



# Public Utilities Commission

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## Commissioners

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October 9, 2020

Docketing Division  
Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215

RE: *In the Matter of the Emergency Application for Rate Increase, Case No. 20-1322-ST-AEM*

Dear Docketing Division:

Enclosed please find the Staff's Review and Recommendations in regard to the application filed by Carroll Township Treatment Services, LLC in Case No. 20-1322-ST-AEM.

Sincerely,

Marianne Townsend  
Chief, Regulatory Utility Services  
Rates and Analysis, Dept.  
Public Utilities Commission of Ohio

Dorothy Bremer  
Section Chief, Regulatory Utility Services  
Rates and Analysis, Dept.  
Public Utilities Commission of Ohio

## **BACKGROUND**

Carroll Township Treatment Services, LLC (CTTS or Company) provides sewage disposal service to nine customers in Carroll Township, Ottawa County. CTTS's customers include Resort I, Resort III, Resort IV, Resort V, GC Group, Boat-O, DLF Enterprises, Wild Wings Campgrounds, and Wild Wings Villas. Wild Wings is owner of the campgrounds and the villas and owns 43 percent of CTTS.

On May 21, 2018 in Case No. 18-889-ST-AIR (Rate Case), CTTS filed an application to increase its rates for sewage disposal service, pursuant to R.C. 4909.18. On April 24, 2019, the Commission accepted the application for filing as of February 28, 2019. On April 8, 2020, the Commission granted the Company's application to increase rates and charges allowing a return of 9.05% for sewage disposal system services rendered in Carroll Township. The Company was also required to refund \$20,691 over an 18-month period to correct for past overcharges and rerate Wild Wings Inc.'s bills based on the Carroll Water and Sewer District water meter.<sup>1</sup> On April 22, 2020, the Company filed compliance tariffs with the new rate effective on bills rendered after April 30, 2020.

## **APPLICATION**

On July 29, 2020 in Case No. 20-1322-ST-AEM (Emergency Rate Case), the Company filed an emergency application to increase rates for sewage disposal service, pursuant to R.C. 4909.16. The Company asserts that its current rates do not provide sufficient income for its utility service to continue to operate. According to the Company's application, for the twelve months ended June 30, 2020, the Company collected annual gross revenues of \$71,725.96 while the expenses for the same twelve-month period were \$191,907.54. The Company asserts that it has survived due to short-term loans made by Wild Wings, Inc., totaling \$157,095. The Company further notes that additional repairs are required for the aging plant and equipment. Finally, the Company states that it is required to refund overcharges to customers in addition to current operating expenses as ordered in the Rate Case.

The Company initially requested the following relief: 1) increase rates from \$1.3019 per hundred gallons to \$2.31728 per hundred gallons and 2) suspend the required refund of overcharges for a reasonable period of time to allow CTTS to return to solvency.

The Company derived the proposed rate of \$2.31728 per hundred gallons by 1) applying a 9.55% rate of return to the \$191,907 expenses incurred during the twelve months ending June 30, 2020; 2) calculating the percentage increase over \$76,232 in revenues; and 3) applying the percentage increase to the

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<sup>1</sup> In the Rate Case, Staff discovered two customer concerns. The first concern is the overcharging of customers for various months (18 total) in 2014, 2015, and 2016 for a total overcharge of \$20,691.17. Staff recommended that the Company credit the customers these overcharges; however, Staff also understood the scale of the credits may present the Company with liquidity concerns. To that end, Staff recommended a partial waiver of the billing adjustment rule to allow the Company to credit customers over a longer period of 18 months. The second concern is the use of Wild Wings, Inc.'s sub-meters for billing purposes. Staff recommended that the Company rerate Wild Wings Inc.'s bills based on the Carroll Water and Sewer District water meter from the time that CTTS began utilizing the sub-meters for billing purposes until the time they stop.

current rate.<sup>2</sup> During the course of Staff's investigation, CTTS amended its requested rate to remove the rate of return component and requests an emergency rate of \$1.9879 per hundred gallons.<sup>3</sup>

### **COMMISSION'S AUTHORITY TO REVIEW EMERGENCY RATE CASE APPLICATIONS**

The Commission's authority to grant emergency relief arises under R.C. 4909.16. This statute gives the Commission the power to amend, alter, or suspend rates when the Commission deems it necessary to prevent injury to any public utility or part of any public utility in this state. The rates as directed by the Commission shall take effect at such time and remain in force for the length of time as prescribed by the Commission.

In reviewing emergency rate applications, the Commission has, in the past, set out standards and considerations by which it is guided in exercising the discretion conferred by the statute. Those standards and considerations include the following:

1. Emergency rate relief is extraordinary in nature.
2. The existence of an emergency is a condition precedent to any grant of temporary rate relief.
3. The applicant's supporting evidence will be reviewed with strict scrutiny, and that evidence must clearly and convincingly demonstrate the presence of extraordinary circumstances that constitute a genuine emergency situation.
4. Emergency relief will not be granted pursuant to Section 4909.16, Revised Code, if the emergency request is filed merely to circumvent, and as a substitute for, permanent rate relief under Section 4909.18, Revised Code.
5. The Commission will grant temporary rate relief only at the minimum level necessary to avert or relieve the emergency.<sup>4</sup>

The ultimate question for the Commission is whether, absent emergency relief, the public utility will be financially imperiled or its ability to render service will be impaired. If the applicant fails to sustain its burden of proof on this issue, the Commission's inquiry is at an end.<sup>5</sup>

The Commission has also previously found that the public utility concerned must bear some responsibility in attempting to alleviate the professed emergency. Specifically, the Commission stated:

The public utility statutes and case law in Ohio clearly indicate that emergency rate relief should only be granted as a last resort measure to avoid injury to the business or interest of the public or the public utility involved. The public utility must show that it has attempted to relieve the emergency using all other measures available to it and the

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<sup>2</sup> Company response to Staff DR1.

<sup>3</sup> Company response to Staff DR1, Q4. The proposed rate of \$1.9879 per hundred gallons includes errors. Applying the Company's methodology while eliminating rounding and errors would result in a proposed rate of \$1.9755 per hundred gallons.

<sup>4</sup> See, e.g., *In re Cobra Pipeline Co.*, Case No. 18-1549-PL-AEM, et al., Opinion and Order (Sept. 11, 2019); *In re Toledo Edison Co.*, Case No. 76-439-EL-AEM, Opinion and Order (Sept. 8, 1976); *In re Ohio Edison Co.*, Case No. 79-44-EL-AEM, Opinion and Order (May 2, 1979).

<sup>5</sup> ); See, e.g., *In re Akron Thermal, Limited Partnership*, Case No. 09-453-HT-AEM, et al., Opinion and Order (Sept. 2, 2009) at 6-7; *In re Lake Erie Utilities Co.*, Case No. 86-799-WS-AEM (Lake Erie), Opinion and Order (Aug. 26, 1986) at 4; *In re Lakeside Utilities Corp.*, Case No. 82-433-WS-AEM, Opinion and Order (Dec. 1, 1982) at 3.

vehicle of emergency rate relief should not be used to circumvent the permanent rate case application standards or procedures.<sup>6</sup>

## STAFF REVIEW AND RECOMMENDATION

Staff's review of the Company's Emergency Rate Case application focused on investigating the Company's assertion that current rates do not provide sufficient income for the utility to continue to operate. In order to verify the assertion regarding the Company's financial status, Staff requested and reviewed updated usage data, revenues, expenses, financial notes, and service contracts. This information was evaluated and compared with information Staff had obtained during the Rate Case investigation. At this time, Staff lacks sufficient information to develop a recommendation on the existence of a statutory emergency or to craft an appropriate emergency remedy, if such a statutory emergency does indeed exist.

CTTS provides safe and reliable service under current operating conditions. Staff has confirmed that the Company's revenues are lower than the allowable gross annual revenue of \$134,891 established in the Rate Case and CTTS's expenses have increased. However, in reviewing the revenues and expenses during the twelve months ending June 30, 2020, Staff has not been able to confirm at this time that the Company's current rates do not provide sufficient income for the utility to continue to operate. CTTS customers' reported usage for this period would generate \$116,659 in gross revenues at the current rate.

The Company reports in their profit and loss statements \$191,548 in expenses for the period July 2019 through June 2020, which is 66% higher than adjusted expenses in the Rate Case. It's worth noting that in the Rate Case, the Company test year expenses were 42% higher than the adjusted expenses identified by Staff and accepted by the Company in that preceding. Staff also provided a copy of the NARUC's Sewer, Uniform System of Accounts to the Company at the start of the Rate Case and provided information on proper regulatory accounting for sewer companies in Ohio. Staff reviewed all expenses, recategorized various expenses, and identified several expenses that should have been capitalized in that case. Staff also encouraged the Company to identify or provide evidence of large but infrequently occurring expenses in order to include this data in the test year. For example, Staff included expenses such as sludge hauling and trash removal which were originally omitted by the Company in the Rate Case.

However, the information provided by the Company in this case does not appear to conform to NARUC's Sewer Uniform System of Accounts nor does it mirror the expense categories that Staff applied, and the Company accepted in the Rate Case. It's possible that some of the expenses submitted by the Company in this case may be classified as one-time or infrequent expenses. However, several of the expenses appear to be new or different from those filed in the Rate Case, other costs appear to be categorized as O&M when they should have been capitalized as plant investments, and yet other costs appear to be

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<sup>6</sup> *In re Cobra Pipeline Co.*, Case No. 18-1549-PL-AEM, et al., Opinion and Order at 65 (Sept. 11, 2019) citing *In re Ohio Power Co.*, Case No. 74-580-EL-AEM (Ohio Power), Opinion and Order (Jan. 13, 1975) at 3; see also *In re Ohio Water Service Co.*, Case No. 75-405-WW-AEM, Opinion and Order (Sept. 11, 1975) at 9 (finding that a financial emergency exists and that "applicant is making every reasonable effort to alleviate that emergency"); *Lake Erie* at 4-7 (denying emergency application in circumstances involving public utility's financial mismanagement, imprudent expenditures, unpaid taxes, and failure to collect debts).

regular but infrequently occurring large expenses that should have been included in the Rate Case test year. Therefore, Staff's review of expenses in this case has been inconclusive.

From January of 2019 through March of 2020, the Company borrowed a total of \$157,095 from Wild Wings, Inc. Since the new rates have been implemented, CTTS refinanced the short-term debt, but did not borrow additional funds. The Company has identified blower and motor units and control panels that need to be replaced relatively soon at an estimated cost of \$26,600.

In conclusion, as stated above, Staff lacks sufficient information from the Company to develop a full recommendation on the Emergency Rate Case application at this time. Moreover, Staff has been unable to confirm that the Company's current rates do not provide sufficient income for the Company to continue to operate until new permanent rates can be set. Given Staff's understanding that emergency rates are, at least in general, used as an extraordinary stopgap measure until new permanent rates can be set, Staff believes an investigation into CTTS's books and records--reviewing revenues, expenses, and capital investments--is more appropriate, at this point, for a permanent base rate case investigation. Therefore, Staff recommends that the Commission direct the Company to file an application pursuant to R.C. 4909.18 to increase base rates within 30 days and hold this case in abeyance while Staff continues its investigation. Should Staff determine that emergency rate relief is appropriate, Staff will file its recommendation at that time.

**This foregoing document was electronically filed with the Public Utilities**

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Summary: Staff Review and Recommendation electronically filed by Mrs. Tanika Hawkins on behalf of PUCO Staff