

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

IN THE MATTER OF THE COMPLAINT BY THE)
COMMISSION STAFF REQUESTING THE)
REVOCATION OF CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY PREVIOUSLY) PSC COMPLAINT DOCKET NO. 342-06
GRANTED TO UTILITY SYSTEMS, INC., AND)
THE GRANT OF FURTHER RELIEF TO ASSIST)
THE SYSTEMS PREVIOUSLY OPERATED BY)
UTILITY SYSTEMS, INC.)
(FILED AUGUST 7, 2006))

ORDER NO. 7014

This 22nd day of August, 2006, the Commission determines and Orders the following:

1. Utility Systems, Inc. ("USI") is a Delaware corporation and a public wastewater utility regulated by the Commission.

2. By prior Orders dated November 23, 2004 (as indicated below), this Commission granted Certificates of Public Convenience and Necessity ("CPCN") to USI for the following community wastewater systems:

<u>NAME</u>	<u>ORDER</u>	<u>DOCKET NO.</u>
Woodlands of Millsboro	6521	04-WW-003
Gull Point	6517	04-WW-002

3. On or about May 8, 2006, H. Clark Carbaugh, who was the president and principal shareholder of USI, caused USI to file a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware.

4. Just prior to filing the bankruptcy petition, USI owned and operated the community wastewater systems known as the Woodlands of Millsboro ("Woodlands"), Gull Point, and Henlopen Station.

5. In addition to the wastewater systems referred to in the

preceding paragraph, USI previously operated a community wastewater system at the Woods on Herring Creek ("WOHC"). USI voluntarily and illegally abandoned the wastewater system at the WOHC in December 2004.

6. The USI wastewater systems at the Woodlands and Gull Point provide the only wastewater treatment service presently available to those two residential communities. The Henlopen Station wastewater system does not treat wastewater, but is the sole means to collect and transmit the wastewater from the community to the Sussex County sewer system.

7. Prior to the filing of the Chapter 7 bankruptcy, USI contracted with White Marsh Environmental Systems, Inc. ("White Marsh") to operate the wastewater systems at the Woodlands of Millsboro and Gull Point in exchange for payments to White Marsh pursuant to the contracts.

8. Before filing its bankruptcy petition, USI defaulted in its contracts with White Marsh by failing to make payments to White Marsh as required by the contracts.

9. USI abandoned and discontinued its regulated public utility business, operations, and services at the Woodlands, Gull Point, and Henlopen Station by failing to operate and maintain the systems, failing to pay White Marsh under its contracts, and ceasing all operations of any kind.

10. The treatment beds which constitute part of the wastewater systems at the Woodlands and Gull Point have been experiencing significant environmental problems, including surfacing of wastewater effluent. The conditions at the two wastewater systems raise serious and immediate environmental and public health concerns.

11. USI has been cited by the Commission and the Delaware Department of Natural Resources and Environmental Control ("DNREC") for regulatory violations at the Woodlands.

12. The Bankruptcy Court entered an Order on July 11, 2006 granting the Bankruptcy Trustee's motion to abandon USI's three wastewater systems at the Woodlands, Gull Point, and Henlopen Station. In the same Order, the Trustee also received Court approval to abandon the WOHC wastewater system.

13. USI is insolvent.

14. USI's liabilities exceed its assets and USI's income is inadequate to pay its expenses.

15. USI's insolvency is evidenced by the voluntary bankruptcy petition filed by H. Clark Carbaugh on behalf of USI.

16. USI lacks the financial resources to operate, maintain, and/or make needed repairs and improvements to the wastewater systems at the Woodlands, Gull Point, and Henlopen Station.

17. H. Clark Carbaugh sent a letter to the Commission dated August 15, 2006 stating that he was no longer a corporate officer or director of USI. A copy of Mr. Carbaugh's letter is attached as Exhibit "A."

18. The USI wastewater systems at the Woodlands, Gull Point, and Henlopen Station serve residential customers and provide the only practical means for disposing of wastewater in the communities served by the systems and, in the cases of the Woodlands and Gull Point, the only means of treating the wastewater. Immediate steps need to be taken to assure the continued operation of the systems, and to limit further environmental damage and protect public health.

19. If, for any reason, the wastewater systems at the Woodlands, Gull Point, or Henlopen Station were to cease operating, great harm would ensue to the health, safety, welfare, and property of the residents of those communities, to public health, and to the environment.

20. In order to protect the health, safety, and welfare, and the property of the residents of the Woodlands, Gull Point, and Henlopen Station, to protect public health generally, and to protect the environment, immediate steps need to be taken to ensure the short-term and long-term operation and viability of their community wastewater systems.

21. Immediate steps need to be taken to ensure that any and all property of USI be employed: (a) to protect the health, safety and welfare, and the property, rights, and interests of the residents at the Woodlands, Gull Point, Henlopen Station, and the Woods on Herring Creek; and (b) to protect public health and the environment affected by USI's wastewater systems.

22. As stated above, USI received CPCNs from the Commission to operate the wastewater systems at the Woodlands and Gull Point.

23. USI never obtained CPCNs from the Commission to operate the wastewater systems at Henlopen Station or the WOHC, and therefore failed to obtain legal authority to operate those wastewater systems.

24. Pursuant to 26 Del. C. § 203A(c)(i), no public utility shall abandon or discontinue in whole or in part, any regulated public utility business, operations, or services provided under a CPCN or which are subject to the jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance.

25. USI never obtained Commission approval to abandon the wastewater systems at the Woodlands, Gull Point, or Henlopen Station.

26. USI never obtained Commission approval to abandon the wastewater system at the WOHC.

27. Pursuant to Commission Order No. 6783 (Nov. 22, 2005), the Commission determined that USI illegally abandoned the wastewater system at the WOHC in December 2004.

28. The wastewater system at the Woodlands requires substantial capital investment to operate properly at a potential cost of \$100,000 or more.

29. The wastewater system at Gull Point requires substantial capital investment to operate properly at a potential cost of \$100,000 or more.

30. The wastewater system at the WOHC requires substantial capital investment to operate properly at a potential cost of \$1,500,000 or more.

31. The wastewater system at Henlopen Station does not comply with applicable Sussex County Code provisions, which may seriously undermine any effort to transfer the system, or have Sussex County assume responsibility for the system.

32. Section 203D(j) of Title 26 provides:

(j) The Commission may, for good cause, undertake to suspend or revoke a certificate of public convenience and necessity held by a wastewater utility. Good cause shall consist of:

(1) A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Title 7, 16, or 26 dealing with the provision of wastewater services to customers, or any Order or rule of the Commission relating to the same; or

(2) A finding by the Commission that the wastewater utility has failed in a material manner to provide adequate or safe wastewater service to customers as evidenced by inadequate customer service, insufficient investment in, or

inadequate operation of, the system or otherwise; and

- (3) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative wastewater utility or a designated third party capable of providing adequate wastewater service; and
- (4) A finding by the Commission that to the extent practicable, any financial consequences to customers served by the utility subject to a revocation are appropriately mitigated.

The Woodlands of Millsboro

33. USI has violated provisions of Title 7, 16, and 26 dealing with the provision of wastewater service to customers at the Woodlands and also of Orders and rules of the Commission in numerous respects, including, but not limited to, the matters referred to below.

34. The USI wastewater system at the Woodlands has been in chronic violation of the provisions of Title 7 and regulations issued by the Department of Natural Resources and Environmental Control ("DNREC"). For example, on November 2, 2000, February 5, 2002, and January 9, 2004, DNREC issued Notices of Violation to USI of Title 7 and regulatory violations at the Woodlands. Among other things, USI was ordered by DNREC to pump wastewater from the system before it could reach the treatment beds, which are overloaded and have failed. However, USI deliberately violated DNREC's order by refusing and failing to pump wastewater from the system. USI's conduct caused repeated overloading of the failed treatment beds and the surfacing of wastewater effluent at the treatment beds.

35. In Order No. 6865 (Mar. 14, 2006), the Commission ordered USI to pay, in advance, the cost of a consultant to evaluate the wastewater

system at the Woodlands, and to do so by April 30, 2006. USI did not appeal Order No. 6865, and the Order is final.

36. Order No. 6865 (Mar. 14, 2006), was later amplified in Commission Order No. 6882 (Mar. 28, 2006). USI did not appeal Order No. 6882 and the Order is final. USI has failed to pay the cost of the consultant and is therefore in violation of Orders Nos. 6865 and 6882.

37. In Order No. 6875 (Mar. 14, 2006), the Commission ordered USI to place in escrow any funds received by USI from customers at its system at Henlopen Station (sometimes referred to as Henlopen Acres or Henlopen Junction). USI did not appeal Order No. 6875 and the Order is final. USI violated Order No. 6875 by failing to place into escrow funds that it received from Henlopen Station customers.

38. In Order No. 6883 (Mar. 28, 2006), the Commission ordered USI to fund the Henlopen Station escrow account. USI did not appeal Order No. 6883 and the Order is final. USI has violated Order No. 6883 by failing to fund the escrow account.

39. In Order No. 6652 (June 7, 2005), the Commission ordered USI to:

immediately maintain its books and records in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners' System of Accounts for Wastewater and Sewer Systems.

USI did not appeal Order No. 6652 and the Order is final.

40. USI violated Order No. 6652 by failing to maintain its records in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners' System of Accounts for Wastewater and Sewer Systems.

41. Pursuant to Rule 9.2 of the "Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke

Certificates of Public Convenience and Necessity to Provide Wastewater Services," the Commission may consider certain factors in determining whether to revoke USI's CPCN at the Woodlands.

42. At a minimum, USI's conduct involves transgressions of the following provisions of Rule 9.2:

9.2.1 Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the wastewater utility;

* * * *

9.2.3 Actual, threatened or impending insolvency of the wastewater utility; . . .

9.2.4 Persistent, serious, substantial violations of statutes or regulations governing the wastewater utility in addition to any finding of non-compliance required by Section 9.1.1 above; . . .

9.2.5 Failure or inability on the part of the wastewater utility to comply with an order of any other federal, state or local regulatory body after the wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance

43. The conduct of USI poses an imminent threat to the health and safety of its customers at the Woodlands, to the general public, and/or to the environment.

44. USI is financially and otherwise incapable of: (a) operating the system at the Woodlands; (b) correcting the many deficiencies in the system at the Woodlands; and (c) resolving the deficiencies in its own operations.

45. The Staff of the Public Service Commission conducted an emergency community meeting with residents of the Woodlands on August 3, 2006, along with a representative of DNREC and two representatives of White Marsh, and, in addition, conducted an inspection of the former USI wastewater system.

46. The former USI wastewater system at the Woodlands is in deplorable condition. The deficiencies include, but are not limited to: (a) an inadequate electrical system; (b) inadequate pollution control and treatment equipment; (c) a so-called hand-made SBR system that does not act as a proper SBR system; (d) septic tanks adjacent to homes that require pumping a minimum of every three years that have not been pumped in eleven years; (e) waste back-ups into homes; (f) failed treatment beds; and (g) surfacing of wastewater effluent in treatment beds, including treatment beds along the property line of a resident's back yard.

47. USI has failed in a material manner to provide adequate or safe wastewater service to customers at the Woodlands as evidenced by inadequate customer service, insufficient investment in, and/or inadequate operation of the system at the Woodlands, in that, among other things:

- a) USI permitted the treatment beds at the Woodlands to become overloaded and to fail;
- b) USI continued to direct wastewater to the treatment beds at the Woodlands after they were overloaded and failed causing repeated instances of surfacing of wastewater effluent;
- c) USI failed to make investments in the system in order to prevent and rectify the problems with the system;
- d) USI failed to operate and maintain the system in a manner that would prevent the overloading and failure of the treatment beds and the surfacing of wastewater effluent;

- e) USI retained White Marsh as a contract operator, but failed to pay White Marsh under the contract, creating a risk that the system would be left without an operator;
- f) USI abandoned the wastewater system at the Woodlands; and
- g) USI is insolvent and incapable of providing adequate or safe wastewater service to customers at the Woodlands.

48. To the extent practicable, service to customers at the Woodlands will remain uninterrupted under a contract operator such as White Marsh, which is capable of providing adequate wastewater service subject to the existing circumstances.

49. Financial consequences to customers at the Woodlands will be appropriately mitigated through the relief granted herein.

Gull Point

50. USI has violated provisions of Title 7, 16, and 26 dealing with the provision of wastewater service to customers at Gull Point and also of Orders and rules of the Commission in numerous respects, including, but not limited to, the matters referred to below.

51. The USI wastewater system at Gull Point is in violation of the provisions of Title 7 and regulations issued by DNREC.

52. In Order No. 6875 (Mar. 14, 2006), the Commission ordered USI to place in escrow any funds received by USI from customers at its system at Henlopen Station (sometimes referred to as Henlopen Acres or Henlopen Junction). USI did not appeal Order No. 6875 and the Order is final. USI violated Order No. 6875 by failing to place into escrow funds that it received from Henlopen Station customers.

53. In Order No. 6883 (Mar. 28, 2006), the Commission ordered USI to fund the Henlopen Station escrow account. USI did not appeal Order No. 6883 and the Order is final. USI has violated Order No. 6883 by failing to fund the escrow account.

54. In Order No. 6652 (June 7, 2005), the Commission ordered USI to:

immediately maintain its books and records in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners' System of Accounts for Wastewater and Sewer Systems.

USI did not appeal Order No. 6652 and the Order is final.

55. USI violated Order No. 6652 by failing to maintain its records in accordance with Generally Accepted Accounting Principles and the National Association of Regulatory Utility Commissioners' System of Accounts for Wastewater and Sewer Systems.

56. Pursuant to Rule 9.2 of the "Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services," the Commission may consider certain factors in determining whether to revoke USI's CPCN at Gull Point.

57. At a minimum, USI's conduct involves transgressions of the following provisions of Rule 9.2:

9.2.1 Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the wastewater utility;

* * * *

9.2.3 Actual, threatened or impending insolvency of the wastewater utility; . . .

9.2.4 Persistent, serious, substantial violations of statutes or regulations governing the wastewater utility in addition to any finding of non-compliance required by Section 9.1.1 above; . . .

9.2.5 Failure or inability on the part of the wastewater utility to comply with an order of any other federal, state or local regulatory body after the wastewater utility has been notified of its non-compliance and given an opportunity to achieve compliance

58. The conduct of USI poses an imminent threat to the health and safety of its customers at Gull Point, to the general public, and/or to the environment.

59. USI is financially and otherwise incapable of: (a) operating the system at Gull Point; (b) correcting the many deficiencies in the system at Gull Point; and (c) resolving the deficiencies in its own operations.

60. The Staff of the Public Service Commission conducted an emergency community meeting with residents of Gull Point on August 2, 2006, along with a representative of DNREC and a representative of White Marsh and, in addition, conducted an inspection of the former USI wastewater system.

61. The former USI wastewater system at Gull Point is in deplorable condition. The deficiencies include, but are not limited to: (a) an inadequate electrical system; (b) inadequate pollution control and treatment equipment; (c) failed treatment beds; and (d) surfacing of wastewater effluent in treatment beds, including treatment beds adjacent to residents' back yards and a community swimming pool.

62. USI has failed in a material manner to provide adequate or safe wastewater service to customers at Gull Point as evidenced by inadequate customer service, insufficient investment in, and/or inadequate operation of the system at Gull Point, in that, among other things:

(a) USI permitted the treatment beds at Gull Point to

become overloaded and to fail;

- (b) USI continued to direct wastewater to the treatment beds at Gull Point after they were overloaded and failed causing repeated instances of surfacing of wastewater effluent;
- (c) USI failed to make investments in the system in order to prevent and rectify the problems with the system;
- (d) USI failed to operate and maintain the system in a manner that would prevent the overloading and failure of the treatment beds and the surfacing of wastewater effluent;
- (e) USI retained White Marsh as a contract operator, but failed to pay White Marsh under the contract, creating a risk that the system would be left without an operator;
- (f) USI abandoned the wastewater system at Gull Point;
and
- (g) USI is insolvent and incapable of providing adequate or safe wastewater service to customers at Gull Point.

63. To the extent practicable, service to customers at Gull Point will remain uninterrupted under a contract operator such as White Marsh, which is capable of providing adequate wastewater service.

64. Financial consequences to customers at Gull Point will be appropriately mitigated through the granting of the relief requested herein and otherwise.

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

1. Utility Systems, Inc., by counsel or duly authorized officer, shall file with this Commission a written response to this Order showing good cause, if any it has, why the Certificates of Public Convenience and Necessity for the Woodlands of Millsboro and Gull Point community wastewater systems previously granted to that entity should not be revoked for the reasons stated in this Order. Such written response must be filed with the Commission on or before September 11, 2006. If Utility Systems, Inc. desires the Commission to conduct an evidentiary hearing on the issue of whether Utility Systems, Inc.'s Certificates of Public Convenience and Necessity should be revoked, Utility Systems, Inc. should include a request for such hearing in its written response. If the Commission does conduct such a hearing, Utility Systems, Inc. shall have the right to present evidence, to be represented by counsel, and to appear personally or by other representative. The Commission will thereafter reach its decision based on the evidence presented at such hearing.

2. If Utility Systems, Inc. fails to file, in a timely fashion, the written response as directed in the preceding paragraph, the Commission will revoke Utility Systems, Inc.'s Certificates of Public Convenience and Necessity without a hearing and without any further notice to Utility Systems, Inc.

3. The Secretary shall send a copy of this Order to the last known addresses of Utility Systems, Inc. and its former President H. Clark Carbaugh.

4. The Commission Staff is directed to work cooperatively with the communities at the Woodlands of Millsboro, Gull Point, Henlopen Station, and the Woods on Herring Creek to maintain their wastewater

systems on a temporary basis, and assist them in developing short-term and long-term plans for the handling, treatment, and disposal of their wastewater, including, but not limited to, transferring the wastewater systems to a viable operator or operators, with any such transfers being subject to the prior approval of the Commission.

5. The Commission, through its Staff, shall marshal any and all assets of Utility Systems, Inc. that are within the jurisdiction of the Commission and, subject to the prior approval of the Commission, shall apply those assets to defray the costs to Utility Systems, Inc.'s customers at the Woodlands of Millsboro, Gull Point, Henlopen Station, and the Woods on Herring Creek: (1) to rectify the deficiencies in their wastewater systems; and/or (2) to replace their wastewater systems; and/or (3) to obtain wastewater service from an alternative wastewater service provider.

6. Subject to the prior approval of the Commission, the Staff shall undertake to take additional steps to mitigate the financial consequences to Utility Systems, Inc.'s customers at the Woodlands of Millsboro, Gull Point, Henlopen Station, and the Woods on Herring Creek related to Utility Systems, Inc.'s abandonment of its wastewater systems and its insolvency.

7. Henceforth, Utility Systems, Inc., its officers, directors, receivers, agents and assigns, and any other person purporting to act on Utility Systems, Inc.'s behalf, are prohibited from expending, transferring, leasing, assigning, encumbering, or otherwise disposing of any funds, property of any kind, rights, title, or interests of any kind of Utility Systems, Inc., that are not subject to the jurisdiction of the Bankruptcy Court, or taking any other action on behalf of Utility Systems, Inc. in matters outside of the jurisdiction of the Bankruptcy

Court, without first obtaining the prior approval of the Commission.

8. 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/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

EXHIBIT

A

CC: [unclear]

H. CLARK CARBAUGH

17 Tallowick Lane
Dover, DE 19904

Phone: 302-674-0771

August 15, 2006

Delaware Public Service Commission
Attn: Mr. Bruce Burcat, Executive Director
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

RE: Henlopen Station

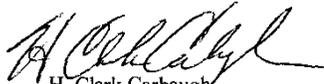
Dear Mr. Burcat:

I have received your letter of July 27, 2006 regarding the request for exceptions to the Hearing Examiners' Report on Henlopen Station.

You are aware that I am no longer a corporate officer or director of Utility Systems, Inc. Based on my understanding of the situation, there is currently no individual who has the authority to speak for Utility Systems, Inc. regarding the PSC proceeding concerning Henlopen Station. Accordingly, I have to question how the PSC can now proceed in a matter which logically must receive input from the opposing viewpoint.

In any event, I will not be responding to your request for the filing of exceptions in this matter.

Very truly yours,


H. Clark Carbaugh

- cc: Francis J. Murphy, Esquire
- G. Arthur Padmore
- Larry Ray
- Montague Claybrook