

**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.,) PSC DOCKET NO.04-WW-001
FOR 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)
DISCONTINUANCE OF WASTEWATER UTILITY)
SERVICES BY UTILITY SYSTEMS, INC., TO THE) PSC DOCKET NO. 05-58
WOODS ON HERRING CREEK COMMUNITY AND)
THE ABILITY OF UTILITY SYSTEMS, INC., TO)
OPERATE WASTEWATER SYSTEMS SUBJECT TO)
THE JURISDICTION OF THE PUBLIC SERVICE)
COMMISSION (OPENED FEBRUARY 16, 2005))

ORDER NO. 6900

AND NOW, this 25th day of April, 2006;

WHEREAS, 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;

AND WHEREAS, 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;

AND WHEREAS, on July 6, 2004, Utility Systems, Inc., 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);

AND WHEREAS, 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. Among other things, the Commission concluded that: (1) Utility Systems, Inc. unlawfully and voluntarily abandoned the Woods on Herring Creek Community wastewater system; and (2) on December 21, 2004, USI unlawfully transferred three parcels of land, owned by USI and held as plant in its Woods on Herring Creek service area, without first obtaining Commission approval in violation of 26 Del. C. § 215(a)(1);

AND WHEREAS, on December 20, 2005, Utility Systems, Inc. appealed Commission Order No. 6783 to the Delaware Superior Court. However, these consolidated dockets remained open and pending before the Commission and the Commission anticipated further proceedings involving USI's conduct related to the Woods on Herring Creek and Woodlands of Millsboro community wastewater treatment systems. Furthermore, USI has not obtained a stay of Commission Order No. 6783;

AND WHEREAS, Commission Order No. 6783 (Nov. 22, 2005) provides, at pp. 17-8, paragraph 3(b):

The December 2004 transfer and sale of three parcels of land (described as lots 5, 6, and 7) located at "The Woods on Herring Creek" development from Utility Systems, Inc., to Carbaugh Property Management, LLC, having been done without Commission approval, is declared to be in violation of 26 Del. C. § 215(a)(1). Therefore the transaction conveying the three

lots is found to have been illegal. Utility Systems, Inc., shall take appropriate actions to have the title and possession of such parcels returned to the utility plant of Utility Systems, Inc., within ninety days from the date of this Order. If Utility Systems, Inc., reverses those earlier sales and transfers within such time, the Commission will then reconsider whether to forego enforcing and whether to revoke the \$1,000 sanction set forth in paragraph 158 Part G of the Findings and Recommendations of the Hearing Examiner. On or before 90 days from the date of this Order, Utility Systems, Inc., shall file a report with the Commission reporting whether, and when, the title and possession of such parcels have been returned to the utility plant of Utility Systems, Inc.

AND WHEREAS, the ninety-day period referred to above expired on February 20, 2006. USI has not taken steps to have title and possession of the three parcels of land transferred back to USI. In Order No. 6882 (Mar. 28, 2006), the Commission determined that the penalty imposed upon USI for failing to re-acquire the three parcels of land would not exceed \$360,000;

AND WHEREAS, the Commission has been forced to file proceedings against Carbaugh Property Management LLC and USI in the Delaware Court of Chancery to prevent Carbaugh Property Management LLC from conveying the three parcels of land to any person other than USI, and require that title to and possession of the three parcels of land be returned to USI;

AND WHEREAS, in Order No. 6783, the Commission imposed a penalty of \$150,000 on USI for inadequate wastewater services and facilities at the Woodlands of Millsboro. Senior Hearing Examiner O'Brien's Report, paragraph 150(b), provides, in part:

b) USI . . . [is] compelled to satisfy the penalty [related to the Woodlands of Millsboro]

from any award of damages it may receive in the Chancery Court action against the WOHC Homeowners Association. In the event the Chancery Court does not make an award of damages in USI's favor, then USI may apply to the Commission for the elimination of, or reduction of, the penalty under the following circumstances: 1) USI establishes that a) it is pumping waste from the Woodlands system on a schedule that will reduce or eliminate surfacing of effluent in the treatment beds; or b) that USI has taken other steps to eliminate the threat of effluent surfacing, such as installing new equipment or improving the operation of its current equipment; 2) USI is completely up to date on the cleaning of septic tanks at the Woodlands, and that there are no problems with the septic tank system comparable to those that exist at the WOHC; 3) USI establishes that the wastewater treatment system at the Woodlands is capable of providing safe, reliable and efficient wastewater service to the residents of the Woodlands; 4) USI cooperates with Staff in identifying and correcting the problems with the wastewater system at the Woodlands; and 5) USI pays, in advance, the reasonable cost of an independent consultant, selected by the Commission Staff, to oversee USI's activities at the Woodlands and to verify that USI is meeting, and ultimately, that USI has met, the requirements of conditions 1, 2 and 3, set forth above.

AND WHEREAS, on March 28, 2006, the Commission issued Order No. 6882, which obligates USI to pay, in advance, the sum of \$43,000, representing the reasonable cost of a consultant, recommended by the Commission Staff and approved by the Commission, to evaluate USI's wastewater treatment system at the Woodlands of Millsboro. The Commission approved the consultant at the Commission meeting on March 28, 2006;

AND WHEREAS, pursuant to Order No. 6783, USI was afforded the opportunity to obtain a reduction of, or elimination of, the \$250,000, \$150,000 and \$90,000 penalties provided for therein. However, in

Order No. 6882 (Mar. 28, 2006), the Commission determined that USI shall not be eligible for a reduction of, or elimination of, the penalties or sanctions set forth in Order No. 6783 unless USI re-acquired title to the three parcels of land by March 24, 2006. USI has failed to re-acquire title and the March 24, 2006 deadline has passed;

AND WHEREAS, as reflected in Commission Order No. 6883 (Mar. 28, 2006), USI has failed to fully fund an escrow account with receipts from its customers at Henlopen Station/Henlopen Acres. USI's shortfall in the escrow account is \$4,533.21;

AND WHEREAS, in a letter dated March 22, 2006, that was addressed to Francis J. Murphy and also sent to Commission Staff, H. Clark Carbaugh, President of USI asserted: "You and the PSC Commissioners should certainly know and understand that Utility Systems, Inc. is insolvent and bankrupt;"

AND WHEREAS, in light of USI's representation about its financial status, and in light of USI's outstanding financial obligations to its customers and the Commission, any income or other funds that USI receives should be directed to meeting USI's obligations to its customers and the Commission. For example, USI needs to pay the cost of the consultant to evaluate its wastewater system at the Woodlands as required by Commission Order No. 6882.

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

1. That Utility Systems, Inc. is henceforth prohibited from paying any monies to or transferring any property to: (a) H. Clark Carbaugh; (b) Elizabeth Carbaugh; (c) any individual related to

H. Clark Carbaugh or Elizabeth Carbaugh; and (d) any officer, director, or shareholder of Utility Systems, Inc., or any individual, person, or entity in which any of the foregoing have an interest of any kind, without first obtaining written approval of the Commission. This prohibition shall remain in effect unless and until it is modified by the Commission.

2. 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/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary