

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

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

ORDER NO. 6868

AND NOW, to-wit, this 14th day of March, 2006;

1. This matter is before the Commission to consider the application of John A. Sergovic, Jr., of the law firm of Sergovic & Ellis, P.A., to withdraw as counsel from his representation of Utility Systems, Inc. ("USI"), respondent in the above-captioned action.

I. BACKGROUND

2. By PSC Orders Nos. 6619 (May 10, 2005) and 6678 (July 19, 2005), the Commission opened, and pursued, this docket to determine if USI was operating as a "public utility" in its ownership and operation of a wastewater collection system in the Henlopen Station condominium complex near Rehoboth Beach. That investigation has been progressing before the designated Hearing Examiner who has held an evidentiary hearing and is now receiving post-hearing briefing. In such proceedings, USI has been represented by Mr. Sergovic.

II. APPLICATION OF JOHN A. SERGOVIC, JR., TO WITHDRAW AS COUNSEL

3. On Friday, February 24, 2006, Mr. Sergovic filed an Application to withdraw as counsel ("Application") in this proceeding. In response to this Application, the Hearing Examiner sent a letter to Mr. Sergovic informing him that although his Application was filed "in

lieu of Utility Systems, Inc.'s Answering Brief," it had not arrived in time for the Commission's consideration at its February 24, 2006 meeting. The Hearing Examiner reminded Mr. Sergovic that until the Commission could consider the Application at its March 14, 2006 meeting, he remained counsel of record for USI and was obligated to fulfill his responsibilities to his client under the applicable Rules of Professional Conduct. Consistent with the Hearing Examiner's letter, Mr. Sergovic filed a document entitled, "Opening Brief of Utility Systems, Inc." with the Commission on Monday, March 6th.

4. In his earlier Application, Mr. Sergovic states that he is unable to continue representing USI due to "irreconcilable differences and for factual reasons." Application to Withdraw as Counsel at ¶ 1. In support of his Application, Mr. Sergovic cites Rule. 1.16(b)(4), 1.16(b)(5) and 1.16(b)(6), of the Delaware Lawyers' Rules of Professional Conduct. Those provisions allow (but do not obligate) a lawyer to withdraw from representation if: (1) the client persists in a course of action to which the lawyer fundamentally disagrees; (2) the client has failed to meet obligations (including financial ones); and (3) continued representation would work a financial hardship or an unreasonable imposition on the lawyer.

5. On February 27, 2006, the Hearing Examiner sent a letter asking the parties whether they object to Mr. Sergovic's request to withdraw. H. Clark Carbaugh, President of USI, responded on March 3, 2006 by facsimile on behalf of USI. Mr. Carbaugh's response does not cite any prejudice that will inure to USI if its present counsel is permitted to withdraw. In fact, Mr. Carbaugh states that he

"realistically cannot object to Mr. Sergovic's request to withdraw."¹ According to Mr. Carbaugh, "Utility Systems, Inc. has not had the financial resources to pay the invoices submitted by Mr. Sergovic." *Id.*

6. USI's admission of its current inability to pay for its current lawyer's past services provides (in this particular instance) sufficient grounds, under Rules 1.16(b)(5) and 1.16(b)(6), for Mr. Sergovic to now withdraw. Moreover, allowing his withdrawal would not disrupt the process of this proceeding. With Mr. Sergovic's March 6th filing, USI has completed its part of the post-hearing briefing.

7. Of course, USI can retain other counsel. It is entitled to appear by counsel and the Commission encourages it to do so to assist it in future proceedings in this matter. However, the Commission's present Rules of Practice and Procedure permit corporate officers to represent their companies before the Commission. Rules of Practice and Procedure, Rule 13(a). Between now and the time the Hearing Examiner issues her report, Mr. Carbaugh may elect to secure other counsel or he may represent USI himself before the Commission to file exceptions, if necessary.

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

1. The Application of John A. Sergovic, Jr., of the law firm of Sergovic & Ellis, P.A., filed on February 24, 2006, requesting permission to withdraw as counsel of record for Utility Systems, Inc. in the above-captioned docket is hereby granted, and John A. Sergovic, Jr., shall deliver notice of this Order to Utility Systems, Inc., and advise Utility Systems, Inc. of the need to proceed in this docket.

¹Letter of H. Clark Carbaugh to the Delaware Public Service Commission, Attn: Ms. Ruth Ann Price, Hearing Examiner, dated March 3, 2006.

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

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary