

September 17, 2019

VIA U.S.P.S. AND EMAIL (MATTYS@CITYOFLACROSSE.ORG)

Mr. Stephen Matty
City Attorney
City of La Crosse
400 La Crosse Street, 6th Floor
La Crosse, WI 54601

RE: Comments to Proposed Common Council Resolution 19-1269 Proposed for
Council Adoption on September 18, 2019

Dear Mr. Matty:

As you know, Godfrey & Kahn, S.C. has been retained by the Shelby Sanitary District No. 2 (“SSD”) for negotiations with the City of La Crosse (the “City”) for extending the sewer service agreement between the City and SSD. Also, as you know, on September 18, 2019 the Common Council is proposing to adopt 19-1269 Resolution to approve the first phase of the proposed sanitary sewer rate increase described in the Trilogy Study (the “Rate Study / Increase”) and 19-1358 approving the sewer service area effective December 31, 2019 (the “Sewer Service Area”).

The Rate Study, if approved by the Common Council, will result in a 62.3% increase over the current rate structure for SSD during the next three years. Obviously, SSD as well as the City, owes a fiduciary responsibility to its respective customers to ensure that the proposed rate increase is fair and equitable before it is approved.

On September 10, 2019, SSD formally requested a 45-day extension of the Common Council’s proposed action on these resolutions to afford adequate time for SSD to provide written comments to the Trilogy Rate Study and proposed rate increase. A copy of the September 10, 2019 request for the 45-day extension is attached to this letter. Without the extension, there is inadequate time for review and comment to meet the fiduciary responsibility referenced at the outset of this letter.

The purpose of this letter is to provide some preliminary comments to the Trilogy Rate Study and the preliminary Donahue report upon which the Rate Study / Increase is based, as well as the Sewer Service Area. SSD requests that these comments be provided to public officials for

consideration prior to making a decision on the proposed resolutions. In addition, the SSD plans to make comments at the 15 minute public hearing of the Finance and Personnel meeting on September 18, 2019 (the "Hearing Remarks"). Immediately following the close of that hearing, the Common Council proposes to act on the resolutions.

Please be advised that the filings of these comments and the Hearing Remarks do not act as a waiver of the request for the 45-day extension for comments prior to Common Council action on these resolutions. Rather, these preliminary comments are provided to substantiate the need for the extension request to allow a more thorough analysis prior to Common Council actions on these matters.

PRELIMINARY COMMENTS OF SSD ON THE RESOLUTIONS

I. It is Unreasonable to Base a Rate Increase on a Preliminary Engineering Study Which is Not Yet Been Finalized.

The Trilogy report, which forms the basis for the rate increase request, is based upon a preliminary engineering plan prepared by Donahue & Associates (the "Preliminary Report"). The Preliminary Report is in excess of 400 pages. SSD has engaged consulting engineers and financial advisors to review both the Trilogy Rate Study as well as the Preliminary Report upon which it is based; all at great expense to the SSD. Without receiving an additional 45-days to file comments, there is inadequate time to completely analyze the full 400(+) page Preliminary Report and the Rate Study before the September 18, 2019 proposed decision by the Common Council.

In any event, a rate increase premised upon a Preliminary Report, which has not yet been finalized, is concerning. SSD believes the more reasonable path would be to finalize the Donahue engineering report with the opportunity for comments to be considered before approving a rate increase. In particular, the basis for the rate increase may change based upon new information provided in the final engineering report.

II. The Resolution Proposing to Limit Sewer Service Areas Based Upon a Failure to Reach Sewer Agreements is Somewhat Misleading

In the proposed resolution defining the sewer service area the resolution contains the following statement:

"WHEREAS, La Crosse currently provides wholesale wastewater treatment services to the City of Onalaska, the City of La Crescent, Minnesota, the Town of Campbell and the Town of Shelby Sanitary District No. 2;

WHEREAS, contracts with all these wholesale customers, other than the City of La Crescent, expire at the end of 2019 and new contracts with terms acceptable to the La Crosse have not been agreed upon"

The implication created in the foregoing resolution is that SSD has not been using best efforts to reach an agreement with the City. In fact, in April of 2019, SSD provided the City with a revised draft of the sewer service agreement for the City's review/comment ("Revised Draft"). To date, the District has not received any written feedback from the City regarding the Revised Draft. The SSD remains committed to seek a reasonable sewer service extension agreement with the City, but cannot do so without a timely response to the Revised Draft from the City during the limited time remaining until the current agreement expires on December 31, 2019.

For this reason, SSD wanted to bring this background information regarding negotiations to the attention of the Common Council before it makes its final decision on the Sewer Service Area.

III. The Rate Study and the Preliminary Report Upon Which it is Based Would Unfairly Favor Industrial Customers Over Wholesale Customers

Currently, the City serves four adjacent municipalities – Onalaska, La Crescent, Campbell and Shelby. All of these communities are charged the same flow rate of \$1,631/MG. Trilogy Consulting is recommending an across the board rate increase for these municipal customers at \$2,647/MG (62.3% increase from the current rates phased in over three years). While the City continues to propose surcharge rates for loading, SSD should expect to see a linear relationship between loadings and its surcharge fees given its wastewater almost exclusively consists of residential users.

It is important to note that the predicted loading rates for the City's wastewater plant contained in the Rate Study and Preliminary Report need further clarification. Some of the industrial customers (who produce much higher loading rates) are planning expansions of their own and have extrapolated their loading rate data.

The SSD's percentage of the flow is reduced in the relevant studies, mostly due to an expected increase in flow from other customers. In the Rate Report Study and the Preliminary Report, the SSD's percentage of future loadings actually is projected to increase as well. SSD believes this is due to a poor extrapolation of future loading rates coming from the City's industrial customers. In some cases there are industrial customers who plan to have an increase in flow but, surprisingly, no increase in loadings. This surprising projection is based upon promises made by industrial customers to make additional investments with regard to their own pre-treatment facilities. SSD believes it is prudent for the City to have a further analysis of the reasonableness of these assumptions based upon the extent of these promised investments by industrial customers.

In addition, SSD also requests a further explanation about how the City plans to hold these industrial customers accountable for expanding their promised pre-treatment efforts. In the absence of an enforcement mechanism for fulfilling these promises, industrial customers could continue to receive preferential treatment from the City if the Rate Study and Preliminary Report are approved.

IV. Other Considerations Involving Industrial Sewer Customers Which Provide Preferential Treatment in a Manner That is Unreasonable for Wholesale Customers like SSD Who Serve Primarily Residential Customers

As mentioned previously, the majority of loading rate increases to the City's wastewater treatment plant are expected to be incurred by its industrial customers. Historically, the industrial customers have accounted for approximately 20% of the flow but nearly 50% of the BOD loading. See Table 3 below.

Table 3 – Comparison of Current La Crosse and Industrial Flow, Organic Loading, and Revenue Contributions

	Flow (MGD)	Loading (lb/day of BOD)	Revenue
Total La Crosse WWTP	11.54	29,400	\$6,839,157
Industrial Contribution	2.04	14,051	\$1,302,587
Percentage	17.7%	47.8%	19.0%

Table 4 below shows the same data as it relates to future flow, loading and revenues for the City's industrial customers. While overall industrial flows expected to increase by approximately 7%, overall industrial loading is predicted to increase by over 14%. In the Rate Study and Preliminary Report, these industrial sewer customers are expected to pay the same proportionate rate for service provided. See Table 4 below.

Table 4 – Comparison of Future La Crosse and Industrial Flow, Organic Loading, and Revenue Contributions

	Flow (MGD)	Loading (lb/day of BOD)	Revenue
Total La Crosse WWTP	15.8	32,800	\$11,127,308
Industrial Contribution	2.99	17,960	\$2,112,470
Percentage	18.9%	54.8%	19.0%

The rates applied to the City’s industrial sewer customers varies as the City has contracts with each industrial discharger individually. Furthermore, none of these contracts have similar language for the management of flows, loads and peaking factors. The contracted data was based upon historical raw wastewater loading assumptions in order to normalize the data set.

It is very important that the City develop a standard contract to use when reissuing contracts to their industrial sewer customers in order to assure equitable treatment between wholesale customers who serve primarily residential users and industrial sewer customers for the City.

Some of the main plant upgrades proposed in the Preliminary Report include a new holding tank, septic and grease traps. The main reason for these updates is to accommodate future flows and loadings from the City’s industrial customers. As mentioned above, SSD does not believe the industrial loadings were extrapolated correctly. In order to be “fair and equitable,” one would expect that the City’s industrial customers would have an increased percentage of the City’s revenue given that these industrial contracts are accounting for an even larger percentage of flow and loadings; all of which are driving the expected capital cost expenditures highlighted in the Preliminary Report.

As previously mentioned, a very large percentage of the projected operational costs is attributed to introducing dissolved oxygen to handle the strength of the load to be treated. In the Preliminary Report, the City’s industrial customers are expected to increase their percentage of the loading by 7%; yet those industrial customers are expected to contribute the exact same percentage of revenue - making the City’s wholesale customers incur more than their fair share of these costs.

For all these reasons, the City should require the following before it accepts the proposed rate increase and proposed allocations between industrial and wholesale municipal customers:

- The City's consultant (Donahue and Trilogy) need to use the same criteria when classifying domestic strength concentration. This directly impacts how and where the City generates its revenue.
- There needs to be a clear and distinct plan to hold the City's industrial customers accountable for the investments they plan to make to their pre-treatment facilities; and
- The City should provide a reasonable justification for why the City's industrial customers are planning to increase their percentage of the plants loading strength with no increase to their portion of the plants overall revenue.

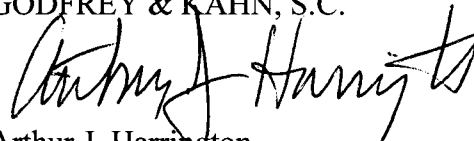
CONCLUSION

SSD understands and appreciates the need for large capital expenditures to meet regulatory requirements imposed upon the City. In addition, SSD commits to continuing the negotiations with the City to reach a sewer service agreement for the next 20 years on or before the expiration of the current contract on December 31, 2019. The comments provided in this letter are meant to be preliminary and should not be considered a waiver of its request for a 45-day extension for additional comments to the complex factors underlying the Rate Study and Preliminary Report. In particular, SSD has recently retained a rate expert to review the Rate Study and provide additional comments in the near future.

More time for written comments before the City's decision on the proposed resolutions will increase the likelihood that the City and SSD can fulfill their respective fiduciary obligations and thereby mitigate the need for PSC to resolve any dispute on the sewer rates in this case.

Very truly yours,

GODFREY & KAHN, S.C.



Arthur J. Harrington
Attorney Shareholder

AJH:smr
Enclosures

cc: Mr. Bernard Lenz, Utilities Manager via email (lenzb@cityoflacrosse.org)

September 10, 2019

VIA U.S.P.S. AND EMAIL (MATTYS@CITYOFLACROSSE.ORG)

Mr. Stephen Matty
City Attorney
City of La Crosse
400 La Crosse Street, 6th Floor
La Crosse, WI 54601

RE: Request for 45 Day Extension to Respond to Sanitary Sewer Utility Rate Study

Dear Mr. Matty:

As you know, Godfrey & Kahn, S.C. has been retained by the Shelby Sanitary District #2 (“SSD”) for negotiations with the City of La Crosse (the “City”) for extending the sewer service agreement between the City and SSD. In April of this year, SSD and the Town of Shelby (the “Town”) provided the City with a revised draft of the agreement for the City’s review/comment (“Revised Draft”). At the time we provided the Revised Draft to the City we also asked for more information about any proposed rate increases. After we receive the additional information on rates that we requested, we were looking forward to finalizing these negotiations before the current agreement extension expires at the end of this year.

Since we have provided our Revised Draft in April and before receiving the additional rate information we had requested, the City has recently circulated to its customers (including SSD), a Sanitary Sewer Utility Rate Study and a proposed Rate Increase (“Rate Study/Increase”) for comment. In a letter dated August 30, 2019, the SSD was informed by the City that the Rate Study/Increase will be the subject of a two-hour workshop on September 18 and then, that night, will be submitted to the La Crosse Common Council for approval and adoption and implementation on January 1, 2020 (“Rate Action Notice”). The Rate Study/Increase, if approved by the Common Council, would result in a three-year phased in rate increase in excess of 60 per cent over the current rate structure at the end of this three-year period. A copy of the Rate Action Notice and Agenda for the Workshop are attached with this letter.

Since receiving the Rate Action Notice, SSD has retained consulting engineers and financial advisors to review the Rate Study/Increase and provide written comments to be filed with the City before the Common Council takes final action on the Rate Study/Increase (SSD Written Comments). For your information, one fundamental flaw in the Rate Study is the failure

Mr. Stephen Matty
September 10, 2019
Page 2

of that study to incorporate key engineering information contained in a report submitted by SSD to the City and prepared by SEH, called the Sanitary Collection System Facilities Plan-SSD#2.

Obviously, the Rate Increase Notice process is seriously flawed for at least the following reasons: (1) less than three weeks prior notice to prepare for meaningful input is inadequate; (2) the limited two-hour period in the Workshop agenda for all interested parties to comment is insufficient to accommodate questions from all the interested parties so that they can react with meaningful comments; and (3) a proposed decision by the Common Council on the Rate Study/Increase that very night provides no opportunity for meaningful consideration of public comment.

Quite frankly, our client was shocked by this compressed timeline outlined in the Rate Action Notice. This proposed process does not afford a reasonable time for SSD to determine if the increased rates are "fair and equitable" to its customers, nor does it afford a meaningful opportunity to the Common Council to consider public comments before a City decision is made on the Rate Study/Increase. We firmly believe that affording SSD adequate time to file the SSD Written Comments will enhance the likelihood of good decision-making by the Common Council.

We appreciate your timetable to having the increased rates be adopted and in place by the first of 2020 as part of the application process for a Clean Water Loan Program administered by the DNR. At the same time, the SSD has a fiduciary responsibility to its sewer customers and the Town of Shelby citizens that it has taken all reasonable steps to understand and accept the increase from a fairness principal. The SSD does not oppose paying its fair share of the costs of the treatment facility but only wants to provide information and to comment, as appropriate, on the rate study.

Therefore, under the circumstances outlined in this letter, SSD is formally requesting that the Common Council delay making a final decision on the Rate Study/Increase for at least 45 days. This 45 day delay is the absolute minimum necessary to afford an opportunity for SSD to submit the SSD Written Comments before a City decision is made on this important matter. We believe acceding to this request will not only increase the likelihood of success on the ongoing sewer negotiations between the City and SSD, but also serve to mitigate the need for asking the Public Service Commission ("PSC") to resolve a dispute over the reasonableness of future rate increases.

Given the time sensitivity of this extension request, we have also provided a copy of this letter to Mr. Bernard Lenz, Utilities Manager.

Mr. Stephen Matty
September 10, 2019
Page 3

Your prompt written response to this request for a 45 day extension would be greatly appreciated.

Very truly yours,

GODFREY & KAHN, S.C.

A handwritten signature in black ink, appearing to read "Arthur J. Harrington". The signature is written in a cursive style with a large, stylized initial "A".

Arthur J. Harrington
Attorney Shareholder

AJH:smr
Enclosures

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cc: Mr. Bernard Lenz, Utilities Manager via email (lenzb@cityoflacrosse.org)



CITY OF LA CROSSE UTILITIES

WATER - SEWER - STORM

400 La Crosse St

La Crosse WI 54601-3396

Phone (608) 789-7536

utilities@cityoflacrosse.org

8/30/2019

Dear Community Partner:

Per many of our Sanitary Sewer Service contracts and as a courtesy to our customers, this letter is being sent to inform you of a pending Sanitary Sewer Utility Rate increase planned for January 1, 2020. Wholesale sewer rates are proposed to go from \$1,631 to \$1,970 per Million Gallons. The full proposed rate schedule is on page 6 of the attached Trilogy Consulting LLC Sewer Rate Study Executive Summary DRAFT report dated June, 2019. Please plan accordingly.

The Sanitary Sewer Utility has been working on and planning for improvements at the Waste Water Treatment Plant (WWTP) for several years. These improvements have been driven by State mandates for enhanced phosphorus treatment, capacity needs related to bio-solids, timing (the facility plan is updated every 10 years), age of the plant, and the desire to add sustainability through methane reuse and heat recovery/re-use.

A draft Facility Plan and draft Rate Study are complete and were presented at a Public Information Meeting held June 25th, 2019. The reports and a recording of the meeting were made available on the City of La Crosse Utility web site immediately following. The next steps are to implement the first phase of rate increase to ensure the Utility is in sound financial shape for the State Clean Water Fund Grant Program, to confirm the demand from wholesale customers to be included in the final Facility Plan, and to do preliminary engineering to ensure all needs to implement the recommendations in the draft Facility Plan are accounted for. No decision on implementation of Phase 2 and 3 of the proposed rate increases will be made until the final Facility Plan and a final Rate Study is approved, but it is likely a Phase 2 rate increase will occur on January 1, 2021, and a Phase 3 increase on January 1, 2022. What those Phase 2 and 3 rates will look like will be finalized after the Facility Plan is finalized.

Additionally, we are inviting all industrial permittees and wholesale customers to come to a Workshop #2 specifically related to the draft Sanitary Sewer Utility Rate Study on September 18th at 1:00 p.m. at La Crosse City Hall (agenda attached). This workshop will include a deep dive into the rate study, the connection fee, and associated calculations. We seek questions to increase the understanding of the process used in the rate study and suggestions to improve the process and the final rate study. I encourage your communities and businesses to participate by sending a representative to the workshop.

Finally, there will be a special La Crosse Common Council meeting on September 18, 2019 at 6:00 p.m. where our engineering consulting firm, Donohue and Associates will present the draft Facility Plan and a proposal for the work needed to make it a Final Facility Plan. Trilogy Consulting LLC will then present the draft Rate Study and the phased rate increase recommended in the plan before the La Crosse Common Council votes on approving these rates and next steps.

There lots of exciting progress made with more to come. Thanks for your interest.

A handwritten signature in black ink that reads "Bernard N Lenz".

Bernard N Lenz, PE
City of La Crosse Utilities Manager

Wastewater Facilities Planning

Partner Workshop #2 - Rates

The Technical Background and Path Forward

City of La Crosse, WI



Meeting Agenda

Presenters	City of La Crosse, Trilogy LLC, and Donohue & Associates, Inc.
Date	Wednesday September 18th
Time	1:00-3:00 PM
Location	5 th Floor La Crosse City Hall

Objectives

1. Provide relevant background information.
2. Review and discuss the Wastewater Rate study including methodology, historical and forecast data used, cash flow forecasts, revenue requirements, and proposed rate schedule.
3. Review and discuss proposed connection fee.

Background

- Overview of types of services and customers served by the Utility
- History of wastewater rate studies
- Reasons for the rate study
- Rate setting process

Rate Study

- Current financial status of the Utility
- Alternative rate increase and cash flow scenarios
- Revenue requirements
- Cost of service allocation
- Proposed rates
- Customer bill impacts
- Alternative models for recovering capital costs

Connection Fee

- Basis for proposed fee
- Amount of proposed fee

The Schedule

Other Concerns?