

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
BASS PROPERTIES, INC., FOR APPROVAL)
OF RATES TO GOVERN THE PROVISION OF) PSC DOCKET NO. 05-205WW
WASTEWATER SERVICES IN DELAWARE)
(FILED JUNE 17, 2005))

ORDER NO. 7075

This 21st day of November, 2006, the Commission determines and Orders the following:

1. In June 2004, Bass Properties, Inc. ("Bass"), operated a wastewater utility system serving the Lea Eara Farms development in New Castle County. When this Commission assumed regulatory authority over public wastewater utilities, Bass was a "grandfathered" utility, and was certificated to serve the Lea Eara Farms service territory. See PSC Order No. 6608 (Apr. 26, 2005). As part of the "grandfathering" process, Bass had to file its June 2004 rate which was then "frozen" pending Commission review. See 26 Del. C. § 301(c) (2004 Supp.).¹

2. The Commission began its review of Bass's grandfathered rate by directing both published and direct customer notices soliciting comments. See PSC Order No. 6672 (July 5, 2005). Unfortunately, neither form of notice was given: Bass failed to

¹Staff reports that, as of June 2004, Bass's wastewater operations were subject to a 1990 Trust Declaration that required that the rate for its services could not be less than the costs of operating the utility but also could not exceed the New Castle County unit rate for public sanitary service customers, as may be amended from time to time. Bass's June 2004 rate was apparently at the maximum level permitted under the declaration - the rate then being charged by the New Castle County public sewer system.

provide direct notices to its customers and the newspaper notice was never published. Concurrently, control over Bass was internally changed, but without any prior Commission approval.² Moreover, Staff found it difficult to procure data from Bass about its costs and revenues.

3. Eventually Bass contracted with Artesian Utility Development, Inc. ("AUDI") for the latter to operate the Bass wastewater system. AUDI has prepared and submitted to Staff a pro forma Tariff, with the "frozen" rate and rules for customer service. AUDI has also provided Staff with financial data, including projections of revenues and expenses during AUDI's tenure, as well as historical data related to Bass's earlier direct operations of the system.

4. Staff now reports that it has reviewed the financial data and concludes that it is "readily apparent" that Bass's current rate (its June 2004 rate) does not recover the full costs incurred in operating the wastewater system. In addition, AUDI has indicated that it too believes that Bass needs to seek a rate increase to ensure the long-term viability of the system.

5. Given the unique circumstances involved here, the Commission will now approve Bass's grandfathered June 2004 rate under 26 Del. C. § 301(c). By doing so, Bass can now move forward to

²See 26 Del. C. § 215(b).

develop a financial strategy to ensure system viability, including (if required) an application for a rate increase.³

6. The Commission acknowledges that in other "grandfathered" scenarios, it has approved frozen rates only after allowing affected current customers the opportunity to comment on current rates and current service. In fact, the Commission initially called for that process here. However, the Commission now believes it might be better to forego such notices and approve the June 2004 carried-forward rate.⁴ In Staff's analysis, that frozen rate is too low to meet the current system costs. And it appears likely that Bass will file for a rate increase in the near future. The Commission fears that it might be confusing for Bass's customers to now receive notice about Commission review and approval of the June 2004 rate and then, within a short period, receive a second notice about a rate increase. The customer's question would surely be: if the June 2004 rate was found reasonable by the Commission in November 2006, how could the utility seek a rate increase so soon afterwards? The Commission thinks the better process is simply to now approve this presumably "below-cost" grandfathered rate and allow for customer input on rate levels and service quality when Bass files for its rate increase. The Commission emphasizes that

³Apparently, New Castle County has recently increased its rates for public sewer service, which would have the effect of moving upward the rate cap contained in the Bass Trust declaration. The Commission does not make any determination in this Order on the continued applicability of the Trust declaration's rate formula now that the Commission has statutory rate regulation oversight.

⁴Section 301(c) does not explicitly require notice to customers as part of the Commission's review of grandfathered rates.

in such application, the Commission can review all aspects of Bass's finances and operations.⁵

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

1. That, the rate set forth below, which was charged by Bass Properties, Inc., in its service territory granted in PSC Order No. 6608 (Apr. 26, 2005), and as of June 7, 2004 and July 6, 2004, is confirmed under 26 Del. C. § 301(c) (2004 Supp.). Until changed by later Order of the Commission, the following rate shall be the lawful rate for service in that service territory:

The charge per residential dwelling unit is based on water usage data provided by the water supplier. Of the four most recent quarterly readings, the two quarters of lowest consumption are selected, added together, and the sum doubled to create an annual billing consumption. This annual billing consumption is then multiplied by \$3.24517 per thousand gallons to create the annual bill.

2. That within ten days of this Order, Bass Properties, Inc. shall file a final Tariff to govern its services. Such Tariff shall include the rate set forth in Ordering paragraph 1. Such Tariff shall be effective upon approval by Staff.

3. That the Staff shall monitor the revenues and costs for the wastewater system operated by Bass Properties, Inc., on at least an annual basis, to determine whether the revenue and cost projections submitted to Staff conform to later actual experience.

⁵The Commission directs Bass to file a Tariff to mirror its June 2004 rate. That Tariff should not include any rates not in effect on that June 2004 date. In particular, Bass did not claim in its schedule of June 2004 rates any late payment, return check charge, or inspection fee. Those fees should not be in the first Tariff. If Bass desires to now seek such charges, it should file an application for such charges, either as a stand-alone request or as part of a larger rate increase filing.

4. That all questions (including potential sanctions) arising from the transfer of control of Bass Properties, Inc., without prior approval under 26 Del. C. § 215(b), are deferred to a later determination and Order.

5. The Commission reserves the jurisdiction and authority to enter such other or 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/ Jeffrey J. Clark
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary