

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE INVESTIGATION INTO )  
THE UNAUTHORIZED ABANDONMENT OR DISCONTIN- )  
UANCE OF WASTEWATER UTILITY SERVICES BY )  
UTILITY SYSTEMS, INC., TO THE WOODS ON )  
HERRING CREEK COMMUNITY AND THE ABILITY OF ) PSC DOCKET NO. 05-58  
UTILITY SYSTEMS, INC., TO OPERATE WASTE- )  
WATER SYSTEMS SUBJECT TO THE JURISDICTION )  
OF THE DELAWARE PUBLIC SERVICE COMMISSION )  
(OPENED FEBRUARY 16, 2005) )

**ORDER NO. 6588**

**AND NOW**, this 8<sup>th</sup> day of March, 2005;

**WHEREAS**, Utility Systems, Inc. ("USI") is a corporation of the State of Delaware that provides wastewater utility services to communities within the State of Delaware. USI's business address is Sterling Hall, 1132 South Little Creek Road, Dover, Delaware 19903-0617; and

**WHEREAS**, on July 6, 2004, the Delaware General Assembly enacted new legislation, found at 74 Delaware Laws, Chapter 317, which granted the Delaware Public Service Commission (the "Commission") jurisdiction to regulate certain Wastewater Utilities having more than fifty customers, including the jurisdiction to grant and revoke Certificates of Public Convenience and Necessity ("CPCNs"); and

**WHEREAS**, pursuant to 74 Delaware Laws, Chapter 317, USI is a public utility subject to the supervision and regulation of the Commission; and

**WHEREAS**, on information and belief, USI has been providing wastewater utility services to the Woods on Herring Creek Community since 1985; and

**WHEREAS**, on October 1, 2004, USI filed an application, dated September 29, 2004, with the Commission for a CPCN to provide wastewater utility services to the Woods on Herring Creek Community; and

**WHEREAS**, the Commission received letters dated August 19, 2004 and October 21, 2004, from the Woods on Herring Creek Homeowner's Association ("Homeowner's Association") requesting that the Commission deny a CPCN to USI and requesting a hearing on the homeowners' complaints against USI; and

**WHEREAS**, the Homeowner's Association alleged, among other things, that: (a) USI received notices from the Department of Natural Resources and Environmental Control ("DNREC") of violations of Title 7; (b) USI is in material violation of the Delaware Code and state regulations governing Wastewater Utilities; and (c) USI was not a reliable wastewater services contractor; and

**WHEREAS**, on November 9, 2004, the Commission entered Order No. 6506, which opened PSC Docket 04-WW-001 to, among other things, investigate the complaints of the Homeowner's Association against USI, and consider USI's application for a CPCN for the Woods on Herring Creek Community. William F. O'Brien was appointed Hearing Examiner; and

**WHEREAS**, on December 15, 2004, USI sent a letter to Hearing Examiner O'Brien advising that: (a) USI intended to relinquish its

permits from DNREC to operate the wastewater system at the Woods on Herring Creek Community as of December 20, 2004; and (b) concurrently, effective December 20, 2004, USI was withdrawing its application for a CPCN to serve the Woods on Herring Creek Community; and

**WHEREAS**, on December 22, 2004, Hearing Examiner O'Brien sent a letter to the Commission Staff which, among other things, asked for the Staff's position on whether USI may abandon or discontinue wastewater services to the Woods on Herring Creek Community without obtaining approval from the Commission under 26 Del. C. § 203A(c)(1); and

**WHEREAS**, on December 29, 2004, Staff sent a letter to Hearing Examiner O'Brien advising that it was the Staff's position that USI was not permitted to abandon or discontinue, in whole or in part, the operations and wastewater services being provided to the Woods on Herring Creek Community without first having received Commission approval under 26 Del. C. § 203A(c)(1); and

**WHEREAS**, 26 Del. C. § 203A(c)(1) provides:

Subject to the provisions of Chapter 10 and § 706(d) of this title and excluding electric suppliers, no public utility shall abandon or discontinue, in whole or in part, any regulated public utility business, operations or services provided under a certificate of public convenience and necessity or otherwise which are subject to jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance.

**WHEREAS**, because USI is a public utility subject to the jurisdiction of the Commission under § 203A, the Staff respectfully submits that USI is prohibited from abandoning or discontinuing

wastewater services to the Woods on Herring Creek Community without approval of the Commission; and

**WHEREAS**, after USI sent its December 15, 2004 letter to Hearing Examiner O'Brien, the Homeowner's Association informed the Staff that the Homeowner's Association: (a) did not oppose USI's effort to relinquish its DNREC permits to operate the wastewater system; (b) wished to sever its ties with USI; and (c) planned to turn over the operation of the system to a financially viable wastewater utility within thirty days; and

**WHEREAS**, USI has relinquished its DNREC permits for the Woods on Herring Creek wastewater system and has ceased operating the system; and

**WHEREAS**, Staff does not wish to interfere with the efforts of the Homeowner's Association to operate the wastewater system on a temporary basis, with the approval of DNREC, and with the intent of having a viable wastewater utility assume responsibility for operating the system in the near term; and

**WHEREAS**, Staff has nevertheless also concluded that USI cannot abandon or discontinue operating the Woods on Herring Creek wastewater system without first obtaining an Order from the Commission subject to whatever terms and conditions the Commission may deem proper; and

**WHEREAS**, the Commission has granted two CPCNs to USI to operate wastewater systems in the State of Delaware - PSC Dockets Nos. 04-WW-002 and 04-WW-003; and

**WHEREAS**, USI's December 15, 2004 letter to Hearing Examiner O'Brien regarding the Woods on Herring Creek wastewater system stated,

in part, that it is "financially impossible for USI to continue operating the system . . ." USI's statement raises concerns about USI's financial ability to operate the two wastewater systems for which it has received CPCNs from the Commission; and

**WHEREAS**, based on information and belief, USI has outstanding liabilities to a waste hauler who pumped waste from the Woods on Herring Creek wastewater system and perhaps other systems operated by USI in 2003 and 2004; and

**WHEREAS**, on January 7, 2005, USI sent a letter to Hearing Examiner O'Brien stating, among other things, that USI was authorized to cease operations at the Woods on Herring Creek Community without Commission approval under 26 Del. C. § 203A(c)(6), because its abandonment or discontinuance of service was based on nonpayment of bills; and

**WHEREAS**, Staff also sent a letter dated December 29, 2004 to USI, asking that USI file an application with the Commission seeking Commission approval to abandon or discontinue operating the Woods on Herring Creek wastewater system; and

**WHEREAS**, USI has reportedly abandoned the Woods on Herring Creek wastewater system, without approval from the Commission, in violation of 26 Del. C. § 203A(c)(1); and

**WHEREAS**, USI has reportedly discontinued its operation of the Woods on Herring Creek wastewater system, without approval from the Commission, in violation of 26 Del. C. § 203A(c)(1); and

**WHEREAS**, the Staff received a letter dated March 1, 2005 from the Homeowner's Association stating that the wastewater system is

"failing" and expressing concerns about the need for funds to invest in the system; and

**WHEREAS**, USI has failed to file an application with the Commission seeking Commission approval to abandon or discontinue its operation of the Woods on Herring Creek wastewater system, as required by 26 Del. C. § 203A(c)(1); and

**WHEREAS**, the Commission Staff has prepared a Complaint to serve on USI related to, among other things: (a) USI's failure to obtain approval from the Commission to abandon or discontinue its operation of the Woods on Herring Creek community wastewater system; and (b) USI's financial capability to continue to operate the two wastewater systems for which USI has received CPCNs granted by the Commission; and

**WHEREAS**, pursuant to 26 Del. C. § 206, the Commission may investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility; and

**WHEREAS**, pursuant to 26 Del. C. § 217, the Commission is empowered to impose a penalty of up to \$1,000 per day for every day in which a public utility fails to comply with any Order of the Commission. In addition, the Commission is empowered to invoke the provisions of any other statute which addresses violations of Commission Orders or State law by a public utility.

Now, therefore, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Commission hereby formally opens this docket captioned:

IN THE MATTER OF THE INVESTIGATION INTO  
THE UNAUTHORIZED ABANDONMENT OR DISCONTIN-  
UANCE OF WASTEWATER UTILITY SERVICES BY  
UTILITY SYSTEMS, INC., TO THE WOODS ON  
HERRING CREEK COMMUNITY AND THE ABILITY OF  
UTILITY SYSTEMS, INC., TO OPERATE WASTE-  
WATER SYSTEMS SUBJECT TO THE JURISDICTION  
OF THE DELAWARE PUBLIC SERVICE COMMISSION  
(OPENED FEBRUARY 16, 2005).

2. The Secretary of the Commission is authorized to serve the Staff's Complaint on Utility Systems, Inc. The Secretary shall inform Utility Systems, Inc., that, pursuant to Rule 16 of the Commission's *Rules of Practice and Procedure*, Utility Systems, Inc., is ordered to file an Answer to the Staff's Complaint within twenty (20) days after service of the Complaint.

3. This docket is hereby consolidated with the proceedings involving Utility Systems, Inc., in PSC Docket No. 04-WW-001 that are pending before Hearing Examiner William F. O'Brien.

4. Pursuant to 26 Del. C. § 502 and 29 Del. C. ch. 101, the Commission refers this matter to Hearing Examiner William F. O'Brien. Hearing Examiner O'Brien shall address whether Utility Systems, Inc., may abandon or discontinue the operation of the Woods on Herring Creek Community wastewater system without Commission approval. Hearing Examiner O'Brien shall also address, and the Commission Staff is authorized to investigate, whether Utility Systems, Inc., has the financial capability to operate the two wastewater systems for which it has received CPCNs from the Commission, whether Utility Systems,

Inc., has been paying its vendors, and whether Utility Systems, Inc., has the financial resources to do so, and any other matter related to the issues presented in this docket or PSC Docket No. 04-WW-001. Hearing Examiner O'Brien shall also address whether further relief is just and proper, including whether the imposition of any statutory penalties on Utility Systems, Inc., is appropriate. Hearing Examiner O'Brien shall conduct consolidated proceedings in this matter and in PSC Docket 04-WW-001 and submit a Report to the Commission that will include his proposed findings and recommendations. Such proceedings shall be conducted with due regard for the procedures required by 29 Del. C. §§ 10122-10126. Hearing Examiner O'Brien is delegated the power to provide any direct notice that might be required by these provisions.

5. Pursuant to 26 Del. C. § 102A, Hearing Examiner O'Brien is delegated the power to determine the form and manner of any public notice of this proceeding. Hearing Examiner O'Brien shall provide for such notice in a manner that will reasonably allow affected or interested persons the opportunity to intervene and participate in the proceedings, including the Homeowner's Association. Hearing Examiner O'Brien is specifically delegated, under Rule 21 of the Commission's *Rule of Practice and Procedure*, the authority to grant or deny petitions to intervene.

6. Pursuant to 26 Del. C. § 207, Utility Systems, Inc., is ordered to make available for inspection by the Commission's Staff and provide Staff with access to: (a) all of Utility Systems, Inc.'s books, accounts, appraisals, valuations, contracts, reports of

engineers, records, memoranda, and other documents and data; and (b) all of Utility Systems, Inc.'s premises, property, plant, facilities, and equipment.

7. The Secretary shall transmit a copy of this Order to the following persons or entities:

- (a) Utility Systems, Inc.;
- (b) The Woods on Herring Creek Homeowner's Association;
- (c) The Division of the Public Advocate; and
- (d) The Secretary of the Department of Natural Resources and Environmental Control.

8. Francis J. Murphy, Esquire, is appointed to represent the Commission Staff in this matter.

9. Utility Systems, Inc., is hereby advised that the cost of this proceeding may, under the provisions of 26 Del. C. § 114(b)(1), be charged to the utility.

10. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Arnetta McRae  
Chair

/s/ Joshua M. Twilley  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

PSC Docket No. 05-58, Order No. 6588 Cont'd.

/s/ Jaymes B. Lester  
Commissioner

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Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary