

**RESOLUTION AMENDING POLICIES WITH RESPECT
TO THE CRITICAL NEEDS AND FAILING SYSTEMS SUB
ACCOUNT**

WHEREAS, the West Virginia Infrastructure and Jobs Development Council (the “Council”) was created by Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the “Council Act”);

WHEREAS, Section 9 of the Council Act creates the Infrastructure Fund;

WHEREAS, Section 17c of the Council Act authorized the West Virginia Water Development Authority (the “Authority”) to establish the Critical Needs and Failing Systems Sub Account (the “Sub Account”) within the Infrastructure Fund;

WHEREAS, the West Virginia Legislature in the 2022 Regular Session amended Section 17(c)(b)(3) and authorized the use of the Sub Account funds for line-extension projects with a cost of less than \$2 million; and

WHEREAS, the Council hereby determines that revised policies and procedures must be adopted to provide for the award of funds from the Sub Account for line-extension projects costing less than \$2 million (except for the 10% which may be provided by the Project Sponsor).

NOW, THEREFORE, be it resolved by the West Virginia Infrastructure and Jobs Development Council as follows:

1) The Council hereby adopts the “Additional Policies Governing the Critical Needs and Failing Systems Sub Account” attached hereto as Exhibit A and incorporated herein by reference.

2) The Council hereby instructs the Executive Secretary to add the “Additional Policies Governing the Critical Needs and Failing Systems Sub Account” to the current policies on the Council’s website under Project Center – Operational Policies and Guidelines.

3) This Resolution shall be effective immediately upon adoption.

Adopted this 5th day of October, 2022.

 Date: 2022.10.05
16:17:15 -04'00'

Executive Secretary

EXHIBIT A

Additional Policies Governing the Critical Needs and Failing Systems Sub Account**X. Critical Need Projects**

a. The Council shall direct the Authority to make either a loan and/or a grant from the Critical Needs and Failing Systems Sub Account (the “Sub Account”) when the Council, or the Technical Review and Funding Committee (the “Funding Committee”) Chair, or if the Chair is not available another member of the Funding Committee (the “Chair”) as provided below, determines a proposed project will address a Critical Immediate Need/No Service (defined below) set forth in Section 17c(b)(1), a Critical Immediate Need/Failure (defined below) set forth in Section 17c(b)(2) or is a Critical Need Line Extension (defined below) as set forth in Section 17c(b)(3) of the Council’s Act.

b. (i) Critical Immediate Need/No Service Project

A critical immediate need arises when an unforeseen event occurs that prevents a Project Sponsor from providing adequate and continuous water or wastewater service to its customers and the Project Sponsor does not have sufficient funds to pay the cost of restoring service (a “Critical Immediate Need/No Service”). The Council will consider the unforeseen event, the extent of the service disruption, the age of the failed facility, the public health risks, and the environmental risks when determining whether a proposed project is a Critical Immediate Need/No Service.

Requirements for applications for a Critical Immediate Need/No Service Project are set forth in Appendix A attached to this policy.

(ii) Critical Immediate Need/Failure Project

A critical immediate need arises when there is a failure of certain components of the system due to age of the facility that does not prevent a Project Sponsor from providing continuous water or wastewater service to its customers but jeopardizes its ability to provide continuous services and the Project Sponsor does not have sufficient funds to pay the cost of repairing or replacing the failed components (a “Critical Immediate Need/Failure”). The Council will consider the failed components, systemic issues, the extent of possible service disruption, the age of the failed components, the rate setting history, public health risks, and the environmental risks when determining whether a proposed project is a Critical Immediate Need/Failure.

Requirements for applications for a Critical Immediate Need/Failure Project are set forth in Appendix A attached to this policy.

(iii) Critical Need Line Extension Project

A critical need line extension project will be considered when a proposed line extension project provides for the extension of service to an unserved area with residences and/or businesses that could not otherwise receive service (a “Critical Need Line Extension”) and complies with the requirements for application set forth in Appendix B of this policy.

c. (i) Application for Critical Immediate Need/No Service Project

The Project Sponsor shall complete the Critical Immediate Need/No Service Project application provided on the Council's webpage and electronically file, email or fax it to the Executive Director. Application requirements are more fully described in Appendix A, attached hereto.

(ii) Critical Immediate Need/No Service Project Procedure

Upon receipt of an application for a Critical Immediate Need/No Service Project, the Executive Director shall process the application as follows:

1. If the request is for a project with an estimated cost of \$300,000 or less to address an existing loss of adequate and continuous service to customers or an imminent environmental disaster, the application shall be sent to the Chair of the Funding Committee or another member of the Funding Committee if the Chair is not available, for review and consideration in consultation with a another member of the Funding Committee.

2. Upon the approval of the application, a member of the Funding Committee shall notify the Project Sponsor and the Executive Director so that the Project Sponsor can commence the repair or replacement required to restore adequate and continuous service to the customers or avoid an environmental disaster. The Chair or another member shall provide a report of the approval at the next Funding Committee meeting. Within one week of approval of the manual Critical Immediate Need/No Service Project application the Project Sponsor shall complete the Council's online application.

3. If the Chair, or two members, if the Chair is not available denies the request, then the Chair, or two members, if the Chair is not available shall notify the Project Sponsor and the Executive Director. The Project Sponsor may apply for other funding using the Council's online application.

4. If the application for a Critical Immediate Need/No Service Project is for more than \$300,000, then the Executive Director (a) shall place it on the agenda for the next regularly scheduled Funding Committee meeting or (b) request the Chair of the Funding Committee or if the Chair is not available the Executive Director to call a special meeting. Following review by the Funding Committee, a recommendation shall be made to Council whether to fund the proposed project from the Sub Account, deny the application or recommend another funding scenario.

5. As a condition to the receipt of Critical Immediate Need/No Service Project funding, any Project Sponsor which has not funded its renewal and replacement account and capital maintenance reserve account shall be required to establish rates sufficient to fund these accounts at the required level within one year of receipt of the grant.

(d) (i) Application for Critical Immediate Need/Failure Project

The Project Sponsor shall complete the Council's Immediate Need/Failure Project application provided on the Council's webpage and electronically file, email or fax it to the Executive Director. Upon the receipt and review of the application, the Executive Director may

direct the Project Sponsor to complete the Council's standard application provided on the Council's webpage. The Council will review the plan for correcting the systemic issues related to the age of the system, what actions the Project Sponsor has taken to remedy the issues (including rate increases and pay-as-you-go projects) and will consider funding necessary to remedy the systemic issues and set the terms of such funding. Application requirements are more fully described in Appendix A, attached hereto.

(ii) **Critical Immediate Need/Failure Project Procedure**

Upon receipt of an application for a Critical Immediate Need/Failure Project, the Executive Director shall process the applications as follows:

1. If the request is for a project with an estimated cost of \$300,000 or less to address the failure of certain components of the system, the application shall be sent to the Chair of the Funding Committee, or another member of the Funding Committee if the Chair is not available, for review and consideration in consultation with another member of the Funding Committee.

2. Upon the approval of the application, a member of the Funding Committee shall notify the Project Sponsor and the Executive Director so that the Project Sponsor can commence the repair or replacement required address the existing equipment failure or an imminent environmental disaster. The Chair or another member shall provide a report of the approval at the next Funding Committee meeting. Within one week of approval of the manual Critical Immediate Need/Failure Project application the Project Sponsor shall complete the Council's online application.

3. The Chair, or two members if the Chair is not available, may elect to defer the request and notify the Executive Director to (a) place it on the agenda for the next regularly scheduled Funding Committee meeting or (b) request the Chair of the Funding Committee or if the Chair is not available the Executive Director to call a special meeting. Following review by the Funding Committee, a recommendation shall be made to Council whether to fund the proposed project from the Sub Account, deny the application or recommend another funding scenario.

4. If the Chair, or two members if the Chair is not available, denies the request, then the Chair, or two members if the Chair is not available, shall notify the Project Sponsor and the Executive Director. The Project Sponsor may apply for other funding using the Council's online application.

5. If the application for a Critical Immediate Need/Failure Project is for more than \$300,000, then the Executive Director (a) shall place it on the agenda for the next regularly scheduled Funding Committee meeting or (b) request the Chair of the Funding Committee to call a special meeting. Following review by the Funding Committee, a recommendation shall be made to Council whether to fund the proposed project from the Sub Account, deny the application or recommend another funding scenario.

6. As a condition to the receipt of Critical Immediate Need/Failure funding, any Project Sponsor which has not funded its renewal and replacement account and capital

maintenance reserve account shall be required to establish rates sufficient to fund these accounts within one year of receipt of the grant.

e. Application for Critical Need Line Extension Project

The Project Sponsor shall apply for a Critical Need Line Extension Project by completing the Council's online preapplication. The Project Sponsor should request a waiver of the Rule 42 requirement. Since the total project cost at construction must be less than two million dollars the Project Sponsor should consider requesting a smaller amount (not to exceed \$1,800,000) to allow for cost adjustments and bid overrun issues. IF THE PROJECT COST COMES IN OVER \$1,999,999.99, THE PROJECT IS NOT ELIGIBLE FOR A BID OVERRUN GRANT OR OTHER COUNCIL FUNDING. If the project cost at construction exceeds \$2 million, the Project Sponsor may contribute up to 10% (or up to \$200,000) to the project. If the project cost at construction exceeds \$2,200,000, the project is not eligible for funding. Requirements for applying for a Critical Need Line Extension Project are provided in Appendix B attached to this policy.

f. Upon the completion of an application for a Critical Need Line Extension Project, the Executive Director shall process the application using the standard Council review procedure. The Funding Committee shall make recommendations to the Council on whether the project should be funded from the Sub Account, denied or offered another funding scenario.

g. In order to have funds available to meet unforeseen needs throughout the fiscal year, the Council shall restrict the availability of one-fourth of the funds transferred annually to the Sub Account for use in the fourth quarter, provided, however, that if at any time the balance in the Sub Account is less than \$4 million, the Sub Account funds may only be used for (i) Critical Immediate Need/No Service Projects, and/or (ii) Critical Immediate Need/Failure Projects until June 1.

APPENDIX A

West Virginia Infrastructure and Jobs Development Council
Critical Immediate Need/No Service Funding
Application Form

(See Appendix A of the policy before completing this application.)

I. Utility (Sponsor)

Name: Enter the Utility Name.

County: Enter the County of the Utility.

Contact: Enter the Utility Contact Person.

Address: Enter the Utility's Address.
Enter the Utility's Address.
Enter the Utility's Address.

Phone: Enter the Utility's Phone Number.

Fax: Enter the Utility's Fax Number.

Email: Enter the Utility's Email.

II. Administrator (If the Applicant is not the Utility, please fill out this section.)

Organization: Enter the Administrator's Organization.

Contact: Enter the Administrator's Name.

Address: Enter the Administrator's Address.
Enter the Administrator's Address.
Enter the Administrator's Address.

Phone: Enter the Administrator's Phone Number.

Fax: Enter the Administrator Fax Number.

Email: Enter the Administrator's Email.

West Virginia Infrastructure and Jobs Development Council

Critical Immediate Need/No Service Funding

Application Form

I. Describe the Critical Need

Describe the event causing the Critical Need.

II. Total Estimated Cost

III. Schedule to Resolve Critical Need

Describe the estimated time to address the Critical Need.

IV. Proposed Remedial Action

Describe the steps to resolve the Critical Need.

V. Account Balances

Revenue Fund

Renewal and Replacement Fund

Capital Maintenance Reserve Fund

VI. Last completed fiscal year
audit _____

Submitted by: _____

Date Submitted: _____

Critical Immediate Need/No Service Funding Application

APPENDIX B

Appendix B
Requirements for Applications
Critical Need Line Extension Projects

A. Application Form

1. Applications for a Critical Need Line Extension Project must be filed electronically. The Project Sponsor shall complete the Council's standard online application form and provide all information requested therein except where otherwise noted herein. The completed form shall be submitted electronically using the Council's standard online application process.
2. The accounting data requested in the standard application may be based upon the most current Annual Report filed with the PSC or an audited financial report of the Project Sponsor, whichever is more recent. A Rule 42 financial exhibit is not required for Critical Need Line Extension applications and a waiver should be requested and so noted on the application. The Project Sponsor shall provide a cash flow analysis showing the estimated revenues and estimated expenses associated with the proposed new customers.
3. The Project Sponsor should use care to ensure that the data provided in the application is consistent, accurate and current. Cost estimates should be based on the information provided in the abbreviated PER as described herein.
4. For the purposes of the application, the Project Sponsor may request Critical Need Line Extension grant for 100% of the cost. However, the Council may elect to offer other types or mixes of funding or to deny funding at its sole discretion.
5. To be considered and receive a contingent binding commitment the applicant must submit signed user agreements or a petition for service from the customers to be served, and other funding commitments for the project if the total project cost does not exceed \$2 million. If the number of user agreements are different from the initial application user count, the applicant must provide an explanation on the difference.

B. Exclusions

1. Line extensions having a total estimated project cost in excess of \$2,000,000 are not authorized under this program.

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2. If the project cost comes in over \$1,999,999.99, the project is not eligible for a bid overrun grant or other Council funding. (Project Sponsors are advised to prepare their project budgets accordingly, restricting the application amount to not exceed \$1,800,000.). If the cost at construction exceeds \$2 million, the Project Sponsor may contribute up to 10% (or \$200,000) to the project. If the project comes in over \$2,200,000, the project is not eligible for funding.
3. Applications filed under this program are not eligible for other Council funding but may utilize committed funding from other sources (municipal contributions, county grants, cash contributions, etc.). Firm commitment letters for such funding must be provided with the application. Applications received without acceptable commitment documentation will be returned without further review.

Line extension projects which require an upgrade in the capacity of any treatment facilities (water or sewer) are not authorized under this program.

C. Preliminary Engineering Report

All applications for a Critical Need Line Extension shall be accompanied by a Preliminary Engineering Report (PER). In consideration of the limited scope of work acceptable for funding under this program the Council will accept abbreviated Preliminary Engineering Reports. The PER for a Critical Need Line Extension application must include the following:

1. A narrative description of the proposed line extension including a discussion of the need for the extension, a narrative description of the area to be served, the number of new customers to be served, estimated cost per new customer and other information pertinent to the application.
2. For water projects the supplying water system and treatment facility (WTP) must be identified and for sewer projects the accepting sewer system and treatment facility (WWTP) must be identified. A discussion of the adequacy of the proposed supplying system and source of supply (water) or accepting system and treatment facility (sewer) must be provided.
3. A discussion of alternatives shall be provided. The "No Action" alternative need not be considered. Alternative discussions should include only reasonable

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Critical Need Line Extension Projects

alternatives; for example, most rural water line extension projects offer no clear reasonable alternatives unless there are two or more alternatives, capable and proximate sources of supply.

For sewer line extensions the Project Sponsor should evaluate not less than two (2) logical alternatives for the collection system type (i.e. pressure sewers, STEP systems and gravity sewers) unless system layout and site topography clearly indicate otherwise.

Life cycle cost analysis shall be used to evaluate reasonable alternatives and the results reported; calculations shall be provided.

4. A project map showing the proposed extension. The Project Sponsor should also include unserved customers beyond the termination point to which service could have been extended. Project maps shall be of such size, scale and level of detail as necessary to clearly show the project area and the general layout of proposed lines. (Detailed line layouts or plan sheets are not necessary and should not be submitted with the PER.)
5. Project cost and budget information including, the estimated construction cost, the estimated project cost and a complete breakout of all soft costs. For all line extensions, unit costs and estimated quantities shall be provided as part of the construction cost estimate. Cost estimates shall be provided in customary format and shall provide sufficient detail as to allow for meaningful review by the Council.

All cost estimates shall bear the seal and signature of the Registered Professional Engineer responsible for their preparation. All cost estimates must be dated; estimates dated more than six (6) months prior to the application date are not acceptable.

6. A draft Schedule B in the Council's customary format. The Schedule B must be dated and signed by the Project Sponsor and their Engineer. Information provided in the Schedule B must be consistent with the most current project cost estimate.
7. A brief discussion of permits and other regulatory approvals which will be required for construction of the line extension. (Extensive or detailed documentation of permits or approvals is not needed in the abbreviated PER.)

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8. A brief discussion of any known property acquisitions, rights-of-way or other legal rights which will be required for construction of the line extension.
9. Any other information which the Project Sponsor believes to be pertinent to the Council's review of the proposed line extension. (Do not provide the Project Sponsor's Annual PSC Reports, census data, flood plain data or other similar data or information with the PER.)
10. The PER shall be prepared by or under the direct supervision of a currently licensed Professional Engineer registered in the State of West Virginia and shall bear their seal and signature.

D. Prior Critical Need Line Extension Projects

1. The Project Sponsor shall provide information with respect to other funding that has been applied for but not approved for the Critical Need Line Extension project (such as Small Cities Block Grant).
2. The Project Sponsor shall provide a list of any prior Critical Need Line Extension Projects approved by the Council and the status of each such Critical Need Line Extension Project.