

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
BETHANY BAY WASTEWATER TREATMENT PLANT)
FOR APPROVAL OF RATES TO GOVERN THE) PSC DOCKET NO. 04-479WW
PROVISION OF WASTEWATER SERVICES IN)
DELAWARE (FILED DECEMBER 21, 2004))

ORDER NO. 6939

This 6th day of June, 2006, the Commission determines and Orders the following:

1. The Bethany Bay wastewater system is a public wastewater utility owned by Linder & Company, Inc. ("Linder"). The system serves the 450-home Bethany Bay condominium complex located in Sussex County. As a wastewater utility that was in operation on June 7, 2004, Linder's Bethany Bay system became subject to this Commission's regulatory supervision in 2004.¹ As a part of the "grandfathering" process, the Commission is charged with reviewing Linder's present rates (frozen as of June 7, 2004), as well as any adjustments to such rates the "grandfathered" utility might propose.²

¹See 26 Del. C. § 203D(a)(2) (2004 Supp.). Originally, the Commission granted a Certificate of Public Convenience and Necessity to Excel Property Management, LLC ("Excel") to operate this "grandfathered" wastewater system. See PSC Order No. 6519 (Nov. 23, 2004). After questions arose about the ownership of the system (see PSC Order No. 6833 (Feb. 7, 2006)), the Commission revoked the prior certificate and certificated Linder as the public utility. See PSC Order No. 6905 (April 25, 2006). Principals in Excel might hold the necessary operator's license for the system, but the facilities are held by Linder. According to Linder, while it owns the system, management decisions are made by the Bethany Bay Homeowners' Association composed of several unit associations. It is not clear to what degree Linder (as the developer of the complex) may control the Homeowners' Association.

²See 26 Del. C. § 301(c) (2004 Supp.).

2. The Commission originally directed that notice of its rate review process be given by newspaper publication and direct notice to the then-current customers of the Bethany Bay system. PSC Order No. 6583 (Mar. 8, 2005).³ Both sets of notices solicited objections to, or comments about, Linder's rates and its services in the Bethany Bay system. Staff reports the receipt of two responses. One customer objects to the flat rate structure used by the utility, asserting that smaller-sized units in the condominium complex should be charged less for wastewater services than larger units that presumably accommodate more people and hence generate more wastewater. A second response objects to the quarterly flat rate charges as excessive given that most customers did not occupy the condominium units on a year-round basis and hence pay for services they do not use during part of the year.⁴

3. Staff has now filed a report of its investigation of the reasonableness of Linder's current wastewater rates of \$100 per unit per quarter, payable in advance.⁵ Utilizing a "cash flow" approach, Staff reviewed the system's revenues, expenses, cash balances, and reserve fund balances (both real and projected) for a study period running from 2004 through 2008. From its review, Staff has concluded that the existing rates (which generate approximately \$180,000 in annual revenues) are adequate to sustain operations over the study

³The utility has certified that it sent direct notices to its customers on March 22, 2005.

⁴Memo from Customer (Apr. 21, 2005); Letter from Customer (Apr. 6, 2005).

⁵Staff Memorandum (June 2, 2006).

period, while still maintaining reserve funds for emergencies.⁶ Staff concludes that the current rates (with two very minor exceptions discussed below) are just and reasonable.

4. In addition, the Staff recommends that the Commission endorse the utility's current practice of maintaining a significant cash reserve account to accumulate funds to be used to offset "connection fees" that will likely be imposed on the condominium unit owners when the Bethany Bay collection system is interconnected to a sewage disposal district operated by Sussex County. That interconnection is anticipated within the next five years. Staff finds such accumulations reasonable so long as adequate accounting safeguards are in place to ensure that such funds are used for the intended purpose and the utility, in all its accounting, implements the systems of accounts adopted by the National Association of Regulatory Utility Commissioners.

5. Third, Staff recommends that the Commission reject the two objections offered by present customers. Initially, Staff suggests that the flat rate structure utilized by Linder is an acceptable wastewater utility practice and that given the smaller sizes of both the rate and customer base, it might not be effective, nor efficient, to create more discrete rate classes. As to the issue of year-round charges, Staff responds that the utility's services remain available on a year-round basis (although many customers may not be year-round

⁶Staff's report indicates that Linder, as the developer of the condominium complex, "contributed" most of the initial infrastructure for the utility operations. So far, the cost of further capital expenditures (funded from reserve accounts) have been relatively small and have been expensed on an annual basis.

residents) and that use of year-round charges help spread out the recovery of the wastewater utility's fixed charges.

6. Finally, Staff recommends that the Commission make two modifications to Linder's rates. One modification would be to alter the "late fee" charge from a flat \$25 to a charge of 1-1/2% per month. The second would reject the \$500 fee proposed by Linder (but never charged) that would be assessed to subsequent purchasers of condominium units. According to Staff, this proposed fee would likely recover costs of the initial construction that presumably were paid by the initial purchaser of the unit.

7. In this review under section 301(c), the Commission adopts Staff's recommendations. It finds just and reasonable Linder's recurring quarterly fee of \$100 per unit. It also endorses, subject to appropriate accounting safeguards, the continued maintenance of reserve accounts to accumulate balances committed to off-setting any anticipated charges for interconnecting the Bethany Bay system with the Sussex County public sewer operations. The Commission rejects the proposed \$500 "subsequent purchaser" fee as not justified and also directs the utility to modify its late fee to 1-1/2% per month.

8. The Commission also declines the customers' suggestions to restructure Linder's rates to account for differing condominium unit sizes or the prevalence of peak-seasonal usage. As Staff suggests, it might be difficult to construct a more nuanced rate structure that focuses on either differences in unit usage or times-of-year periods of usage. In a system as small as this, the administrative costs of constructing a new rate structure that would attempt to define usage

differences and allocate costs based on such criteria might not be cost effective, to either the utility or its customers. Moreover, the quarterly flat rate structure has presumably been in place for some time and has engendered only two complaints here. Finally, if as anticipated, Linder's system - and its rate structure - will lapse in five years (when interconnection is made with the County system) any savings to customers from a restructured rate regime would, over the long run, be relative small.

9. The Commission makes these final determinations without further hearings or proceedings. The Commission does not believe that the rate review process mandated by section 301(c) necessarily requires all the procedural accouterments that might attend a "full-blown" rate proceeding. This is particularly so when the task is to review pre-existing rates of small systems such as the one owned by Linder.⁷

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

1. That, for the reasons set forth in the body of this Order, the recurring quarterly rate of \$100 per unit currently charged by Linder & Company, Inc. for public utility wastewater services in the service territory granted by PSC Order No. 6905 (Apr. 26, 2006) is found just and reasonable and is hereby approved. However, Linder & Company, Inc. shall modify its proposed Tariff to have its "late fee" calculated at 1-1/2% per month rather than the current flat charge of

⁷With Staff's assistance, Linder has constructed and now proposes a Tariff to govern its operations. The Commission accepts such proposed Tariff, subject to the rate modifications adopted here.

\$25 amount. The proposed "subsequent purchaser" fee of \$500 proposed by Linder & Company, Inc. is not approved and shall not be included in the utility's Tariff nor charged by the utility.

2. That Linder & Company, Inc. shall, within ten days of this Order, file a final Tariff consistent with the proposed Tariff earlier proposed but with the rate modifications adopted here. Upon Staff's approval, such final Tariff shall govern the rates, terms, and conditions for the public utility wastewater services offered by Linder & Company, Inc.

3. That Linder & Company, Inc. shall promptly implement procedures to ensure that revenues and funds generated by public utility services are restricted exclusively to public utility operations. In particular, Linder & Company, Inc. shall implement procedures and accounting safeguards to ensure that funds and balances for emergencies, for renewals and replacements, and for off-setting anticipated sewer connection fees upon interconnection with the Sussex County sewer system are maintained and that disbursements from such funds and accounts are restricted to intended uses. Linder & Company, Inc. shall submit to the Commission by July 30 and January 31 of each year, statements reflecting fund balances, the sources of fund accumulations, and the nature of disbursements.

4. That Linder & Company, Inc. shall report any major changes in its public utility operations to the Commission within thirty days of such change.

5. That Linder & Company, Inc. shall submit an annual report to the Commission as required by the "Minimum Standards for Wastewater Utilities."

6. That Linder & Company, Inc. shall promptly implement, for its public utility operations, the Uniform System of Accounts adopted by the National Association of Regulatory Utility Commissioners.

7. That Linder & Company, Inc. shall neither modify its Tariff or its rates without Commission approval except as otherwise may be allowed by law.

8. 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/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary