utility's distribution mains so far as possible. If "dead ends" exist the utility shall provide facilities for flushing.

7.2. Utility Service Pipe.

7.2.1. Where the service pipe is required for the immediate and continuous use for general service to premises abutting the public street or right-of-way in which mains are located, the utility will furnish, install, and maintain the utility service pipe and appurtenances between the main in the street up to the

customer's point of service at or near 90 degrees to the main. Provided, all utility service pipes and appurtenances shall be installed only by the utility unless by prior written agreement.

7.2.2. The utility shall determine the location of the utility service pipe.

7.2.3. The utility will specify the size, kind, quality and location of all materials used in the utility service pipe.

7.2.4. The utility shall install and maintain, at its own cost and expense, all of the utility service pipe regardless of the side of the road on which the customer is located in reference to the main line. The utility shall designate the point of service on the customer's side of the road.

7.2.5. The utility shall not make any charge for furnishing and installing any permanent service connection, meter or other appliance necessary to deliver and measure the water furnished unless the utility has prior approval of the Commission to charge a tap fee and the same is set forth in the utility's tariff on file with the Commission.

7.2.6. The utility's service pipe shall remain under the utility's sole control and jurisdiction.

7.2.7. The customer shall not attach any fixtures to, or make any branches in, the utility service pipe between the point of service and the distribution main. Violation of this rule may result in termination of service pursuant to these rules.

7.2.8. A utility shall install temporary service connections for construction or other temporary purposes or connections for private fire service at the cost of the applicant.

7.2.9. A water utility shall adopt standard methods of meter installations where practicable and file a written description and drawings to provide a clear understanding of the requirements.

7.3. Customer Service Pipe.

7.3.1. No customer, plumber, company owner or any agent shall connect to the utility's main or to any utility service pipe, or extend the pipes therefrom to any premises for the purpose of securing water service, until application has been made therefor to the utility as provided in these rules and the utility has granted permission in writing.

7.3.2. Once a utility grants an application for service, the customer shall install and maintain the customer service pipe.

7.3.3. The utility's authorized employee shall inform the customer of the location of the point of service. The customer shall install the customer service pipe to the point of service after which the utility will install the utility service pipe from the distribution main to the point of service.

7.3.4. The customer shall also install and properly maintain in good working condition a stop and waste cock of a type approved by the utility on the customer's service pipe immediately inside the foundation wall in a readily accessible location and in a place protected from the possibility of freezing and so placed that it will shut off and drain all plumbing within any and all buildings in the premises.

7.3.5. Where the utility's service pipe is already installed to the point of service, the customer shall connect with the utility service pipe as installed.

7.3.6. The customer's service pipe shall be installed in a workmanlike manner, shall conform to

all reasonable rules and regulations of the utility, and shall be maintained by the customer at his own expense.

7.3.7. The utility will specify the size, kind, quality and location of all materials used in the customer's service pipe and the customer shall comply with those specifications.

7.3.8. A customer must maintain his service pipe in good condition and free from all leaks and defects, at the customer's cost and expense. A customer's failure to comply with this rule may result in termination of service pursuant to these Rules.

7.3.9. The customer's service pipe shall: be laid below the frost line at all points; be placed on firm and continuous earth so as to give unyielding and permanent support; and be installed in a trench at least two (2) feet in a horizontal direction from any other trench wherein gas pipe, sewer pipe, or other facilities, public or private, are or are to be installed.

7.3.10. Except in the case of long-service lines, a customer's service pipe shall not pass through or across any premises or property other than that to be served. If a property served as of September 14, 2021 is later subdivided resulting in the original customer's service pipe crossing the subdivided property that will be occupied by a new customer, the original customer and new customer must have separate service pipes. The original customer must obtain a right-of-way for the original customer's service pipe on subdivided sections of property before title of such section passes to a new owner.

7.3.11. The customer's service pipe and all connections and fixtures attached thereto shall be subject to the inspection of the utility before the water will be turned on, and all premises receiving a supply of water and all service pipes, meters and fixtures, including any and all fixtures within the said premises, shall at all reasonable hours be subject to inspection by any duly authorized employees of the utility.

7.3.12. The utility shall make changes and bear the full costs of changes in the customer's service pipe or meter location required due to changes in grade, relocation of mains, and other causes not related to the customer. The customer shall bear the full costs of changes in service pipe or meter location desired by the customer for the customer's convenience.

7.3.13. The customer shall not attach any fixtures to, or make any branches in, the customer service pipe between the point of service and the premises served. Violation of this rule may result in termination of service pursuant to Water Rule 6.8.

7.3.14. There shall be no more than one (1) customer service pipe required to serve a single premises and each premises shall be supplied through an independent customer service pipe, unless otherwise approved by the utility in writing.

7.4. Long service lines.

7.4.1. To assure the orderly development of its system, and to provide adequate service to its customers, the utility should ordinarily provide water service only at the property line of the customer requesting service, and in those instances where the utility's service does not extend to the customer's property line, the utility should construct an extension in accordance with Water Rule 7.5. In unusual and exceptional cases where the property line of the customer requesting service is an excessive distance from the existing main of the utility, and the cost to be borne by the prospective customer under Water Rule 7.5. is prohibitive, and there is no reasonable prospect of further growth and development in the area, or for any one of the above reasons, the utility may serve the customer by installing a meter in the utility's right-of-way at its main nearest the customer's property, and connecting the meter to the customer's privately owned service line. The customer shall extend his customer service line to an existing distribution main of the

utility and shall be solely responsible for service beyond the meter. The utility shall not serve other customers from a long service line.

7.4.2. If a road crossing is necessary to serve the customer, the utility shall install that portion of the line crossing under the road and shall locate the meter on the customer's side of the road; provided that the utility's distribution main lies within or adjacent to the existing road right-of-way. The customer shall be required to provide evidence to the utility that proper easements or rights-of-way have been obtained. Standards of service received by the customer shall be determined at the metering point. The customer shall not permit others to connect to the customer's water lines or receive water service from the customer's privately owned service line. In the event the utility's main is later extended to the customer's property line under Water Rule 7.5., the customer shall discontinue the use of his privately owned service line and shall pay all costs and charges authorized by the rules of the Commission and the rules and tariffs of the utility for water service from such extension, the same as if the customer had not previously laid and received service through a private service line. The provisions of this rule shall apply to all persons now or hereafter receiving water service through a privately owned service line extending from the utility's main to the property to be served.

7.5. Extension of mains to serve new customer(s) and customers currently served under Water Rule 7.4.

7.5.1. A water utility, whether publicly or privately owned, is under a public service obligation to extend its mains, and its plant and facilities to serve new customers within its service area who may apply for service.

7.5.2. The utility shall make extensions in all cases in which the public convenience and necessity require the service, construction problems are not unusual or burdensome, and the extensions appear to be economically feasible, except that a utility shall first consider an application for an alternate main extension when applicable.

7.5.3. For any proposed extension of mains to be installed by a utility, a reasonable relationship should exist between the per customer investment to serve new customers and the per customer net investment to serve existing customers.

7.5.4. A utility shall make every effort to install its distribution main in the public road right-of-way or in a utility right-of-way abutting the public road right-of-way.

7.5.5. Extensions for general water service.

7.5.5.a. The utility will respond to all inquiries regarding new water service, whether oral or written, by explaining all available options for obtaining service under these rules, including the option of an alternate main extension agreement, pursuant to Rule 7.5.8.g.

7.5.5.b. When extensions other than those made pursuant to Rule 7.5.8.g._are built, the customer pays for the customer service pipe and the utility pays for the utility service pipe.

7.5.5.c. The utility will, upon written request for service in the form of Water Form No. 4, by a prospective customer or group of prospective customers located in the same neighborhood, or a customer currently served under Water Rule 7.4., determine the necessary size of main required to give service and make an estimate of the cost of providing the requested service, using the form of Water Form No. 5, including pipe, valves, fittings, necessary materials, permits, costs incurred by the utility when the utility externally contracts for the construction of the extension, or internal labor costs, provided such internal or external costs are not recovered in existing rates, and other applicable related costs. When a road crossing(s)

is (are) necessary to serve the customer(s) requesting service, the cost estimate shall not include costs attributable to extending the main across the first road (closest to the already existing main), but shall include the costs of installing the main across a second and any subsequent road(s). The utility will provide the written estimate calculated using Water Form No. 5 to the customer in the form of Water Form No. 6, no more than forty (40) days from the receipt by the utility of the written request for service, except that the utility will provide the written estimate to the customer no more than twenty (20) days following a denial of a request for an alternate main extension agreement pursuant to Rule 7.5.8.g. The written estimate shall include an estimated construction start date and an estimated time of construction. If the prospective customer believes that any part of the estimate is unreasonable, the customer is free to pursue an informal request for assistance from the Commission staff or to file a complaint with the Commission. Further, the utility and the customer shall execute a Main Line Extension Agreement. Commission Staff may be consulted to provide assistance and sample forms. The agreement must include as an attachment a copy of this extension rule. The utility shall keep an executed copy of their agreement for at least six (6) years. The length of the extension required shall be that length required to extend from the new proposed service area to the nearest point of connection to the utility system having sufficient excess capacity to provide service at maximum demand.

7.5.5.d. Unless service is to be provided by a long service line pursuant to Water Rule 7.4., whenever the utility is required to extend service from an existing distribution main to property that does not immediately abut the utility's right-of-way or the public road that contains the distribution main, the extension shall be considered a main extension and cost responsibility shall be determined under Water Rule 7.5.5.

7.5.5.e. Where the cost of the extension does not exceed the estimated total net revenue, as calculated below, from hydrants and prospective customers whose service pipes will immediately be connected directly to the extension and from whom the utility has received applications for service upon forms provided by the utility for this purpose, the utility will install, at its own cost and expense, the necessary extension; provided that the patronage or demand will be of such permanency as to warrant the capital expenditure involved.

7.5.5.e.1. Net annual revenue shall be gross annual revenue minus an amount equal to the excess usage leak adjustment rate approved for the utility times the applicant's usage used for purposes of this rule, with this difference further reduced for any revenue based taxes.

7.5.5.e.2. The utility will base revenue on the average usage by customer class at the time of the extension, unless circumstances of the applicant show this would result in significant error. For non-residential units, the utility will base annual revenue on typical consumption for comparable units published by the American Water Works Association.

7.5.5.e.3. Estimated total net revenue for private, for profit, utilities will be initially calculated as six (6) times estimated net annual revenue. Each such utility shall file for a line extension multiplier within twelve (12) months of the effective date of these rules.

7.5.5.e.4. The utility-specific line extension multiplier for private, for-profit, utilities shall be based on one (1) divided by the utility's net fixed charge rate. The net fixed charge rate shall equal a function of the utility's weighted cost of capital, applicable income tax rates, and the Commission approved depreciation accrual rate.

7.5.5.e.5. Estimated total net revenue for associations, municipal, and public service district utilities will be calculated as five (5) times estimated net annual revenue. If the Commission approved excess leak adjustment for the utility fails to include all of the incremental costs of serving a new customer that should properly be netted out from the total revenues of the utility, the utility may apply to

the Commission for a determination of the proper amount to be deducted from gross revenues to arrive at an appropriate determination of net revenue.

7.5.6. Extensions beyond the limit of utility-financed extensions of general water service and public fire service.

7.5.6.a. If the utility-estimated cost of the proposed extension required in order to furnish general water service exceeds the utility's estimate of total net revenue as determined by Water Rule 7.5.5.d., the utility will make the extension if the applicant or the applicant's authorized agent contracts for the extension and deposits in advance with the utility the estimated cost of the extension over and above the limit of the utility-funded portion of the extension. The utility shall not pay nor be liable for any interest on such cash deposits. The utility shall make the extension after receiving the cash deposit. The utility shall, for each bona fide new customer who, within a period of ten (10) years from the making of such extension, directly connects to the extension between its original beginning and the original terminus, refund to the original depositor(s), an amount equal to the estimated total net revenue of the new customer as determined by Water Rule 7.5.5.d., but in no event shall the aggregate refund made to the depositor(s) exceed the original deposit. Provided that associations, public service districts and municipal water utilities may elect to refund the estimated amount over a period of five (5) years making payments no less frequently than every six (6) months.

7.5.7. Alternate depositor-financed extension plan.

7.5.7.a. Qualifying utilities. -- The above requirements notwithstanding, the utility may decline to finance the portion of a requested extension that would be utility-funded if it can demonstrate that it has no prospect of any reasonable internal or external financing through commercial loans, grants, or through an installment arrangement with an entity installing the extension or providing the necessary materials.

7.5.7.a.1. If the utility declines to finance the portion of a requested extension that would be the financial responsibility of the utility, the utility shall file for a waiver of the extension rule within sixty (60) days of the written request.

7.5.7.a.2. Before filing for a waiver, the utility must first estimate the extension costs.

7.5.7.a.3. A request for a waiver by a utility shall be accompanied by supporting documentation justifying its request, including cost estimates, documentation of inability to finance, internally or externally, through commercial loans, grants or an installment arrangement with an entity installing the extension or providing the necessary materials, and the proposed agreement.

7.5.7.a.4. If the Commission finds that the utility has reasonably declined to finance the portion of the requested extension that would otherwise be utility-funded, the Commission shall authorize the use of the alternate depositor-financed extension plan as described below.

7.5.7.b. Description of alternate depositor-financed extension plan. -- Under the alternate depositor-financed extension plan, the utility shall make the extension after:

7.5.7.b.1. receiving a cash deposit equal to the full amount of the extension cost; and

7.5.7.b.2. agreeing to give the depositor(s), who is a customer, a monthly bill credit totaling one hundred percent (100%) of the actual net bill(s) from the date service is initiated and until the total credits given equal the estimated total net revenue as defined in Water Rule 7.5.5.d.; and

7.5.7.b.3. agreeing to refund to the original depositor(s) an amount equal to the estimated total net revenue as defined in Water Rule 7.5.5.e. of each bona fide customer, other than the depositor(s), who, within a period of ten (10) years from the construction of the extension, directly connects to the extension between its original beginning and the original terminus. The refund may be spread out over a five (5) year period with the utility making payments no less frequently than every six (6) months. The refunds shall continue until the total refunds given equal the estimated total net revenue as defined in Water Rule 7.5.5.d.

7.5.7.c. In no event shall the total refund made to the depositor(s) under Water Rule 7.5.7. exceed the original deposit of the depositor(s).

7.5.7.d. The utility shall not pay nor be liable for any interest on the cash deposits associated with line extensions.

7.5.8. General Provisions.

7.5.8.a. If the actual cost of the extension is less than the estimated cost, the utility will refund the difference as soon as the actual cost is ascertained, but in no event later than ninety (90) days after completion of construction of the extension. When the actual cost of the extension exceeds the estimated cost, the utility will bill the depositor for the difference between the estimated and the actual cost. The utility will not pay interest on the applicant's payment or on any balance that is refunded.

7.5.8.b. In estimating the cost of an extension, the utility will base the estimate on the diameter of the pipe to be used; provided that the estimated cost to the customer or customers shall not be based on a pipe diameter greater than the diameter of the main from which the extension is to be made, unless actual consumption estimated for the proposed customer or customers requires a larger pipe.

7.5.8.c. Extensions made under this rule shall be and remain the property of the utility.

7.5.8.d. The utility reserves the right to further extend its distribution mains from and beyond the extension made under this rule, and the depositor or the depositor's agent paying for an extension shall not be entitled to any refund for customers attaching to such further extension or branch mains.

7.5.8.e. In determining the length of water line to be installed in an urban area when land is subdivided into lots, the main, or water line (if installed by an entity other than a utility), shall be extended to fully cover the frontage of the property, and if the last lot to be served is a corner lot the terminal point of the extension made hereunder shall be located so that the water line ties in with the intersecting street. If there is no main located in the intersecting street, the terminal point of the extension shall be located at the nearest street line of the intersecting street. In rural areas or open land areas, the extension required will be that length necessary to adequately serve the applicant.

7.5.8.f. Before water lines are laid in any new subdivision, the road surface shall be brought to the established sub-grade as determined by the agency having jurisdiction.

7.5.8.g. Alternate Main Extension Agreements.

7.5.8.g.1. A utility may enter into an agreement with an applicant that complies with the Commission approved checklist attached hereto as Water Form No. 7, providing an alternate plan for a main extension. Commission Staff may be consulted to provide assistance and sample forms.

7.5.8.g.2. An applicant desiring to enter into an alternate main extension agreement should submit a written request to the utility.

7.5.8.g.3. A utility will, within twenty (20) days of receipt of the written request to enter into an alternate main extension agreement, consider the request and submit a response to the applicant indicating the utility's approval or denial of the request.

7.5.8.g.4. If the utility denies the request to enter into an alternate main extension agreement, the utility will provide the applicant with a detailed explanation of its decision and explain the available options for obtaining service under these rules. If the applicant believes that a denial is unreasonable, the applicant is free to pursue an informal request for assistance from the Commission staff or to file a complaint with the Commission.

7.5.8.g.5. In providing an alternate plan for main extensions a utility may not discriminate between customers whose service requirements are similar.

7.5.8.g.6. An alternate main extension agreement shall be filed with and approved by the Commission prior to implementation or execution of the agreement by any of the parties. The agreement shall include the name, address and phone number of the parties to the agreement. The agreement shall also include a provision explaining why the utility is not funding the extension. The agreement must attach a copy of Water Rule 7.5 and a statement signed by the prospective customer that the customer has reviewed and understands the provisions of Water Rule 7.5.7. which entitle a customer to refunds and that the customer knowingly waives such rights, if applicable. Failure to obtain Commission approval will result in the loss of the right to obtain reimbursement from the utility. If an entity other than the utility constructs the extension, upon completion of construction and proper utility inspection of the extension, the utility shall initiate service only after proper transfer of title to all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.

7.5.8.h. Contract for service. -- A utility is not required to make free extensions or refunds as described in this rule unless those to be served by such extension shall guarantee to the utility that they will take water service at the premises within thirty (30) days after water service is available or as otherwise mutually agreed in a user's agreement.

7.5.8.i. Construction conditions. -- A utility will undertake construction of line extensions, as provided in this rule, promptly after all applications are completed, necessary right-of-way agreements or rights of entry are delivered to the utility, and all prospective customers have signed contracts.

7.5.8.j. Right-of-Way.

7.5.8.j.1. If construction of an extension involves the acquisition of a private right-of-way, then the prospective customer shall attempt to secure the right-of-way and deliver it to the utility free of cost before construction of the extension begins.

7.5.8.j.2. If, however, it is not reasonably possible for the prospective customer or customers to secure the right-of-way, and the construction of an extension involves the utility's incurring expense for right-of-way easements, either by purchase or condemnation, the utility will add those costs to the total cost of the extension.

7.5.8.j.3. As a condition to obtaining a main extension, property owner or developer must grant the utility the necessary easements to allow the utility to make future extensions into unserved areas. The property owner or developer will grant the necessary easements without requiring the utility to pay additional consideration for the additional easements to the property owner or developer. If the property owner or developer is unwilling to grant the additional easements, the utility shall not be required to extend its main to serve the property owner or developer.

7.5.8.k. Upon the proper filing of a Tariff Rule 42A, 42R, 42T, 19A, or 19R rate case or a certificate case filed pursuant to W. Va. Code §24-2-11 by the utility, the utility may seek to include in its tariff a Capacity Improvement Fee, Capacity Assurance Fee or such other fee or charge designed to raise capital to cover the cost of future capacity expansion to be assessed against customers or entities creating those costs.

7.5.9. Community infrastructure investment agreements with municipal utilities and public service districts.

7.5.9.a. Municipal utilities and public service districts may enter into "community infrastructure investment agreements" in accordance with the provisions of W. Va. Code §22-28-1 et seq.

7.5.9.b. A utility that has entered into "community infrastructure investment agreements" pursuant to W. Va. Code §22-28-1 et seq. shall maintain separate books and records for the project areas involved in the agreements. For purposes of this section, the project areas for which separate books and records are required include plant upgrades and stand alone systems.

7.5.9.c. A utility that has entered into "community infrastructure investment agreements" pursuant to W. Va. Code §22-28-1 et seq. shall file (i) a copy of the certificate of appropriateness, (ii) a copy of the community infrastructure investment agreement, and, if necessary, (iii) a new tariff containing rates applicable to the new service area. The utility shall file the required documents with the Commission no later than thirty (30) days of the date the project is transferred to the utility.

7.5.9.d. If rates for the new customers served by a public service district project are higher than the rates for the public service district's existing customers, the public service district shall, within ninety (90) days of the date the project is transferred to the public service district, make a formal rate application with the Commission in order to justify the higher rates to the new customers. A municipality shall enact an ordinance increasing rates, if necessary, within ninety (90) days of the date the project is transferred to the municipality.

7.6. Water Losses.

7.6.1. Each utility shall determine either by actual measurement or by estimate the amount of "Water Losses" as defined in Water Rule 3.17. in each division of its system and report, separately, to the Commission in its annual report. If the reported Water Losses are in excess of fifteen percent (15%) of the water supply delivered into the transmission and distribution system on an annual basis, the utility will state the remedial actions it proposes to take. A utility may seek assistance from the Commission regarding remediation of water losses in excess of fifteen percent (15%).

7.7. Cross connections and back flow prevention regulations.

7.7.1. See West Virginia Bureau for Public Health legislative rules pertaining to cross-connections and backflow prevention codified at 64CSR15 (effective March 13, 2004).

7.7.2. All utilities that have adopted a standard or uniform cross-connection and backflow program pursuant to §64-15-8.2 of the *West Virginia Code of State Rules* must file the details of such programs with the Commission. Such programs will be approved as filed unless it can be shown that the program violates an existing Commission rule.

7.8. Standard pressure.

7.8.1. The utility shall ensure that every utility customer receives a "standard pressure" within the Commission-established minimum and maximum pressure limits. When possible, a "standard pressure" shall be calculated as the static pressure based on the difference in elevation between the base of the storage tank and meter box or point of service. Where this method of calculating a customer's "standard pressure" is not practical, the utility will use the actual engineering design of the system or common engineering methods to determine the "standard pressure" at the point of service. A utility shall not allow pressure to fluctuate more than fifty percent (50%) above or fifty percent (50%) below such "standard pressure" during normal operating conditions. Pressure variations outside the limits specified are not a violation of this rule if they are infrequent and arise from unusual or extraordinary conditions, or arise from the operation of the customer's equipment. This rule shall be interpreted to permit a different "standard pressure" calculation for each customer due to varying elevations.

7.8.2. A utility should establish an elevation in each pressure district above which it cannot provide the minimum pressure required by this rule. A utility shall post notice of that elevation in a prominent place in the public offices of the utility. A utility may furnish new service to customers above this elevation if the customer is fully advised of the conditions under which average service may be expected, and the customer's agreement is secured in writing. The utility may require in the agreement that its terms shall be binding on future customers served at the same location under similar circumstances; provided that the agreement be recorded with the appropriate county clerk. This waiver shall not prevent the Commission from requiring a better service when, upon investigation, it appears that improvements should be made.

7.8.3. A utility shall not make changes to the standard pressure or pressures adopted for its customers without the approval of the Commission.

7.8.4. A customer's pressure shall be no less than twenty (20) p.s.i. at peak demand on system or thirty (30) p.s.i. static pressure at the terminus of the utility's service line (meter box or curb box) unless the customer has waived this requirement. For all new customers desiring service on and after October 24, 2003, a customer's pressure shall be no greater than one hundred thirty-five (135) p.s.i. unless the customer has waived this requirement. The utility shall keep on file all the aforesaid waivers, in accordance with Water Rule 4.1.

7.9. Quality of water.

7.9.1. Purity. -- All water furnished by a utility for domestic use, shall be pure, wholesome, potable and in no way dangerous to the health of the consumer.

7.9.2. Health Department. -- Every water utility shall comply with the rules of the Bureau for Public Health governing purity of water, testing of water, operation of filter plants and such other rules they may prescribe, pursuant to law, having as their ultimate end the purity of water.

§150-7-8. Inspections and Tests.

8.1. Meter testing facilities and equipment.

8.1.1. Testing facilities. -- A utility shall provide or have access to laboratory meter-testing facilities that are necessary to perform the tests required by these rules or by orders of the Commission. The testing facilities are subject to the approval of the Commission, and shall be available at all times for inspection or use by any member or authorized representative of the Commission.

8.1.2. Tests required; Reports to Commission. -- A utility shall, as a minimum requirement, conduct the tests required by these rules with such frequency, and in such manner, and at such places as provided herein or as may be approved or ordered by the Commission. A utility shall make yearly reports,

in accordance with the requirements of the Commission, in the annual report, of meter tests, number of customers and amount of refunds. These reports must be filed not later than thirty (30) days after the expiration of the period covered by the reports.

8.1.3. General testing equipment. -- A utility furnishing metered water service shall own and maintain the equipment necessary to accurately test all types and sizes of meters employed for the measurement of water unless the utility has made arrangements to have the testing done in a shop or laboratory containing equipment acceptable to the Commission. The utility shall promptly report in writing to the Commission all alterations or repairs to meter testing equipment that might affect the accuracy or method of operation of such equipment.

8.1.3.a. The utility shall hold for all testing instruments and other equipment, a certificate signed by a proper authority giving the date when the instrument was last certified and adjusted, and certificates, when superseded, shall be kept on file in the office of the utility.

8.1.3.b. Shop testing equipment. -- Testing equipment shall consist of calibrated tanks large enough to hold the equivalent volume needed to move the test dial one or more complete revolutions. It is recommended that the calibrated tanks hold not less than the quantity needed to test meters in accordance with the test requirements of the American Water Works Association (AWWA) found in the Water Meters Section of Manual M6, Denver (1986). The equipment shall have the proper valves, gauges, and flow devices to determine the flow rate in gallons per minute and to check the pressure on the intake side of the meter.

8.1.3.c. Field testing equipment "Prover Meter". -- Testing equipment shall consist of a calibrated meter(s) with proper discharge valves and gauges to adjust the flow on the outlet side of the prover meter. The utility shall test and calibrate the field testing equipment against a certified calibrated tank not less than once each year, or more frequently if circumstances warrant, and ensure that a record of testing accompanies the field test equipment when in use. It is recommended that the test record be plotted as an accuracy curve in graph form so that operating error may be determined easily. The error of the prover meter as a correction factor when computing final accuracy of meters tested in place by using the following formula:

$$\text{TESTED METER ACCURACY} = \frac{MV}{PV} \times PA$$

where: MV= volume recorded on meter tested
PV = volume recorded on prover meter
PA = accuracy of prover meter at tested flow rate (in %).

8.2. Tagging, sealing and capping meters.

8.2.1. Tagging meters. -- A utility shall maintain a record of each meter showing the type, brand, serial number, registration reading, test date, flow rates, and test results. A utility shall maintain this record, which may be kept on paper or electronically, after installation of the meter and for so long as the meter remains in service.

8.2.2. Sealing meters. -- The meter tester performing a test shall seal all meters in which the accuracy can be adjusted or which could otherwise be easily altered or tampered with at the time of the test. Pulse generator remote type meters shall have the remote counter sealed.

8.2.3. Capping meters. -- A utility will place caps on the inlet and outlet ports of all meters removed from service and awaiting testing. A utility will cap and seal all meters that have been tested and

sealed or are ready for installation until installed.

8.3. Accuracy requirements for water meters.

8.3.1. Installation accuracy. -- Before a utility installs a water meter for the use of any customer, whether new, repaired, or removed from service for any cause, the utility shall ensure that the meter is in good order and is adjusted or repaired to be as nearly correct as is commercially practical. However, a manufacturer's certified test may be accepted in lieu of utilities' test of new meters of the positive displacement type.

8.3.2. Whenever, on installation, periodic or any other test, a utility finds a meter to exceed a limit of two percent (2%) fast or slow, the utility must adjust the meter to register as nearly one-hundred percent (100%) as is commercially practicable. For displacement, multi-jet, propeller, and turbine meters, the normal test-flow-percent accuracy shall be the average of the accuracy results at the intermediate and maximum test-flow rates. For compound and fire-service meters, the normal test-flow-percent accuracy shall be the average of the accuracy results at the maximum test-flow rate of the main line meter and the intermediate and maximum test-flow rates of the bypass meter.

8.3.3. After a utility makes all necessary repairs, adjustments and final tests so that the meter registers accurately, the utility shall seal the meter. It is recommended that all meters of the disc or displacement type, two inch (2") or less in size, be tested before being installed on the premises of any customer.

8.3.4. A utility shall always test a meter of the turbine type, two inch (2") and larger, after installation. A utility shall install these meters with a "Test Tee" and valve for use in testing.

8.3.5. Meters of the turbine type can be tested and calibrated more accurately in place. The accuracy of turbine meters is affected by changes in distribution of velocities through the meter. Such variation of velocity may occur to an appreciable degree through change of nature of inlet piping.

8.3.5.a. A Commission certified meter prover shall perform all tests to determine the accuracy of registration of any water meter.

8.3.6. Meter Test Flow. -- Flow rates shall be in accordance with "American Water Works Association" standards.

8.3.7. Tests -- How Made. -- The testing procedures shall be in accordance with American Water Works Association standards.

8.4. Periodic test.

8.4.1. Meters shall be periodically tested as follows:

3/4" or less in size at least once every 10 years.
1" in size at least once every 7 years.
1-1/4", 1-1/2", 2" in size at least once every 5 years.
3" in size at least once every 3 years.
4" and larger in size at least once each year.

8.4.2. "Periodic test periods" for testing meters in the system of utilities supplying water of high turbidity, or of peculiar characteristics, will be determined by the Commission from time to time.

8.4.3. The time frame for periodic tests may be modified by the Commission from time to time upon the submission of evidence by the utility to substantiate any request for modification.

8.5. Request tests.

8.5.1. Action required. -- If any customer requests in writing to the utility a test of the accuracy of his or her meter, and the meter is not due for periodic testing, the utility shall notify the customer of the conditions under which the test will be made by the utility or by a referee. If the customer requests that the utility proceed with the test and remits an amount equal to the estimated cost to be incurred by the utility, but not less than ten dollars ($10), the utility shall make the test promptly. The meter tester shall provide a report giving results of the test to the customer and the utility, and a complete record of the test shall be kept within the applicable Division of the Commission. If, when tested, the meter is found to be more than two percent (2%) in error, the utility will refund the amount advanced to the customer. If the meter is not found to be more than two percent (2%) in error, the utility shall retain the amount advanced by the customer for the test.

8.5.2. Customer's privilege. -- A customer may be present when the utility conducts the test on the customer's meter or, if the customer desires, may send an expert or other representative appointed by the customer.

8.5.3. If the customer files a complaint with, or makes a request for assistance from, the Commission regarding the accuracy of his or her meter, the Commission will notify the utility and the utility shall have a representative present to remove the meter and assist a Commission inspector with the test. This test shall be made at the expense of the utility.

8.5.4. Report to customer. -- Within ten (10) days after the completion of the test, a utility will provide to the customer a report giving the name of the customer requesting the test, the date of the request, the location of the premises where the meter had been installed, the type, make, size and serial number of the meter, the date of removal, the date tested, and the result of the test.

8.6. Meter testers.

8.6.1. Meter tester required. -- A utility shall have in its employ or have access to the services of one or more competent meter testers whose duty is to perform tests to determine the accuracy of the utility's meters.

8.6.2. Certification of meter tester. -- A utility desiring to certify an employee as a meter tester must secure a qualification card from the Commission in the form of Water Form No. 9; have same executed by the applicant and returned to the Commission; together with a certification by a responsible representative of the utility as to the facts contained on the card. The Commission will then schedule a certification test consisting of a written examination and demonstration test of the applicant's meter testing skills on certified testing equipment. If the applicant's qualifications are satisfactory, the Commission will then issue a card to the employee in the form of Water Form No. 10, authorizing the employee to test meters of the type and size shown on the card.

8.6.3. Experience required. -- No employee of a utility is authorized to test meters unless the employee has had at least six (6) months' experience in a utility water-meter shop, or equivalent experience, part of which time must have been spent working on the type meter for which authority to test has been requested. All tests must be made by an authorized meter tester.

8.6.4. Reports to Commission.

EXHIBIT 1

DEVELOPER'S PROJECT

The Water System to be constructed by Developer is described in the attached pages.

INTEGRITY FEDERAL SERVICES
CIVIL ENGINEERING • LANDSCAPE ARCHITECTURE • PLANNING
148 S. Queen Street, Suite 201 • Martinsburg, WV 25401 • Phone: 304-725-8456 • www.ifs-ae.com

REVISIONS

WATER TREATMENT PLANT PARCELS AND LAYOUT EXHIBIT

SIDEWINDER ENTERPRISES LLC

JEFFERSON COUNTY, WEST VIRGINIA

SCALE:	HORIZ.: 1"=1000' VERT.:
DATE:	MARCH 5, 2024
JOB:	3138-0201
DRAWN:	CHECK:
CADD:	
NCS:	
SHEET:	1 OF 1

Public Service Commission of West Virginia

201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323

Phone: (304) 340-0300
Fax: (304) 340-0325

April 25, 2025

Electronic Service Only

Kristen Stolipher, Utility Manager
City of Charles Town
661 S. George Street, Suite 101
Charles Town, WV 25414

Robert R. Rodecker, Esq.
John R. McGhee, Jr., Esq.
Cynthia L. Wilson, Esq.
Counsel, City of Charles Town
Kay, Casto, & Chaney PLLC
PO Box 2031
Charleston, WV 25327

RE: Case No. 25-0079-W-PC
City of Charles Town

Ladies and Gentlemen:

Staff Memorandum issued today was served via email on the above-listed parties. If you wish to respond to Staff Memorandum, you may do so in writing, within 10 days, unless directed otherwise, of this date. You will not receive a copy of the Staff Memorandum by regular mail.

Your failure to respond in writing to the utility's answer, Staff's recommendations, or other documents may result in a decision in your case based on your original filing and the other documents in the case file, without further hearing or notice.

When you provide an email address you will automatically receive electronic docket notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed.

Documents submitted to the Public Service Commission of West Virginia may be 1) uploaded to its public website, 2) subject to public disclosure under the West Virginia Freedom of Information Act, and/or 3) subject to disclosure under the West Virginia Open Governmental Proceedings Act. Do not submit personal information with your filings. The Commission is not responsible for confidential or personal information included with your submission. A list of personal information is available here: http://www.psc.state.wv.us/Privacy_Policy/WhatisPII.htm

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to caseinfo@psc.state.wv.us and state the case number in the email subject field. **You are encouraged to file an Electronic Mail Agreement which allows the commission to serve all orders issued in this matter via electronic notification.**

Sincerely,

Karen Buckley
Executive Secretary

KB/mv

11:49 AM APR 25 2025 EXEC SEC DIV

FINAL JOINT STAFF MEMORANDUM

TO: **KAREN BUCKLEY**
Executive Secretary

DATE: April 25, 2025

FROM: **MEYISHI BLAIR**
Staff Attorney

RE: **CASE NO. 25-0079-W-PC**
CITY OF CHARLES TOWN

It is the joint position of Staff that the Commission grant its approval of the alternate water mainline extension agreement by and between the City of Charles Town with Sidewinder Enterprises, LLC, which was revised and filed with the Commission on April 7, 2025. As revised, the agreement comports with the requirements of Water Form No. 7 and there are no terms of the agreement that are questionable.

Attached is the final recommendation of the reviewing engineer for the Commission's consideration. Please file this Memorandum and attachment in the customary manner.

MB/jt
Attachment

WB WB
s:_staff_files\mblair\cases\2025\25-0079-w-pc charles town utility board\final joint staff memorandum.docx

11:49 AM APR 25 2025 EXEC SEC DIV

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

FINAL INTERNAL MEMORANDUM

DATE: April 9, 2025

TO: Meyishi Blair, Staff Attorney
Legal Division

FROM: David W. Holley, Technical Analyst DWH
Engineering Division

RE: Case No: 25-0079-W-PC
Charles Town Utility Board
Final Memo

On February 6, 2025 the City of Charles Town through the Charles Town Utility Board (Board) filed an Alternate Water Mainline Extension Agreement (Service Agreement) between the Board and Sidewinder Enterprises, LLC (Developer).

Per the agreement the Developer will drill up to three (3) wells on Developer's property to be used as raw water sources which will be treated by a treatment plant constructed by the Developer and then turned over to the Board to own and operate. This agreement covers Phase I which constructs the plant and a raw water line from the well to the plant and to the Industrial development. The agreement states the plant will produce enough potable water for the Industrial development. The plant will be able to produce enough potable water for an additional two hundred (200) equivalent dwelling units in the Middleway community which will be served by an extension in Phase II of the project. The agreement is not clear as to what is meant by serving customers of the Developer in the future. The agreement states the treatment facility will be turned over to the Board, but the wells will be owned and maintained by the Developer.

Staff filed an Initial Joint Staff Memorandum and a Data Request on March 4, 2025 requesting additional information and additions to the Alternate Mainline Extension Agreement. The Board filed their response on March 24, 2025.

The Board filed a revised agreement on April 7, 2025 that addressed two (2) of the items in Staff's Data Request.

Per the revised agreement, engineering drawings and the permit (21,281) issued by the State of West Virginia, Office of Environmental Health Services, the Developer will construct approximately 9,000 LF of 12" raw water line. The line will run the well along Middle Way Pike (WV Route 51) to the 75,000 GPM treatment plant, along with a 500,000 gallon raw water storage tank, a 22,000 gallon finished water tank, 422 gallon hydro-pneumatic tank and all related appurtenances.

The raw water line will provide water to the industrial customer (Bottling Plant) and treatment plant. The treatment plant will provide potable water to the Industrial customer and future customers of the Developer if he divides his land into parcels. Which will either be metered by the Board separately or the Developer can become a utility and become a resale customer. The Plant will also allow the Board serve up to two hundred (200) residential customers in the Village of Middelway in the Middelway District in Jefferson County. The Development is located at the intersection of Grace Street and Brucetown Road, west of Charlestown, Jefferson County, West Virginia.

Technical Staff has completed reviewing the revised agreement and recommends the agreement be approved from a technical aspect.

Technical Staff defers any further comments or recommendations to the Legal Division.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Issued: April 28, 2025

CASE NO. 25-0079-W-PC

CITY OF CHARLES TOWN
Petition for consent and approval of a Service Agreement between Charles Town Utility Board and Sidewinder Enterprises, LLC (Village of Middleway).

PROCEDURAL ORDER

By this Procedural Order, the parties are given ten additional days in which to file a response or objection to the Staff recommendation or to request a hearing.

PROCEDURE

On April 25, 2025, Commission Staff filed its Final Joint Staff Memorandum in this proceeding, which constitutes Commission Staff's final substantive recommendation in this case. As of the date of this Order, none of the parties have responded to the Staff recommendations.

Accordingly, all parties to this proceeding shall be given ten additional days in which to either respond or object to the Staff recommendation or to request a hearing. If no party responds or objects to the Staff recommendation or requests a hearing, this matter will be decided based on the documents in the case file, including the Staff recommendation, without hearing.

ORDER

IT IS, THEREFORE, ORDERED that all parties to this proceeding be, and they hereby are, granted ten (10) days from the date of this Order in which to file a response or objection to the Final Joint Staff Memorandum or to request a hearing in this case. In the absence of any responses or objections to the Staff recommendation or any request for hearing, this matter will be decided based on the documents in the case file, including the Staff recommendation, without hearing.

IT IS FURTHER ORDERED that the Executive Secretary serve this Order upon Commission Staff by hand delivery, upon all parties of record who have filed an e-service agreement with the Commission by electronic service and upon all other parties by U.S. First Class Mail.

Emily K. Miller
Administrative Law Judge

EKM:s:lc
250079a

CHARLES TOWN UTILITY BOARD

Wednesday, April 30, 2025

Special Meeting

661 South George Street
Charles Town, WV 25414

Next Meeting - May 14, 2025 at 4:00 P.M.