

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

IN THE MATTER OF THE COMMISSION'S	)	
INVESTIGATION ON ITS OWN MOTION,	)	
WHETHER UTILITY SYSTEMS, INC.,	)	PSC COMPLAINT DOCKET
PROVIDES PUBLIC UTILITY SERVICES IN	)	NO. 335-05
ITS MAINTENANCE OF A WASTEWATER	)	
COLLECTION SYSTEM TO HENLOPEN STATION	)	
CONDOMINIUM PROPERTIES NEAR REHOBOTH	)	
BEACH, DELAWARE (OPENED MAY 10, 2005)	)	

**ORDER NO. 6619**

**RULE TO SHOW CAUSE TO  
UTILITY SYSTEMS, INC.**

This 10<sup>th</sup> day of May, 2005, the Commission determines and Orders the following:

1. The Commission now opens this proceeding to investigate and determine:

- (a) First, is Utility Systems, Inc. ("USI") operating as a "public utility" under 26 Del. C. § 102(2) (2004 Supp.) in its ownership, operation, and maintenance of a wastewater collection system which serves the Henlopen Station condominium complex, located off Rehoboth Avenue in Lewes and Rehoboth Hundred, in Sussex County, Delaware? and, if so;
- (b) What good cause, if any, does USI have for not submitting an application, under the provisions of 26 Del. C. § 203D(a)(2) (2004 Supp.), for a

Certificate of Public Convenience and Necessity ("CPCN") to operate such system? and

- (c) What good cause, if any, does USI have for not submitting a schedule of rates and a rate application applicable to such system, as required by the provisions of 26 Del. C. § 301(c) (2004 Supp.)?

The Commission has the authority to institute this investigation by the provisions of 26 Del. C. § 206 and Rule 16(b) of the Commission's Rules of Practice and Procedure." The Commission begins such investigation by issuing this Rule to Show Cause directing USI to file its answers to the above questions.

2. USI is a public wastewater utility subject to the regulatory authority of this Commission. As an entity that was in the business of a wastewater utility on June 7, 2004, USI has been granted several CPCNs to continue to operate several wastewater systems serving several other developments. See PSC Orders Nos. 6517 (Nov. 23, 2004) and 6521 (Nov. 23, 2004).<sup>1</sup> In its aggregated overall operations, USI provides wastewater utility services to 50 or more customers.

3. Staff has conducted an investigation and reports to the Commission that USI owns and operates or maintains a wastewater

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<sup>1</sup>See 26 Del. C. § 203D(a)(2) (2004 Supp.). USI also previously applied for a CPCN to continue to provide wastewater services to the Woods on Herring Creek development in Sussex County. That application, and USI's subsequent efforts to withdraw its request and forego further operation of such system is the focus of the pending consolidated proceedings in PSC Dckts Nos. 04-WW-001 and 05-58. See PSC Order no. 6588 (Mar. 8, 2005).

collection system that serves the residential and commercial units in the Henlopen Station condominium complex located off of Rehoboth Avenue Extended, just west of Rehoboth Beach, Delaware. USI apparently owns and operates the system pursuant to an Agreement for Sewage Disposal purposes dated February 24, 1984. While this wastewater system apparently originally had its own treatment facility, it now interconnects with the West Rehoboth Sanitary Sewer District established by Sussex County and serves to collect and transport wastewater generated by the individual condominium units to the 8-inch main of the County system.

4. According to Staff, USI owned and operated the Henlopen Station collection on June 7, 2004, and continues to own and operate that system to serve the various condominium units. USI has in the past, and continues to charge, each condominium unit in the Henlopen Station complex an annual fee or charge of \$100 for use of, or service provided by, the USI collection system serving the complex.

5. Under the provisions of 26 Del. C. § 102(2) (2004 Supp.), a "public utility" includes any entity that "operate[s] for public use within this state," any "wastewater (which shall include a sanitary sewer charge). . . service, system, plant, or equipment." That definition would appear to be broad enough to include USI's operation of its wastewater collection system ("system" or "plant") serving the Henlopen Station complex for which USI charges individual condominium unit owners ("for public use") a separate fee (possible "sanitary sewer charge"). If USI's operation of such a system does constitute a public utility operation, then USI had, under 26 Del. C. § 203D(a)(2),

a statutory obligation to file for a CPCN (describing such system and the schedule of rates) before December 3, 2004. Similarly, if such system is a public utility operation, USI then had another obligation to file with the Commission, by January 2, 2005, an initial rate application for the Commission's review. See 26 Del. C. § 301(c) (2004).

6. Staff reports that USI did not file an application for a CPCN for its Henlopen Station system nor did it file an initial rate application to justify continued use of its \$100 per unit annual fee.

7. In light of Staff's investigation, the Commission now issues a Rule to Show Cause to have USI explain why it believes that its ownership and operation of its Henlopen Station complex wastewater system is not a "public utility" operation subject to the regulatory jurisdiction of this Commission. In addition, this Rule directs USI to file any explanations it might have for why it did not file for a CPCN for such system under 26 Del. C. § 203D(a)(2) and why it did not file an initial rate application, under 26 Del. C. § 301(c), for the \$100 fee charged Henlopen Station unit owners.

8. USI shall file its written Answer (original and ten copies) to the questions posed by this Rule on or before Wednesday, June 9, 2005. USI shall also serve a copy of such Answer on the Division of the Public Advocate by that same date. In its Answer, USI shall set forth all facts and arguments that it believes makes its ownership and operation of the Henlopen Station complex collection system fall outside of the definition of a "public utility" system, operation, or service. If, in its Answer, USI acknowledges that such system is a

"public utility" operation, then USI shall provide all facts and arguments that it believes establish that: (a) it was not required to make the filings required by 26 Del. C. §§ 203D(a)(2) and 301(c); or (b) it had good cause for not making those filings. In lieu of such explanations, USI can make full and complete applications under 26 Del. C. §§ 203(d)(a)(2) and 301(c) for the Henlopen Station complex wastewater system.

9. After receipt of USI's Answer, the Commission will determine the course of further proceedings. In this matter, USI has the right to be represented by counsel or to appear by other representative permitted under the Commission's Rules of Practice and Procedure. If the Commission later directs further fact-finding or a hearing, USI shall be entitled to notice of such hearing, the right to elect informal fact-finding, and the right to present evidence. The Commission's final decision will be based on the evidence included in the record in this matter.

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

1. That, for the reasons set forth in the body of this Order, the Commission initiates this proceeding and docket to determine: (a) is Utility Systems, Inc., operating as a "public utility" under 26 Del. C. § 102(2) (2004 Supp.) in its ownership, operation, and maintenance of a wastewater collection system serving the Henlopen Station condominium complex near Rehoboth Beach, Delaware?; and (b) if so, does Utility Systems, Inc., have good cause for its prior failure to make appropriate applications as required by 26 Del. C. §§ 203D(a)(2) and 301(c) (2004 Supp.)?

2. That, on or before Wednesday, June 9, 2005, Utility Systems, Inc., shall file with the Commission an Answer to this Rule to Show Cause setting forth all facts and arguments in response to the facts and issues set forth in paragraphs 3 through 8 of the body of this Order. Utility Systems, Inc., shall file ten copies of such Answer with the Commission and serve one copy on the Division of the Public Advocate. Such Answer shall be full and complete responses.

3. That, after receipt of such Answer, the Commission will, by later Order, direct the further course of proceedings in this matter.

4. That Francis J. Murphy, Esquire, is appointed Rate Counsel for this matter.

5. That the Secretary shall serve a copy of this Order on Utility Systems, Inc., by certified mail. The Secretary shall also mail, by United States mail, a copy of this Order to the Henlopen Station Condominium Association. The Secretary shall also deliver a copy of this Order to the Division of the Public Advocate.

6. That Utility Systems, Inc., is hereby notified that it will be assessed the costs of this proceeding under 26 Del. C. § 114.

7. 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

/s/ Joshua M. Twilley  
Vice Chair

PSC Complaint Docket No. 335-05,  
Order No. 6619 Cont'd.

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary