

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

IN THE MATTER OF THE APPLICATION OF)
BASS PROPERTIES, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONTINUE PROVIDING)
WASTEWATER SERVICES TO THE LEA ERA) PSC DOCKET NO. 05-WW-003
FARMS DEVELOPMENT, LOCATED IN NEW)
CASTLE COUNTY, DELAWARE, PURSUANT TO)
THE PROVISIONS OF 26 DEL. C. §)
203D(a)(2) (FILED FEBRUARY 2, 2005)
AND AMENDED APRIL 1, 2005))

ORDER NO. 6608

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO OPERATE EXISTING WASTEWATER PUBLIC UTILITY**

This 26th day of April, 2005, the Commission determines and Orders the following:

1. By the provisions of 74 Del. Laws ch. 317 (July 6, 2004), the General Assembly and Governor included wastewater systems within the public utilities subject to the regulatory oversight of this Commission. 74 Del. Laws ch. 317 (2004) (amending "public utility" definition in 26 Del. C. § 102(2)).¹

2. The new law includes a specific regime for the granting of Certificates of Public Convenience and Necessity ("CPCN") to begin the business of a wastewater public utility or to extend the system and

¹The enactment continued, in the context of wastewater systems, exemptions from Commission oversight systems owned or operated by municipalities and specific water and sewer districts. 74 Del. Laws ch. 317 §§ 3, 5 (2004) (amending 26 Del. C. § 202(b)). The new law also exempted from Commission oversight wastewater public utilities serving fewer than fifty customers in the aggregate. 74 Del. Laws ch. 317 § 4 (2004), adding 26 Del. C. § 202(h).

operations of an existing wastewater public utility. 74 Del. Laws ch. 317 § 6, adding 26 Del. C. § 203D. Under this regime, a person or entity operating a now-jurisdictional wastewater business on June 7, 2004 must obtain from the Commission a CPCN for its existing service territory within 150 days after July 6, 2004. 26 Del. C. § 203D(a)(ii), as added by 74 Del. Laws ch. 317 § 6 (2004). In this situation of CPCNs for existing service territories of "grandfathered" wastewater utilities, the Commission shall grant the certificate unless: (a) the Commission has actual knowledge at the time of the entity's application that the applicant is in material violation of any of the provisions of Titles 7, 16, or 26 dealing with the provision of wastewater services; or (b) a bona fide boundary dispute exists as to the extent of the applicant's actual service territory. Id.

3. On February 2, 2005, Bass Properties, Inc. ("Bass Properties") filed a request that the Commission grant to Bass Properties a CPCN to continue providing wastewater services to the Lea Era Farms and Summit Farms developments located in New Castle County, Delaware ("Proposed Service Area"). Staff's investigation into the Application, in cooperation with the Department of Natural Resources and Environmental Control ("DNREC"), found that the Summit Farms development is served by individual septic systems and should not have been included in the Proposed Service Area. On April 1, 2005, a letter was submitted to the Commission revising the initial application to include only those properties in the Lea Era Farms development.

4. As required by 26 Del. C., § 203D(a)(2), Bass Properties included the following in its request: (a) documentation that Bass Properties had been operating a wastewater system prior to the June 7, 2004 statutory deadline; (b) a description of the wastewater facilities serving the Lea Era Farms development and a map showing the area served; and (c) a schedule, or an approved alternative, describing the current rates charged by Bass Properties to its customers within the Proposed Service Area.

4. DNREC, which administers wastewater systems under the provisions of Title 7, and the Department of Health and Social Services ("DHSS"), the primary agency for enforcement of the public health provisions of Title 16, were contacted regarding this CPCN Application. In its response, DNREC states "the Community Wastewater Treatment and Disposal Facility which services the Lea Era Farms community is currently operating in compliance with its operating permit and state regulations." DHSS responded stating it is unaware of any material violation by Bass Properties of any provision of Title 16 that relates to wastewater treatment and disposal within the Lea Era Farms development.

5. This Commission has no actual knowledge of any present violations by Bass Properties of any of the provisions applicable to public utilities in Title 26 within the service territory described in Exhibit "A" to this Order.

6. Nothing in the record before this Commission reflects the existence of any bona fide dispute about the extent of Bass Properties' actual present service territory.

7. Consequently, consistent with the statutory requirement, the Commission shall grant a CPCN to provide wastewater public utility services to the development of Lea Era Farms.²

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to the provisions of 26 Del. C. § 203D(a)(ii), a Certificate of Public Convenience and Necessity is granted to Bass Properties, Inc., to continue to provide wastewater public utility services and to operate the wastewater public utility services as described in its request filed February 2, 2005, and amended April 1, 2005, within the development of Lea Era Farms located on the east side of Summit Bridge Road on the south side of the C & D Canal, New Castle County, Delaware.

2. That Bass Properties, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. That 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:

/s/ Arnetta McRae
Chair

²While Bass Properties submitted its CPCN request beyond the statutory deadline, the Commission finds no prejudice by now granting this CPCN.

PSC Docket No. 05-WW-003, Order No. 6608 Cont'd.

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary