

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

IN THE MATTER OF THE INVESTIGATION INTO)
THE PROTEST OF THE WOODS ON HERRING CREEK)
HOMEOWNERS' ASSOCIATION REGARDING THE)
APPLICATION OF UTILITY SYSTEMS, INC., FOR) PSC DOCKET NO. 04-WW-001
A CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WASTEWATER SERVICES)
TO THE COMMUNITY (FILED OCTOBER 22, 2004))

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

ORDER NO. 6883

AND NOW, this 28th day of March, 2006;

IT IS SO ORDERED AS FOLLOWS:

1. The Public Service Commission ("Commission") is charged by statute with regulating all public utilities in the State of Delaware pursuant to 26 Del. C. § 201.

2. These consolidated dockets involve, among other things, a dispute between Utility Systems, Inc. ("USI") and the Woods on Herring Creek Homeowners Association related to the operation of a wastewater system serving the Woods on Herring Creek Community development.

3. On July 6, 2004, USI became a regulated public wastewater utility, by operation of law, pursuant to 26 Del. C. § 203D. And because the Woods on Herring Creek Community wastewater treatment

system serves more than 50 customers, the system itself falls within the jurisdiction of the Commission pursuant to 26 Del. C. § 203(a)(1).

4. On November 22, 2005, the Commission entered Order No. 6783 in these consolidated dockets adopting the Report of Senior Hearing Examiner William F. O'Brien, dated September 26, 2005 ("Report"), with certain modifications, which Order and Report are incorporated by reference herein.

5. On December 20, 2005, USI appealed Commission Order No. 6783 to the Delaware Superior Court, however, USI has not obtained a stay of Commission Order No. 6783. In addition, these consolidated dockets remain open and pending before the Commission, because the Commission anticipated further proceedings involving USI's conduct related to the Woods on Herring Creek and Woodlands of Millsboro community wastewater treatment systems.

6. In paragraph 156 (pages 73-4) of the Senior Hearing Examiner's Report, Mr. O'Brien recommended that the Commission adopt the following Staff recommendation, which the Commission did indeed adopt in Order No. 6783:

Staff recommends that USI be required to escrow in a separate and distinct bank account, which is subject to review and audit by the Commission Staff, all funds that USI receives for residual property rights that USI has in the Henlopen Acres system. Those funds shall be first applied to repair any defects in the central waste collection system at WOHC that existed as of December 31, 2004, including any septic tank that was improperly installed. The funds should next be applied to pay the outstanding debt of \$22,100 to Roberts Septic. Next, the funds shall be applied to pay any penalties assessed against USI by the Commission in these proceedings. If USI sells any of its assets, the proceeds of the sale

shall be placed in the escrow as indicated above and applied as indicated above.

7. On March 14, 2006, the Commission entered Order No. 6875 in these dockets, which provides, on page 3, paragraph 1, that if USI fails to place in escrow any funds received from customers at its system at Henlopen Acres, USI shall be assessed a penalty of \$1,000 per day, pursuant to 26 Del. C. § 217, for each day USI is in violation of paragraph 156 cited and Commission Order 6783.

8. USI sent a letter dated March 20, 2006, with four pages of documents, to Staff's counsel. Copies of the letter and documents were also sent to Connie McDowell and Kevin Neilson of the Commission Staff. The letter provides that USI has not yet established an escrow account for funds received from USI customers at Henlopen Acres/Henlopen Station. USI's letter and the documents establish that, in 2006, USI has billed \$8,300 to its customers at Henlopen Acres/Henlopen Station and has received \$4,533.21 in funds in 2006, which are subject to the escrow requirement of Order No. 6783, but have not been placed in escrow. USI's letter states, in part:

An escrow account has not yet been established. If USI receives any payments from the property owners at Henlopen Station subsequent to receiving your letter of March 16, an account will be opened and used.

9. USI is hereby directed to place \$4,533.21 in an escrow account forthwith, representing the funds USI represented that it had received thus far in 2006 from customers at Henlopen Acres/Henlopen Station.

10. Pursuant to 26 Del. C. § 217, if USI fails to establish and fund the escrow account as required herein and in Orders 6783 and 6875, by

March 31, 2006, USI shall be obligated to pay a penalty of \$1,000 per day for each day thereafter that USI is in violation of this Order and Orders Nos. 6783 and 6875. However, the penalty shall not exceed \$24,900, representing the amount that USI has billed to its Henlopen Acres/Henlopen Station customers in 2006 (\$8,300), trebled.

11. The Commission retains jurisdiction in this matter, including the authority to enter such further Orders and conduct such further proceedings as it deems just, proper, or appropriate.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary