

**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. 6678

This 19th day of July, 2005, the Commission determines and Orders the following:

1. By PSC Order No. 6619 (May 10, 2005), this Commission directed Utility Systems, Inc. ("USI") to show cause (via a responsive pleading) why its ownership and operation of a sewage collection and distribution system serving the condominium units in the Henlopen Station complex near Rehoboth Beach did not constitute either "public utility" operations or a "public utility" system falling within the definition of "public utility" under 26 Del. C. § 102(2). As recounted in Order No. 6619, USI bills and charges each unit owner in the Henlopen Station complex an annual fee of \$100 for collecting and transporting through its system wastewater generated by such unit. The sewage is conveyed to a main of a public sewer district operated by Sussex County.

2. USI has now submitted its response. It contends that it is not involved as a public utility in either its ownership or operation of its collection system within the complex. According to USI, it does not receive or handle wastewater from any of the units but simply

transits wastewater from such units to the public sewer system via pipes installed by it in easements granted to it by the complex's original developer.¹ USI says that the charge it assesses against each individual unit in the complex represents a fee for the use of those easements and the infrastructure it installed therein. Resp. at ¶¶ 2-10.²

3. The Commission believes that before it acts in this matter it would be appropriate to develop a more complete record through further proceedings, including, if necessary or appropriate, an evidentiary hearing. The Commission therefore refers this matter to a Hearing Examiner to conduct such proceedings, to develop such record, and to then file a Report with her proposed findings of fact, conclusions of law, and recommended decision. Repeating what was set forth in Order No. 6619, in such further proceedings, USI shall have the right to present relevant evidence and to appear by counsel. The Commission will reach its decision based on the evidence presented and the record developed. The focus of the proceeding remains the same as set forth in Order No. 6619: (1) does USI's operation and ownership of the wastewater collection system serving units within the Henlopen Station complex constitute a "public utility" function under 26 Del.

¹The easements were granted to USI originally as part of an agreement for USI to develop and run a "stand-alone" sewer collection and treatment plant to serve the complex. The treatment plant was abandoned when public sewer became available with the collection system then being "connected" to the public line.

²USI represents that its \$100 annual fee represents an amount equal to the "discount" afforded the condominium unit owners by Sussex County in the capital recovery charge portion of the County's sewer billings. According to USI, that discount is available because the units are served by a non-County subdistrict collection system. Resp. at 11.

C. § 102(2)? and (2) if so, does USI have valid excuses for not filing for a certificate and seeking rate approval for that public utility system or operation under 26 Del. C. §§ 203D(a)(2) and 301(c). See Order 6619 at ¶¶ 1 & 7.

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

1. That, for the reasons set forth in the body of this Order, this matter is now referred to Hearing Examiner Ruth Ann Price under the provisions of 26 Del. C. § 502 and 29 Del. C. ch. 101. Hearing Examiner Price is directed to conduct such further proceedings in order to construct a complete record in this matter. If necessary or appropriate, Hearing Examiner Price may hold further evidentiary hearings. Hearing Examiner Price may also, with consent, proceed by informal fact-finding. Hearing Examiner Price is, pursuant to Rule 21 of the Commission's Rules of Practice and Procedure, authorized to grant or deny petitions to intervene. In addition, Hearing Examiner Price is delegated the authority under 26 Del. C. § 102A, to determine the manner and content of any necessary, or appropriate, public notice. After the completion of such proceedings, Hearing Examiner Price shall submit a Report containing her proposed findings, conclusions, and a recommended decision.

2. That Francis J. Murphy, Esquire, is appointed as Rate Counsel in this matter.

3. That the Secretary shall serve a copy of this Order on the Division of the Public Advocate.

4. That Utility Services, Inc., is hereby notified that it will be charged the costs of this investigation and proceeding under 26 Del. C. § 114.

5. 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

Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary