

**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.,	)	
OPERATES AS A PUBLIC UTILITY IN ITS	)	PSC COMPLAINT DOCKET
OWNERSHIP, OPERATION, AND MAINTENANCE	)	NO. 335-05
OF A WASTEWATER COLLECTION SYSTEM	)	
SERVING THE HENLOPEN STATION	)	
CONDOMINIUM PROPERTIES NEAR REHOBOTH	)	
BEACH, DELAWARE (OPENED MAY 10, 2005)	)	

**ORDER NO. 7009**

**AND NOW**, this 22<sup>nd</sup> day of August, 2006, the Commission having received and considered the Findings and Recommendations of the Hearing Examiner, previously designated in the above-captioned matter, which was submitted after a duly publicized evidentiary hearing, and having given all interested persons and companies an opportunity to be heard and to participate, and after due consideration of the testimony of all of the parties;

**AND WHEREAS**, based upon the recommendations of the Hearing Examiner, the Commission has determined that the evidence of record supports approving the Findings and Recommendations of the Hearing Examiner;

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

1. That the Commission hereby adopts and approves in its entirety the Findings and Recommendations of the Hearing Examiner, which is attached to the original hereto as Exhibit "A."

2. That the Commission finds:

- (a) That Utility Systems, Inc.'s ownership, operation, and maintenance of a wastewater collection or transmission system at Henlopen Station is a "public utility" under 26 Del. C. § 102(2);
- (b) That Utility Systems, Inc. did not have good cause for failing to submit an application under the provisions of 26 Del. C. § 203D(a)(2) for a Certificate of Public Convenience and Necessity for the Henlopen Station system; and
- (c) That Utility Systems, Inc. did not have good cause for failing to submit a schedule of rates and a rate application for Henlopen Station as required by the provisions of 26 Del. C. § 301(c).

3. 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/ Dallas Winslow  
Commissioner

PSC Complaint Docket No. 335-05, Order No. 7009 Cont'd.

/s/ Jaymes B. Lester  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary

E X H I B I T "A"

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: May 11, 2006

RUTH ANN PRICE  
HEARING EXAMINER

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**FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER**

Ruth Ann Price, duly appointed Hearing Examiner in this docket pursuant to 26 *Del. C.* § 502 and 29 *Del. C. ch.* 101, and by Commission Order No. 6678, dated July 1, 2005, reports to the Commission as follows:

**I. APPEARANCES**

On behalf of the Public Service Commission Staff  
("the Commission Staff"):

MURPHY SPADARO & LANDON  
BY: FRANCIS J. MURPHY, ESQUIRE

On behalf of Utility Systems, Inc.:

SERGOVIC & ELLIS, P.A.  
BY: JOHN A. SERGOVIC, ESQUIRE

On behalf of the Division of Public Advocate:

G. Arthur Padmore, Public Advocate

## **II. INTRODUCTION**

At the conclusion of the evidentiary hearings, I requested the parties to submit with their briefs, proposed findings of fact and conclusions of law. I have carefully reviewed the parties submissions, including the exhibits entered into the record, the briefs, and the proposed findings of fact and conclusions of law. Based upon the record developed throughout the course of this proceeding and a careful review of the arguments of the parties, I hereby adopt as the findings of fact and conclusions of law of this Hearing Examiner the findings submitted by the Commission's Staff, as follows:

## **III. BACKGROUND**

### **A. Procedural History**

1. On May 10, 2005, the Public Service Commission (the "Commission") issued Order No. 6619 - a Rule to Show Cause to Utility Systems, Inc. ("USI" or the "Company") - to determine whether USI is operating a public utility wastewater system at the Henlopen Station Condominium complex, located off Rehoboth Avenue near Rehoboth Beach, Delaware. In its Order, the Commission asked that this proceeding focus on and answer three questions: (1) whether USI is operating as a "public utility" under 26 Del. C. §102(2) at Henlopen Station; (2) if so, did USI have good cause for failing to file for a wastewater Certificate of Public Convenience and Necessity ("CPCN") under 26 Del. C. §§ 203(D)(a)(2) and 302(c); and (3) did USI have good cause for failing to submit a schedule of rates and a rate application for

Henlopen Station as required by 26 Del. C. § 301(c)? On June 9, 2005, USI responded to the Rule to Show Cause.

2. On June 19, 2005, the Commission entered Order No. 6678, in which it referred the docket to me for further proceedings. On July 25, 2005, the Public Advocate notified the parties and me that the Public Advocate was intervening as a matter of right under 29 Del. C. § 8808(g). The parties engaged in pre-hearing discovery, submitted pre-filed testimony, and an evidentiary hearing was conducted on November 30, 2005.

**B. Utility Systems, Inc.**

3. At all times pertinent to this proceeding, USI has been a recognized public wastewater utility subject to the regulatory authority of the Commission. PSC Order No. 6619, ¶ 2. As an entity that was in the wastewater utility business on June 7, 2004, USI applied to the Commission for, and was issued, CPCNs to continue to operate the community wastewater systems at Gull Point and the Woodlands of Millsboro. See PSC Orders Nos. 6517 (Nov. 23, 2004) and 6521 (Nov. 23, 2004). See also PSC Order No. 6619, ¶ 2; Ex. 9, Responses 8, 13.

4. USI was incorporated in 1982 to provide a single entity to plan, develop, implement, and manage community wastewater systems for subdivisions and condominiums located in Delaware. Ex. 9, Response 3. The primary shareholder of USI is H. Clark Carbaugh (66% owner). Id., Response 5.

**C. Henlopen Station**

5. Henlopen Station is an 83-unit residential and commercial condominium project located off Route 1 near Rehoboth Beach, Delaware. Ex. 10, Prefiled Direct Testimony of H. Clark Carbaugh, p. 1 and Ex. M thereto (Response of USI to PSC Order No. 6619 Rule to Show Cause). On February 24, 1984, USI entered into a written Agreement for Sewerage Disposal Services with Dune Grass Foundation, Inc. ("Dune Grass") to provide sewage service to Henlopen Station. Ex. 10 at Ex. A. Pursuant to the Agreement, USI agreed to "provide all necessary services for the design, installation, operation, maintenance, repair, replacement, modification, and expansion of a central sewage system..." for Henlopen Station.

6. The February 24, 1984 Agreement for Sewerage Disposal Services provides that it is to be governed by Delaware law. Id. p. 6, par. 9. The Agreement granted USI the exclusive right to provide sewage disposal services to Henlopen Station for an initial term of 20 years, and to renew the Agreement annually thereafter. Id. p. 4, par. 6. Under paragraph 3 of the Agreement for Sewerage Disposal Services, if USI brought suit to recover any delinquent "Sewage Charge," USI "shall also be entitled to recover late charges and reasonable attorneys' fees." Id. p. 4.

**D. The Henlopen Station Easement Agreement**

7. In anticipation of the Agreement for Sewerage Disposal Services, Dune Grass entered into a written Sewage Disposal Easement Agreement with USI dated November 11, 1983. Ex. 13. Under the Easement, USI was granted the

permanent right and easement of ingress, egress and regress on and over all parts of said lands, except those areas occupied or to be occupied by buildings or structures pursuant to said Site Development Plan, for the purpose of installing, constructing, operating, maintaining, repairing or replacing all components of a complete central sewage system, including but not limited to treatment work, disposal fields, manholes, pumps, valves, sewer lines, tanks, meters, and related materials and equipment to provide sewage disposal service and system to the Development.

8. The Easement Agreement also provided:

This easement shall run with and be binding upon the lands and bind the parties hereto, their executors, administrators, heirs, successors and assigns subject to the provisions of the separate Utility Services Agreement of record or to be recorded in the Office of the Recorder of Deeds, in and for Sussex County, entered into between Developer and Utility.

**E. USI Connects Henlopen Station To Sussex County Sewer System**

9. Around 1984, USI began to construct and operate the Henlopen Station community wastewater system. Id. Initially, USI provided onsite wastewater treatment facilities for Henlopen Station. However, by April 1994, USI and Sussex County ("County") were engaged in discussions about connecting the Henlopen Station wastewater system to the County sewer system. Ex. 10 at Ex. A thereto (April 20, 1994 letter from Russell W. Archut to Sussex County to USI). In October 1996, the connection was made between the Henlopen Station system and the County system, and USI decommissioned its treatment equipment. Ex. 10, at Ex. M, p. 2.

10. According to USI, the Company continued to own the wastewater collection lines at Henlopen Station within the easement granted to USI. Id. and see Response of USI to Rule to Show Cause at ¶¶ 7-10. The wastewater collection lines consist of eight-inch PVC pipe, SDR 35 sewers, with six-inch lateral pipes to the buildings with gasketed joints. Ex. 3, Response 2. The approximate length of the collection lines is 990 feet. Id.

11. Since October 1996, the wastewater generated by the Henlopen Station community has flowed through USI's collection lines and into the County sewer system. Id. See also Ex. 3, Response 11. Therefore, what USI calls "collection lines" may accurately be described as collection and transmission lines, or sanitary sewer lines. USI has 86 customers at Henlopen Station and it charges a fee to each of the unit owners. Id. and Ex. 3, Response 33.

**F. USI's Representations To Henlopen Station Customers**

12. Before USI connected its collection lines at Henlopen Station to the County sewer system, USI sent a letter dated January 12, 1996 to its Henlopen Station customers informing them about how USI planned to bill them for "sewerage charges" after the system was connected to the County's system. Ex. 10 at Ex. A. In the letter, USI represented that "Utility Systems, Inc. will bill you \$100 annually since we will continue to maintain this part of the sewerage system." Id. (emphasis added)

13. Later, on April 1, 1996, USI issued a notice to its customers advising them of the new rates they would be charged. Ex. 10, pp 1-2 and Ex. A thereto. The notice was sent on USI

letterhead and identified the charges as "RATES AND CHARGES FOR SANITARY SEWERAGE SERVICES FOR HENLOPEN STATION PROJECT." Id. The notice also stated: "Accounts delinquent more than 30 days are subject to legal actions for collection and/or termination of service." Id. From 1996 to the present, USI has been charging its customers at Henlopen Station pursuant to that notice. Id.

14. On June 15, 2004, USI responded to a request from CPR Property Management, the property manager for Henlopen Station, for copies of documents that describe the ongoing relationship between USI and the property owners at Henlopen Station. Ex. 10, pp. 1-2 and Ex. A thereto. In its response, USI provided a copy of the April 1, 1996 notice. A "TRANSFER" form was also included, which must be signed by anyone who purchases an existing condominium unit at Henlopen Station. The "TRANSFER" form states, in part, that

COMMUNITY SEWERAGE SERVICE IS PROVIDED  
BY UTILITY SYSTEMS, INC. UNDER AN  
AGREEMENT FOR SEWAGE DISPOSAL SERVICES  
RECORDED AT SUSSEX COUNTY RECORDER OF  
DEEDS (BOOK 1248, PAGE 257 ET. SEQ.).  
Id.

15. USI also provided CPR Property Management with copies of USI invoices which state:

ANNUAL SEWAGE CHARGE FOR THE PERIOD  
APRIL 1, 2004 THROUGH FEBRUARY 24,  
2005. IN ACCORDANCE WITH THE  
PROVISIONS OF THE AGREEMENT FOR SEWAGE  
DISPOSAL SERVICES, UTILITY SYSTEMS,  
INC. HEREBY EXERCISES ITS OPTION TO  
CONTINUE PROVIDING SEWAGE DISPOSAL  
SERVICES TO HENLOPEN STATION THROUGH  
FEBRUARY 24, 2005. THE INVOICE AMOUNT  
IS ADJUSTED FOR THE PERIOD COVERED.  
Id.

16. On June 16, 2004, USI sent a letter to CPR Property Management forwarding a copy of the Agreement for Sewage Disposal Services recorded at the Sussex County Recorder of Deeds for the Henlopen Station community. Ex. 10 at Ex. A. The enclosure is the same Agreement, dated February 24, 1984, by which USI first agreed to design, install, operate, maintain, and replace the wastewater system at Henlopen Station. Id.

17. In Exhibit D to its response to the Commission Staff's First Set of Data Requests, USI produced copies of representative statements to customers for the periods April 1, 2003 through March 31, 2004 and April 1, 2004 through February 24, 2005. Ex. 3, Response 8 and Ex. D thereto. Under "INVOICE DESCRIPTION," the USI statements identify the bill as an "ANNUAL SEWAGE CHARGE." Id. The representative statement for April 1, 2004 through February 24, 2005 also states:

UTILITY SYSTEMS, INC. HEREBY EXERCISES  
ITS OPTION TO CONTINUE PROVIDING  
SEWAGE DISPOSAL SERVICES TO HENLOPEN  
STATION THROUGH FEBRUARY 24, 2005.

18. USI's February 24, 1984 Agreement for Sewage Disposal Services had an initial term of 20 years, with the exclusive option to renew annually thereafter. Ex. 10 at Ex. A, p. 4, par. 6. Thus, the Agreement was set to expire on February 24, 2004, unless renewed by USI under its option clause. Id. USI's statements for the period April 1, 2004 through February 24, 2005, informed its Henlopen Station customers that USI was exercising its option to renew the Agreement for an additional year. Id.; Ex. 6, pp. 2-3.

**G. USI's Letters To and Lawsuits Against Henlopen Station Customers**

19. In response to the Commission Staff's Second Set of Data Requests, USI produced copies of communications between USI and Henlopen Station customers whose accounts have been in arrears during the period after January 1, 2004. Ex. 4 and Ex. B thereto. All of the documents produced by USI, which are attached as Exhibit B to USI's response, identify the unpaid invoices as representing bills for "annual sewerage services." Id.

20. USI also produced numerous letters dated April 7, 2004 from its counsel to USI customers with delinquent accounts. The first of the April 7, 2004 letters identified under Exhibit C to USI's response states in the initial paragraph:

Our firm represents Utility Systems, Inc., and it has advised us that you are severely delinquent in your sewer service utility payments.

The same letter also informs the customer:

Your obligations to pay your sewer charges are documented under applicable agreements running with the land which binds your property. The Sewer Service Agreement applicable to your property provides in paragraph 3: "In any foreclosure action or suit to recover money damages, Utility shall also be entitled to recover late charges and reasonable attorney's fees."

All of the April 7, 2004 letters from USI's counsel to delinquent customers are essentially identical.

21. Exhibit C to USI's response includes a June 8, 2004 letter from USI's counsel to a USI customer. Ex. 4 and Ex. C thereto. The

letter forwards certain documents to the customer, including the following documents referred to above: a) the January 12, 1996 correspondence from USI to its Henlopen Station customers; b) the April 1, 1996 USI document containing the Rates and Charges for Sanitary Sewerage Services; and c) the "TRANSFER" form for Sanitary Sewerage Services. Id.

22. USI produced Complaints that the Company filed in the Court of Common Pleas in Sussex County against certain Henlopen Station customers. Id. The Complaints allege that "USI is the supplier of sewer services to Henlopen Junction Condominiums ...". Id. The Complaints also allege that "each unit owner at the Henlopen Junction Condominiums ... is obligated to pay USI for sewer service charges." Id. And the Complaints allege that USI has been assessing the customers "for sewer services" in the second half of 2004 and in 2005. Id. The periods covered by the latter sewer service charges post-date the Commission's jurisdiction over USI, which commenced on July 6, 2004, when the Governor approved 74 Delaware Laws, Chapter 317.

23. In its response to the Commission Staff's Second Set of Data Requests, USI also produced a "DIRECTION TO ENTER DEFAULT JUDGMENT" in a suit for allegedly unpaid sewer charges that was filed in the Sussex County Court of Common Pleas against Piraeus Realty Corporation. Id. The "DIRECTION" was filed on May 23, 2005, and included an award of attorneys' fees, pursuant to USI's February 24, 1984 Agreement for Sewerage Disposal Services by which USI agreed to provide Henlopen Station with "Sewage Disposal Services." Id.

24. On May 11, 2005, the Commission sent USI two certified copies of Commission Order No. 6619 by certified mail. Ex. 16. The certified mailing was received and signed for by USI on May 12, 2005. Id. Mr. Carbaugh admits that he was aware of the certified mailing and the Rule to Show Cause by May 12 or 13, 2005. Hearing transcript at 75-6. Thus, about ten days before directing the entry of a default judgment against Piraeus Realty Corporation for nonpayment of sewage services, USI was aware of the Commission's Rule to Show Cause and the fact that the Commission was investigating whether USI was providing sewage services to Henlopen Station.

**H. Correspondence Between USI and Commission Staff in 2004 and 2005**

25. On December 29, 2004, the Commission Staff wrote to USI requesting information about any wastewater systems being operated by USI. Ex. 10 and Ex. E thereto. USI responded in a letter dated January 10, 2005, in which it stated:

Henlopen Station is an 83-unit residential and commercial condominium project located off of Route 1 just outside Rehoboth Beach. USI developed, operated, and managed a community wastewater system under a recorded Sewage Agreement. Ex. 10 and Ex. F thereto.

26. The letter went on to state:

USI continued to charge the unit owners at Henlopen Station an annual fee of \$100 based on the USI contract and easement rights which it retained. This fee amounted to an offset to the partial assessment that was being waived by Sussex County. There are no wastewater operations or activities associated with Henlopen Station.

27. On March 1, 2005, before the Commission issued Order No. 6619 (May 10, 2005), counsel for the Commission Staff wrote to USI requesting further information about the Henlopen Station wastewater system. Ex. 10 and Ex. G thereto. USI replied to the Commission Staff in a letter dated March 21, 2005. Ex. 10 and Exs. G and H thereto. In its response to the Commission Staff's inquiry about who owned the Henlopen Station community wastewater system, USI wrote:

Any ownership issues as to the pipelines connecting the Henlopen Station buildings to the mainlines of the Sussex County sewer system have not been questioned or determined. Id.

28. In response to the Commission Staff's question about the identity of the operator of the system, USI stated:

There is no community wastewater system serving Henlopen Station. There is no operator. There are no DNREC permits or other regulatory approvals. Id.

29. The Commission Staff asked USI for a complete explanation from USI of the reasons that USI contends that it was not required to obtain a CPCN for Henlopen Station, and USI replied:

There are no charges by Utility Systems, Inc. to the property owners of the community that related to a community wastewater system or its supposed operation. We do not understand how a CPCN could be issued when the community is being served by Sussex County and there is no community wastewater system involved. Id.

30. On April 6, 2005, the Commission Staff's counsel sent a follow up letter to USI, to which USI responded on April 22, 2005.

Ex. 10 and Exs. I and J thereto. In its answer to a specific question about who was responsible for maintaining and repairing the collection system at Henlopen Station, USI stated:

It is very unlikely that there would be any maintenance and/or repair required for the sewers connecting the condominium buildings to the Sussex County sewer main. If there were a problem, it would be taken care of by the condominium association and/or Utility Systems, Inc. The costs would be the responsibility of the condominium association. Id.

31. In the same April 22, 2005 letter, USI again asserted that "[t]here is no community wastewater system at Henlopen Station." Id. And USI stated that the County did not have responsibility "for any maintenance or other work on the sewers of the community." Ex. 10 and Ex. J thereto.

**I. USI's Responses to Data Requests**

32. In its First Set of Data Requests, the Commission Staff asked USI whether it was contractually obligated to maintain, make repairs on, and replace the sewage collection lines at Henlopen Station. Ex. 3, Responses 17, 18, and 19. In its response dated September 7, 2005, USI denied that it had any such contractual obligations. Id. USI went on to state that, as the owner of the pipelines, USI will take care of any break or leak in its property. Id. Response 20. When asked to explain in detail any and all plans that USI has for the long term maintenance and replacement of the sewage collection lines at Henlopen Station, USI simply stated that it would address any maintenance and/or replacement issues if the need develops. Id. Response 21.

33. On September 20, 2005, USI responded to the data requests of the Division of the Public Advocate. Ex. 9. USI was again asked about the party responsible for future repairs of the sewer lines at Henlopen Station:

DPA-15 Please identify the party or parties responsible for paying for any future repairs of the sewer lines and provide documents in support of your response.

RESPONSE: As owner of the sewer lines, Utility Systems, Inc. is responsible for the maintenance and repair of its property.

**Commission Order No. 6783**

34. USI is a party to PSC Dockets Nos. 04-WW-001 and 05-58, in which the Commission recently issued Order No. 6783. Ex. 12. There, the Commission found that, in December 2004, USI voluntarily and unlawfully abandoned a community wastewater system at the Woods on Herring Creek ("WOHC") community. Id. and Hearing Examiner's Report at 55-71. At the time USI unlawfully abandoned the WOHC wastewater system, the treatment beds at the system had completely failed, the system had been noted as a threat to public health and safety by the Division of Public Health, and the system was in need of major repairs at an estimated cost of \$500,000 to \$1.5 million. Id.

35. Just prior to abandoning the WOHC system, USI, also in December 2004, transferred three lots owned by USI at the WOHC Community to a company principally owned by H. Clark Carbaugh, the President and principal shareholder of USI. Id., Hearing Examiner's Report at 72-3. The three lots had been purchased to construct new treatment beds for the WOHC wastewater system. Id. USI transferred

the lots from one Carbaugh-controlled company to another, even though USI understood that at least two of the lots were needed for new treatment beds for the WOHC system. USI is facing penalties from the Commission of almost \$500,000 for its misconduct at the WOHC. Id. USI recently appealed Order No. 6783 to the Delaware Superior Court.

36. The Commission has also cited USI for inadequate wastewater facilities at the Woodlands of Millsboro. Id. at 70-1. USI's system there has experienced chronic pollution problems due to surfacing of wastewater effluent. Id. And the surfacing of effluent at the Woodlands has been occurring in amounts sufficient to create a public health hazard. Id.

**J. USI's Response to the Commission's Rule to Show Cause**

37. USI's response to Commission Order No. 6619, the Rule to Show Cause, is dated June 9, 2005. In its response, USI asserted:

1. a. Utility Systems, Inc. (hereinafter "USI") does not believe its easement containing collection lines at the Henlopen Station Condominium constitutes the operations of a wastewater utility as wastewater is not disposed of or treated by it.
- b. USI does not believe its limited activities at Henlopen Station being the ownership of an easement containing sewage collection lines constitutes an operation of a wastewater utility.
- c. USI's annual assessment for the use of its easement does not constitute a sewage charge for which a schedule of rates is applicable.

38. USI's response to the Rule to Show Cause further states:

6. Any matters related to wastewater from the condominium project and/or the individual unit owners are between

them and Sussex County. USI has no involvement.

7. USI does not receive or handle wastewater from the condominium project and/or the individual unit owners.

\*\*\*\*

9. The condominium project and/or the unit owners use the USI sewer lines within its easement to transmit their wastewater to Sussex County. USI plays no part in handling or management of the wastewater.

\*\*\*\*

11. The charge by USI to the condominium project and/or unit owners is for the use of the easement it has been granted.

#### **IV. QUESTIONS POSED BY THE COMMISSION**

39. In Order No. 6619 (May 10, 2005), the Commission raised the following questions:

(a) First, is Utility Systems, Inc. ("USI") operating as a "public utility" under 26 Del. C. § 102(2) (2004 Supp.) in its ownership, operation, and maintenance of a wastewater collection system which serves the Henlopen Station condominium complex, located off Rehoboth Avenue in Lewes and Rehoboth Hundred, in Sussex County, Delaware? and, if so:

(b) What good cause, if any, does USI have for not submitting an application, under the provisions of 26 Del. C. § 203D(a)(2) (2004 Supp.), for a Certificate of Public Convenience and Necessity ("CPCN") to operate such system? and

(c) What good cause, if any does USI have for not submitting a schedule of rates and a rate application applicable to such system, as required

by the provisions of 26 Del. C.  
§ 301(c) (2004 Supp.)?

40. The Commission reiterated these queries in Order No. 6678:

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. 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 and 301(c).

V. CONCLUSIONS OF LAW AND ADDITIONAL FINDINGS OF FACT

41. Section 102(2) of Title 26 defines the term "public utility" to include

every ... corporation ... that operates ... for public use within this state ... any ... wastewater (which shall include sanitary sewer charge) service, system, plant or equipment.

42. Section 201(a) of Title 26 sets forth the jurisdiction and powers of the Commission and provides, in part:

The Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of this title.

43. Section 203D(a)(2) of Title 26 contains the following provision governing CPCNs for wastewater utilities:

Except for municipalities, governmental agencies and wastewater authorities and districts, which are governed under subsection (b) of this section and wastewater utilities serving fewer than 50 customers in the aggregate, any person or entity already in the business of a wastewater utility as of June 7, 2004, shall by December 3, 2004, obtain from the Commission a certificate of public convenience and necessity for its existing service area. Such person or entity shall provide the Commission a description of its facilities and the area it serves and a schedule of rates currently charged its customers, in such form as the Commission may require.

44. The statutes which govern the Commission's authority to regulate the rates that a wastewater utility may charge its customers are found in §§ 301-14 of Title 26. The Commission's regulation of rates includes the power to determine a public utility's rate base pursuant to § 302. The term "rate base" is defined in § 102(3) of Title 26, which provides, in part:

"Rate base" means: a. the original cost of all used and useful utility plant and intangible assets to the first person who committed said plant or assets to public use or, at the option of the Commission, the first recorded book cost of said plant or assets...

45. On July 6, 2004, private wastewater utilities, serving fifty or more customers, became subject to the Commission's jurisdiction pursuant to 74 Delaware Laws, Chapter 317. Among other things, the new law required existing wastewater utilities, that were in business as of June 7, 2004, to obtain CPCNs under 26 Del. C. § 203D(a)(1). On June 7, 2004, USI was operating several community wastewater systems,

and USI applied for CPCNs for three of them. USI was ultimately awarded CPCNs for its systems at Gull Point and the Woodlands of Millsboro. Ex. 3, Response 32. For these reasons, USI is a "public utility" subject to the jurisdiction of the Commission under 26 Del. C. § 102(2) and § 201(a). USI also admits that it is a "public utility" subject to regulation by the Commission.

46. Under 26 Del. C. § 201(a), the Commission has jurisdiction over all of a public utility's "rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the provisions of ... title [26]."

47. USI meets the definition of a "public utility" under 26 Del. C. § 102(2), because of its operations at Gull Point and the Woodlands of Millsboro. Therefore, the question squarely presented in this proceeding is whether USI's wastewater collection lines at Henlopen Station also fall within the Commission's jurisdiction under 26 Del. C. § 201(a).

48. Henlopen Station falls within the Commission's jurisdiction under § 201(a), because: a) it is a USI service territory; b) USI has facilities at Henlopen Station; c) USI has equipment at Henlopen Station; and d) USI has property rights at Henlopen Station.

49. Henlopen Station is a USI "service territory." "Territory" is defined as a "large extent or tract of land; a region; district." Webster's New Collegiate Dictionary (2<sup>nd</sup> ed. 1959). "Service" is defined as "help, use, benefit" and "contribution to the welfare of others" and "a helpful act." Webster's Ninth New Collegiate

Dictionary (1984). Henlopen Station is a USI wastewater "service territory." Henlopen Station encompasses a tract of land. USI provides the sole means for transporting waste from the Henlopen Station property to the County sewer system and, in doing so, provides a benefit and contributes to the welfare of the condominium owners. The transport of the waste is also "a helpful act." In addition, USI has been billing and collecting funds from customers at Henlopen Station for wastewater utility service for more than twenty years, including the nine years since the collection lines were first connected to the County.

50. When certain customers allegedly failed to pay USI for its wastewater service, USI had its counsel write to the customers. If the customers failed to pay in response to the letters, USI sued them for failing to pay for wastewater service, and obtained a judgment against at least one customer.

51. USI's activities at Henlopen Station, including: a) the collection and the transport of wastewater; b) the billing of customers; c) the collection of fees for the service; d) adding new customers pursuant to the USI "TRANSFER" form; and e) collecting delinquent accounts through letters and lawsuits, establish that Henlopen Station is a USI service territory.

52. The Commission also has jurisdiction over all of USI's facilities, including its facility at Henlopen Station. "Facility" is defined as "something that makes an action, operation, or course of conduct easier." Merriam Webster's Collegiate Dictionary (10<sup>th</sup> ed. 1993). It is also defined as "something (as a hospital) that is

built, installed, or established to serve a particular purpose." Id.  
USI's wastewater collection lines meet the definition of "facility"  
and those facilities are regulated by the Commission under § 201(a).

53. USI also operates wastewater "equipment" at Henlopen  
Station. "Equipment" is defined as:

**1** : the set of articles or physical  
resources serving to equip a person or  
thing: as (1) the implements used in  
an operation or activity : APPARATUS  
(2) : all the fixed assets other than  
land and buildings of a business  
enterprise ...

Webster's Ninth New Collegiate Dictionary (1984).

54. USI's collection lines at Henlopen station are both a set of  
articles and physical resources. They are used as implements in an  
operation or activity, namely, they transport wastewater. And the  
collection lines are part of the fixed assets of USI, as they are  
neither land nor buildings. USI put the collection lines in operation  
and is responsible for their repair and maintenance. USI has the  
collection lines perform a function, namely, collect and transport  
wastewater. And USI caused the collection lines to function, and  
continues to cause them to function by keeping them in operation and  
renewing the Agreement under which they are allowed to function. For  
these reasons, USI's collection lines constitute "equipment" and they  
are subject to Commission jurisdiction under § 201(a).

55. Under § 201(a), the Commission also has jurisdiction over  
USI's "property rights." USI maintains that it owns an easement at  
Henlopen Station. An easement is a property right, and for that  
reason, the Commission has jurisdiction over USI's easement.

56. USI cannot deny that it is a public utility regulated by the Commission, because it has obtained CPCNs for its community wastewater systems at Gull Point and the Woodlands of Millsboro. However, USI contends that its wastewater collection lines at Henlopen Station are not regulated because USI allegedly does not dispose of or treat the wastewater. USI says that it merely owns the collection lines through which the wastewater passes, that it does not handle the wastewater, and that it charges its Henlopen Station customers for the use of its easement. I agree with the Commission Staff, however, that USI's conclusions are contrary to the evidence presented and are not reasonable.

57. USI wants the Commission to look upon USI, not as one company which owns and operates multiple community wastewater systems, but as several distinct companies, operating legally independent wastewater systems. The facts prove otherwise. USI is a solitary corporation. It owns and operates two wastewater systems for which it obtained CPCNs: Gull Point and the Woodlands of Millsboro. USI also owns the wastewater collection lines at Henlopen Station, which are used to transport waste from the condominium buildings to the County sewer system.

58. Under § 201(a), if a water utility owns treatment facilities at one community, but merely transports water to another community, both operations are regulated. Facilities at the second community are not exempt from regulation simply because they do not involve treatment of water. The same is true for USI and its rates, property

rights, equipment, facilities, and service territory at Henlopen Station.

59. The Commission also has jurisdiction over a public utility's rates, including a determination of its "rate base." 26 Del. C. § 301 et seq. USI's easement at Henlopen Station is also subject to Commission jurisdiction, not only as a property right of USI, but also for purposes of rate base, because it is an intangible asset of USI. 26 Del. C. §§ 201(a), 302, and 102(3). The only reasonable interpretation of these statutes is that the Commission has jurisdiction over all of USI's property rights, equipment, facilities, service territories, and rates, and not merely over systems where USI engages in wastewater treatment.

60. Even if the Commission were to consider USI's Henlopen Station as if it were operated by a separate and distinct corporation for purposes of assessing jurisdiction, USI's operation there would still be subject to regulation under § 102(2) and § 201(a), because USI's collection lines and activities at Henlopen Station constitute the operation of a "public utility" as defined in § 102(2).

61. A corporation, such as USI, is a regulated public utility if it "operates" for public use any wastewater (which shall include sanitary sewer charge) service, system, plant or equipment. 26 Del. C. § 102(2).

62. The USI collection lines at Henlopen Station are being provided for public use. 26 Del. C. § 102(2). The collection lines do not serve properties owned by USI. The collection lines provide

wastewater service to members of the public who own residential and commercial condominium units at Henlopen Station.

63. The plain meaning of the word "operate" is broad in scope:

**1** : to perform a function .... **2 a** :  
to cause to function : work **b** : to put  
or keep in operation ...

Webster's Ninth New Collegiate Dictionary (1984).

64. The term "operation" is defined as:

**1** : performance of practical work or  
of something involving the practical  
application of principles or processes  
**2** : ... **b** : the quality or state of  
being functional or operative <the  
plant is now in ~> ...

Id.

65. Because USI is performing a function at Henlopen Station, namely the transport of wastewater in exchange for a sewer service utility charge, USI "operates" a wastewater utility at Henlopen Station. USI's collection and transmission system consists of eight-inch PVC pipe with six-inch lateral pipes, with gasketed joints, that collect and transport the wastewater to the County sewer system. The USI pipes are the sole means to transmit wastewater from the condominium buildings to the County sewer system. In addition, it is plain that USI put the pipes into operation, keeps them in operation by allowing them to continue to carry wastewater, and the pipes do function to transmit wastewater.

66. USI has admitted that, as the owner of the Henlopen Station wastewater collection lines, it is responsible for the maintenance and repair of the lines. Ex. 9, Response to DPA-15. Therefore, USI conceded that it has an obligation to keep the collection lines in

operation. For all of these reasons, USI "operates" a wastewater utility at Henlopen Station.

67. USI is also operating a wastewater "system" at Henlopen Station. "System" is defined as "a regularly interacting or interdependent group of items forming a unified whole ...." Webster's Ninth New Collegiate Dictionary (1984). It is also defined as "a group of devices or artificial objects or an organization forming a network esp. for distributing something or serving a common purpose <a telephone ~> ...." Id. The USI collection lines are an interdependent group of items (primarily eight-inch and six-inch pipes and gasketed joints) forming a unified whole (a wastewater collection and transport system). The USI collection system consists of artificial objects (pipes and gasketed joints), which form a network (the pipes are connected to one another, the condominium buildings and to the County sewer system), and which serve a common purpose (transport wastewater from the condominium buildings to the County sewer system).

68. USI also operates wastewater "plant" at Henlopen Station. "Utility plant" has been defined as "the physical objects and structures comprising a utility's operations and which it uses to provide service to its customers." Chesapeake Utilities Corp. v. Delaware Public Service Commission, 705 A.2d 1059, 1070 (Del. Super. 1997). USI's wastewater collection lines at Henlopen Station are both physical objects and a structure, and they serve to transport wastewater, providing a service for which customers are billed. USI placed the plant into operation and is responsible for its maintenance

and repair. Therefore, USI is operating utility "plant" at Henlopen Station.

69. For the reasons stated above, in paragraphs 53 and 54, USI is also operating "equipment" at Henlopen Station, and for that reason is a "public utility" under § 102(2).

70. Finally, Section 102(2) reflects the intent to include within the definition of a "public utility" any company that charges customers to provide sanitary sewer service. See § 102(2) defining "public utility" as including any corporation operating any wastewater (including sanitary sewer charge) service. On April 1, 1996, USI anticipated that the Henlopen Station wastewater system would be connected to the County sewer system. At that time, USI sent its customers a document entitled "RATES AND CHARGES FOR SANITARY SEWER SERVICES FOR HENLOPEN STATION PROJECT." The same document identified the "SEWAGE CHARGE" that customers were to pay. In response to Staff's data requests, USI has produced numerous documents in which USI asserts that it is providing sewer utility service to Henlopen Station customers. By its own admission, and by its ownership of collection lines being used to transport wastewater from the Henlopen Station complex in a sanitary fashion, USI is providing sanitary sewer service. Further, USI is charging for the service. For those reasons stated above, I find that USI and its Henlopen Station collection lines meet the definition of "public utility" in §102(2).

71. The Staff's interpretation of Sections 102(2) and 201(a) are supported by an analysis of Section 203D(a)(1) of Title 26. Under Section 203D(a)(1), no person, including an existing wastewater

utility, may begin or expand its business or operations without having obtained a CPCN from the Commission. According to USI, any company, including a regulated wastewater utility, could construct the largest wastewater transport pipelines in the State, extending for hundreds of miles, and as long as it did not treat the wastewater that flows through the pipes, the activity would be exempt from regulation. USI's interpretation would thus lead to absurd results.

72. Given that the Commission has jurisdiction over a water utility's transmission of water through pipelines, sound public policy lends even greater support to the regulation of pipelines which carry wastewater. A leak in a pipe carrying drinking water can conceivably cause property damage. However, such a leak is not likely to threaten the public health and safety. Pipes that carry wastewater, such as the USI collection system at Henlopen Station, are transporting waste materials that are potential sources of ground and water pollution. In addition, the waste will necessarily contain organisms and contaminants that can cause serious diseases, illnesses, and injuries in the event a leak develops and wastewater escapes into the environment.

73. The Commission has jurisdiction over all of the service territories, facilities, equipment and property rights owned or operated by USI. The statutes which define "public utility" and establish the Commission's jurisdiction do not limit the Commission's regulatory authority to wastewater utilities that engage in treatment of wastewater. And the Commission's jurisdiction is not limited to systems, plants equipment, or service territories that treat

wastewater, as opposed to collecting and transporting it. Under USI's interpretation of Title 26, the Commission would have jurisdiction over a wastewater utility's collection lines only if they were connected to treatment facilities operated by the utility. Otherwise, the Commission would have no jurisdiction. USI's argument finds no support in the law.

74. A useful analogy can be made to the case of water utilities. Several water utilities in Delaware have multiple, independent stand-alone water systems. In some cases, the water requires treatment, and in other cases, it does not. The Commission's regulatory authority is not premised upon the provision of water treatment. Rather it arises from the provision of water service, or a water system, or water plant, or water equipment, for public use.

75. If USI's statutory construction was correct, a major water supplier could own all of its water transmission pipes, but it would not have to include them in rate base, on the ground that the mere transmission of water was not regulated. The water utility could charge customers any rate that it might choose for transporting the water, as that activity would not be regulated.

76. The Delaware Supreme Court will give substantial weight to the Commission's interpretation of a statute it is empowered to enforce, provided that construction is not clearly erroneous. Eastern Shore Natural Gas Co. v. Delaware Public Service Commission, 637 A.2d 10 (Del. 1994), overruled on other grounds, Public Water Supply Co. v. DiPasquale, 735 A.2d 378 (Del. 1999).

**A. USI Did Not Have Good Cause For: a) Failing to File for a CPCN; or b) To Submit a Schedule of Rates to the Commission**

77. USI has never made any credible attempt to explain how the statutes in Title 26 can fail to apply to it. In paragraph 1 of its Response to the Commission's Rule to Show Cause, USI sought to shift the focus of attention to its easement. USI then asserted, in paragraph 10, that

[t]he condominium project and/or the unit owners are charged a fee for their use of the USI sewer lines located within an easement granted to USI to transmit their wastewater to Sussex County.

78. USI carried the easement argument one step further in paragraph 11, by stating:

The charge by USI to the condominium project and/or the unit owners is for the use of the easement it has been granted.

79. USI does not point to any evidence to support its assertion. The word "easement" does not appear on any bills sent to customers. Further, the word cannot be found in the lawsuit papers USI filed against customers for collection purposes. USI's Response to the Commission's Rule to Show Cause is, therefore, not persuasive.

80. In addition, USI withheld pertinent information about its activities at Henlopen Station, when it sent its March 21, 2005 letter. Ex. 10 and Exs. G and H thereto. There USI asserted:

There are no charges by Utility Systems, Inc. to the property owners of the community that relate to a community wastewater system or its supposed operation.

Later, however, when USI was required to respond to data requests, Staff learned that USI had been billing, writing to, and even suing the property owners for the provision of sanitary sewer utility service for more than nine years.

81. USI's argument, that it has or can charge customers for the use of its easement is inconsistent with the concept of an easement. The condominium owners at Henlopen Station own the real property. USI was granted a limited easement, primarily for the purpose of maintaining and replacing the collection lines. USI now claims that it has no contractual obligation to maintain or replace the lines. Hence, the easement does not serve a valid purpose for the condominium owners.

82. USI now claims that it charges the property owners \$100 each, per year, for the use of an easement that runs across their own land (and for which USI paid only \$10). The notion that USI's easement trumps title to the property that is held by the landowners is illogical. In any event, because the Commission has exclusive jurisdiction over USI's property rights under § 201(a), the Commission has regulatory authority over USI's easement.

83. In paragraph 7 of its Response to the Rule to Show Cause, USI states that "it does not receive or handle wastewater from the condominium project and/or the individual unit owners." The evidence presented by USI itself demonstrates that this statement is simply not true. USI owns the wastewater collection lines. The wastewater flows from the condominium buildings into USI's collection lines. "Receive" means "to act as a receptor or container for" and "to permit to

enter." Webster's Ninth New Collegiate Dictionary. USI's collection lines act as a receptor for the Henlopen Station wastewater and USI permits it to enter the collection pipes. Therefore, USI does indeed receive the wastewater.

84. "Handle" is a broad concept generally defined as "to act on or perform a required function with regard to <~ the day's mail> ...." Id. USI handles or "acts on" the wastewater through its collection lines. These facts are so self-evident that USI's explanation of what happens at Henlopen Station defies logic and common sense.

85. Privately-owned wastewater systems, like the USI system at Henlopen Station, present unique problems. USI recognizes that the County has no responsibility whatsoever for the Henlopen Station wastewater system. Ex. 10 and Ex. J thereto. In these proceedings, USI has only reluctantly acknowledged its own obligation to maintain and repair the system. And USI insists that it has no contractual obligation to do so, even though it: a) renewed the Agreement for Sewerage Disposal Services, which creates such an obligation; and b) has invoked rights under the Agreement, for example, by obtaining an award of attorneys' fees against Henlopen Station customer Piraeus Realty, which is not permitted under Delaware law absent an express contractual provision. Casson v. Nationwide Ins. Co., 455 A.2d 361, 369-70 (Del. Super. 1982).

86. The risks of pollution and health and safety hazards are magnified when dealing with a company like USI. USI is thinly capitalized and has few employees. USI has no long-term plans for the maintenance and replacement of the sewage collection lines at Henlopen

Station. Ex. 3, Response 21. And USI does not have the financial or personnel resources to respond in the event a leak in the system causes significant pollution or property damage. If a leak poses a threat to the public health and safety, USI is unlikely to have the capabilities to meet the threat.

87. USI also has an extensive history of violating state laws and regulations governing wastewater utilities. USI has been cited by the Department of Natural Resources and Environmental Control as a chronic polluter at several community wastewater systems it designed and operated, including the Woods on Herring Creek and the Woodlands of Millsboro. And USI demonstrated, by its conduct at the Woods on Herring Creek, that it is prepared to ignore the law and unlawfully abandon a wastewater system with pollution problems, and which presents hazards to human health and safety, with little notice to customers.

88. Apparently, USI does not want the Commission to exert jurisdiction over its Henlopen Station operation, because the Commission can: a) regulate USI's rates; and b) direct USI to establish a capital reserve to make certain that USI can address a wastewater leak and the ultimate replacement of the system. USI has reason to be concerned that its rates at Henlopen Station are excessive, because it has been fully compensated for its costs, and therefore has no rate base. Ex. 7, Direct Testimony of Andrea C. Crane, p. 17. And USI admits that it has not incurred any operation or maintenance expenses at Henlopen Station since October 1996. Ex. 3, Response 28.

89. USI has no plans whatsoever for the long term maintenance and replacement of the system. Ex. 3, Response 21. The Commission Staff asked USI to

[e]xplain in detail how USI proposes to address a break or leak in the sewage collection lines at Henlopen Station. In its answer, USI should explain in detail what its obligations are to effect a repair, to coordinate work needed for a repair, and to pay the cost of the repair.

USI's response:

As owner of the pipelines, USI will take care of any break or leak in its property.

90. USI's response does not inspire confidence. USI undoubtedly wishes to continue to collect rates at Henlopen Station and pass the funds along to its shareholders, rather than address the possible repair or replacement of a wastewater system that is more than twenty years old.

91. Equally troubling is USI's cavalier attitude toward its customers and its contractual obligations. In its January 12, 1996 letter to Henlopen Station customers, USI told them they would be billed \$100 annually "since we will continue to maintain this part [the collection/transmission lines] of the sewage system." Yet, in its responses to the Commission Staff's data requests, USI denied any contractual obligation to maintain the collection system. Thus, on the one hand USI says it has no contract with its Henlopen Station customers. On the other hand, it sues them and obtains an award of attorney's fees under its contract with them (the Agreement for Sewerage Disposal Services). Likewise, USI argues that it has an

easement giving it access to its collection system, but denies that it has any obligation to maintain the system under the related contract.

92. When asked by its counsel to explain, under oath, nine years of invoices to Henlopen Station customers for sanitary sewer service, the following exchange took place:

Q. [Sergovic] Is there anything magical about the use of annual sewer charge?

A. [Carbaugh] No. This is the invoice that was for early 2004. It was issued, probably, in February of 2004. And at that time - - well, from 1996 going forward, until the PSC became involved, we continued to use the sewage charge terminology. We had enough problems with people understanding that they had an obligation to us to go make some changes in the terminology and getting them all upset again.

So, we continued to use the same terminology until the PSC did get involved. After that, we changed the wording on the invoice system.

Mr. Carbaugh's sworn testimony is not credible.

93. At the evidentiary hearing, USI was forced to concede that its activities at Henlopen Station have not changed since 1996. Hearing Transcript at 79-80. The fact that the Commission was granted jurisdiction over USI at Henlopen Station does not transform a sewage charge into something else.

94. On May 23, 2005, USI directed the entry of a judgment against Henlopen Station customer Piraeus Realty for unpaid sewer service fees. USI's complaint in that lawsuit alleges:

[E]ach unit owner is obligated to pay USI for the sewer charges it assesses pursuant to and under the Sewer Agreement.

The Complaint also alleges:

For the time period April 1999 through February 2005, USI has been assessing Piraeus for sewer services pursuant to the Sewer Agreement.

and

Pursuant to the sewer charges of USI to Piraeus, Piraeus has been assessed with sewer service fees . . . .

95. A few weeks later, in USI's Response to the Commission's Rule to Show Cause, dated June 9, 2005 (and filed with the Commission on June 13, 2005), USI wrote:

The charge by USI to the condominium project and/or the unit owners is for the use of the easement it has been granted.

And USI further wrote that:

USI's annual assessment for the use of its easement does not constitute a sewage charge for which a schedule of rates is applicable.

96. USI's representations to the Commission and its Response to the Rule to Show Cause simply cannot be reconciled with its prior statements and conduct. USI deliberately sought to mislead the Commission. It was only in discovery that the Piraeus Realty lawsuit came to light, along with nine years of correspondence, billing statements, and other lawsuits for sanitary sewer service charges by USI involving Henlopen Station.

97. Should the Commission agree that USI did not have good cause for failing to file a CPCN application or a schedule of rates, the

Commission should consider what penalties, if any, USI should suffer for its failure to comply with the law.

**B. The Fact that USI's Henlopen Station System is a Subdistrict of the County Does Not Exempt it From Regulation by the Commission**

98. At the evidentiary hearing on November 30, 2005, USI raised the fact that its Henlopen Station wastewater system is a subdistrict of the County. Under § 203D(a), "municipalities, governmental agencies and wastewater authorities and districts" are not required to obtain a CPCN from the Commission. A major purpose of 74 Delaware Laws, Chapter 317 was to provide for Commission regulation of privately-owned wastewater utilities. Apparently, the General Assembly did not see a need to include wastewater systems operated by local governments.

99. Local governments: a) answer to voter-customers; and b) have taxing authority, which provide them with the financial ability to repair and replace their wastewater systems. Private wastewater utilities do not answer to voters and do not hold taxing power. Therefore, there is an obvious need for regulation of companies like USI.

100. The fact that USI is a "subdistrict" of the County does not exempt USI from Commission regulation or the requirement that it obtain a CPCN. Section 203D exempts "districts," not "subdistricts."

101. USI has said repeatedly that the County has no connection with its Henlopen Station system, and no obligation to maintain, repair, or replace it. See e.g. Ex. 10 at Ex. J.; Hearing Transcript

at 37-9. When the Hearing Examiner asked Mr. Carbaugh to explain USI's relationship with the County, he testified:

We never had a relationship with the County. We do not have any relationship with the County on this. Hearing Transcript at 94.

102. USI owns the Henlopen Station system, not the County. Presumably, that is why § 203D refers to county-owned "districts" and not privately-owned "subdistricts." The County does not have the authority to exempt a private wastewater utility system from State regulation by unilaterally declaring it a "district" unless it actually became a government-owned and operated "district" and the County actually assumed complete responsibility for the system, as it would for any district. Otherwise, any wastewater utility could go to the County and the County could exempt it from State law.

**VI. SUMMARY OF FINDINGS**

103. In Order No. 6619, the Commission posed three questions. As to the question of whether USI's wastewater collection or transmission system at Henlopen Station is a "public utility" under 26 Del C. § 102(2), I find that the evidence presented is abundant and clear that USI's Henlopen Station wastewater system is such a public utility. Secondly, I find that USI did not have good cause for failing to submit an application, under 26 Del. C. § 203D(a)(2), for a

CPCN for the Henlopen Station System. Further, I find that USI did not have good cause for failing to submit a schedule of rates and a rate application for Henlopen Station as required by 26 Del. C. § 301(c).

Respectfully submitted,

/s/ Ruth Ann Price  
Ruth Ann Price  
Hearing Examiner

Dated: May 11, 2006