

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Mountain Sewer Corporation's Application for Approval to Expand its Service Area	<u>DOCKET NO. 21-097-01</u> <u>REPORT AND ORDER</u>
--	--

ISSUED: March 3, 2022

SYNOPSIS

The Public Service Commission (PSC) approves the application of Mountain Sewer Corporation ("Mountain Sewer") to expand its service area.

On November 23, 2021, Mountain Sewer filed an application ("Application") to expand its current service area ("Current Service Area")¹ to serve a proposed residential subdivision known as Legacy Mountain Estates Subdivision ("LME") that is located "adjacent to but outside of [] [the] Current Service Area."² The proposed expansion would include 60 sewer connections to serve fifty-two (52) single-family residential dwellings and up to eight (8) accessory dwelling units within the LME subdivision. *Id.*

The PSC issued a notice of filing and comment period, seeking comments by December 23, 2021 and reply comments by January 7, 2022. Upon request, the PSC extended the deadlines for comments and reply comments to January 28, 2022 and February 14, 2022, respectively. The Division of Public Utilities (DPU) filed comments on January 26, 2022, and no party filed reply comments.³

¹ The Current Service Area includes the following developments and units within the Huntsville, Utah area: (1) the Catholic Church; (2) Chalets at Ski Lake; (3) Edgewater Beach Resort; (4) Lakeside Village; (5) Langeland Subdivision; (6) Samarel Subdivision; (7) Schlaf Subdivision; (8) Ski-Lake Estates; and (9) Summit at Ski Lake.

² *Mountain Sewer Water Corporation's Application for Approval to Expand its Service Area*, Docket No. 21-097-01, Application for Approval to Expand Service Area filed November 23, 2021.

³ Docket No. 21-097-01, Comments from the Division of Public Utilities filed January 26, 2022 (the "DPU Comments").

THE APPLICATION

Mountain Sewer is a privately-owned public utility as defined in Utah Code Ann. § 54-2-1, and holds two certificates of public convenience and necessity (CPCN), the first issued by the PSC on June 11, 1985, and the second issued on October 8, 1991.⁴ Mountain Sewer currently serves approximately 193 active connections, with another 112 approved, unconnected lots on standby within its Current Service Area.

Mountain Sewer states that it will serve LME under its existing tariff.⁵ It also states that currently its storage capacity is under twenty-two percent (22%) of the “Winter Storage Pond’s” overall capacity, and therefore that it has sufficient capacity to add the proposed service connections within LME. In addition, Mountain Sewer asserts that (1) LME will build all necessary additional infrastructure to serve LME at LME’s own cost, (2) LME will pay any incidental costs incurred related to Mountain Sewer’s proposed expansion, and (3) the proposed connections will not cause any reduction or impairment in the quality and efficiency of the treatment services it provides to its existing customers. As a result, Mountain Sewer states that the expansion will not disadvantage, inconvenience, burden, or harm its existing customers in any manner. Finally, Mountain Sewer explains that the expansion will not adversely impact its

⁴ The PSC initially issued Mountain Sewer Certificate of Public Convenience and Necessity No. 2163 in Docket No. 84-097-01, authorizing Mountain Sewer to provide service in the area described in the PSC’s Report and Order in said docket (“Original CPCN”), and subsequently issued Certificate of Public Convenience and Necessity No. 2602 in Docket No. 91-097-01, authorizing Mountain Sewer to provide service in the expanded service area as described in the PSC’s Summary Order for Certificate of Convenience and Necessity for Expanded Service Territory (“CPCN for Expanded Service Area”, together with the Original CPCN, the “CPCN”). In regard to the CPCN for Expanded Service Area, we observe that Mountain Sewer indicated that, under Utah Code Ann. § 54-4-25, it could expand its system “into the proposed territory without a certificate ... but [] thought it best that [] [it] file a formal petition so the [] [PSC] is aware of the Petitioner’s activities ...” See correspondence from Frank S. Warner, attorney for Petitioner, dated July 12, 1991.

⁵ Mountain Sewer states that its governing tariff has been in effect since October 30, 2017.

existing customers' current rates and will provide benefits to its customers because the new connections will increase revenues for Mountain Sewer which will allow it to take advantage of economies of scale.

PARTY COMMENTS

The DPU Comments recommend the PSC approve the Application, emphasizing Mountain Sewer's assertion that existing Mountain Sewer customers will bear no expansion costs, and its existing rates will remain the same. DPU states that it requested additional information to ensure Mountain Sewer met the criteria under Utah Code Ann. § 54-4-25, including: (1) documentation that Mountain Sewer "has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority, in order to expand its service area;" (2) "a current map showing the [water] service area of all [water] utilities surrounding [Mountain Sewer]"; and (3) a statement that "any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certified fixed public utility which supplies the same product or service to the public" and that the expansion will not "constitute an extension into the territory certified to the existing fixed public utility."⁶

DPU states that on January 25, 2022, Mountain Sewer submitted a response to DPU's request demonstrating its compliance with those requirements. Mountain Sewer's response to DPU (1) included documentation that it obtained required consents from local and county jurisdictions (2) included a service map of sewerage utilities surrounding Mountain Sewer; and

⁶ DPU Comments, at 2.

(3) provided the required statement that Mountain Sewer's expansion request will not impact any existing certified public utility.

Based on Mountain Sewer's Application and its responses to DPU's requests, DPU states that the Application meets the requirements for a service area expansion described in Utah Code Ann. § 54-4-25.

No other party filed comments or reply comments.

FINDINGS AND CONCLUSIONS

Under Utah Code Ann. § 54-4-25(1), a public utility (including a sewerage corporation) may not "establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience or necessity does or will require the construction." Utah Code Ann. § 54-4-25(2) states that the requirement in subsection (1) "[] may not be construed to require any corporation to secure a certificate for an extension: (a) [...] (b) into territory, either within or without a city or town, contiguous to its line, plant, or system that is not served by a public utility of like character; or (c) within or to territory already served by it, necessary in the ordinary course of its business."

As part of its Application, Mountain Sewer submitted information showing that it currently holds a CPCN to serve its Current Service Area. It also submitted a map and a property description of LME illustrating that LME is adjacent to but outside of Mountain Sewer's Current Service Area. In addition, Mountain Sewer submitted a service map of sewerage utilities surrounding Mountain Sewer and a statement confirming that its expansion request will not

impact any existing certified public utility's service area.⁷ We understand this to mean that no other "like" utility currently serves LME.

Mountain Sewer also states, and DPU confirmed, that the proposed expansion will not cause any reduction or impairment in the quality and efficiency of the treatment services it provides to its existing customers. It also states that the expansion will be funded by LME. As a result, Mountain Sewer states that the expansion will not adversely impact its existing customers' current rates and will provide benefits to its customers because the new connections will increase revenues for Mountain Sewer.

The evidence we reference above supports our conclusion that no CPCN is required for Mountain Sewer's proposed expansion to serve LME and its future residents. Specifically, we conclude that LME is "contiguous to [] [Mountain Sewers'] line, plant, or system that is not served by a public utility of like character." Consequently, by operation of law, Mountain Sewer's existing CPCN will now include LME, as specifically described in the Application. We further conclude, accordingly, that a hearing is not required in this matter. On this basis and since the Application is unopposed, the PSC will adjudicate this matter informally, in accordance with Utah Admin. Code R746-1-104(1).

Based on the Application, the evidence we reference above, the DPU Comments and recommendations, and since the Application is unopposed, the PSC concludes that Mountain Sewer's proposed expansion is legally allowed and does not require a separate CPCN. We

⁷ The PSC appreciates Mountain Sewer's submission of "the required consent, franchise, or permit of the proper county, city, municipal, or other public authority," in order to expand its service area, even if not required under Utah Code Ann. § 54-4-25 for its expansion to serve LME.

further conclude that the public convenience and necessity will be served by approving the expansion of Mountain Sewer's service territory to include LME. In addition, we find and conclude that the public interest will be served since the expansion will be funded by LME, Mountain Sewer has sufficient storage capacity to add the proposed service connections within LME, the expansion will not be detrimental to existing Mountain Sewer customers' treatment service and will not increase rates for existing customers, and the expansion will increase revenues for Mountain Sewer which will allow it to take advantage of economies of scale.

ORDER

The Commission orders the following:

1. The Application is approved;
2. Mountain Sewer is authorized to serve LME as specifically described in the Application; and,
3. Mountain Sewer's CPCN is amended to reflect its expanded service territory as described in its Application.

DOCKET NO. 21-097-01

- 7 -

DATED at Salt Lake City, Utah, March 3, 2022.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg

PSC Secretary

DW#322671

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 30 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on March 3, 2022, a true and correct copy of the foregoing was served upon the following as indicated below:

By Email:

J. Craig Smith (jcsmith@SHutah.law)
Donald N. Lundwall (dlundwall@SHutah.law)
SMITH HARTVIGSEN, PLLC
Mountain Sewer Corporation

Patricia Schmid (pschmid@agutah.gov)
Justin Jetter (jjetter@agutah.gov)
Assistant Utah Attorneys General

Madison Galt (mgalt@utah.gov)
Division of Public Utilities

Administrative Assistant