

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN UTILITY DEVELOPMENT, INC.,)
ON BEHALF OF BASS PROPERTIES, INC.,)
FOR APPROVAL OF AN INCREASE IN RATES) PSC DOCKET NO. 07-73WW
TO GOVERN THE PROVISION OF WASTEWATER)
SERVICES TO LEA EARA FARMS, NEW)
CASTLE COUNTY, DELAWARE)
(FILED MARCH 12, 2007))

ORDER NO. 7225

This 3rd day of July, 2007, the Commission determines and Orders the following:

1. Bass Properties, Inc. ("Bass Properties") is the owner of a wastewater collection and treatment system that serves the Lea Eara Farms residential development in New Castle County. In that capacity, Bass Properties is a "grand-fathered" public wastewater utility, subject to regulation by the Commission.¹

2. The Commission previously approved Bass Properties' grand-fathered wastewater rates, carried forward from June, 2004. See PSC Order No. 7075 (Nov. 21, 2006).² The Commission did so even though

¹See 26 Del. C. §§ 102(6), 301(c) (2006 Supp.). See PSC Order No. 6608 (Apr. 26, 2005) (certificating Bass Properties to continue to provide wastewater services to Lea Eara Farms service territory).

²The "grand-fathered" rate element was \$3.24517 per 1,000 gallons. Bass Properties charges its some 243 customers an annual charge for its wastewater services. The amount of the annual wastewater charge for each customer is calculated by applying the "per thousand gallons" rate element factor to the customer's adjusted water consumption in the preceding four quarters. The annualized water consumption figure is derived by disregarding the two quarters of highest consumption and then doubling the water consumption reported for the remaining two quarters. Bass Properties, Inc. Tariff at Part I, Section A. Apparently, Bass Properties' rate formula echoes a similar consumption formula used by New Castle County for its public sewer services

Bass Properties had earlier failed to comply with a Commission directive to notify its customers of the Commission's review of its "existing" rates. The Commission took such tact because Bass Properties had then indicated that it intended to seek an increase in the rate element in order to avoid continued losses. See PSC Order No. 7075 at ¶¶ 2-5.³

3. On March 12, 2007, Bass Properties (by AUDI) filed a letter application seeking approval for that anticipated increase in the rate element from \$3.24517 to \$4.64787 per 1,000 gallons. (Exh. 1.) The Commission allowed such increase to go into effect (subject to refund) on June 1, 2007 but directed Bass Properties to publish newspaper notice of its application and to provide, by mail, a similar notice to each of its existing customers. The notices announced a Commission hearing on the application to be held July 3, 2007. They also solicited comments from customers not only about the proposed rate increase but the quality of Bass Properties' wastewater services.

4. This time, Bass Properties published and mailed the required notices. See Exhs. 2 (affidavit of publication); 3 (affidavit of mailing). No one has sought to intervene. Moreover, Staff reports that no comments have been received about the rate element increase or any deficiencies in Bass Properties' wastewater services.

to residential customers. See Code of New Castle County, Delaware, sec. 38.02.505A (Mar. 2007).

³By this time, Bass Properties had retained Artesian Utility Development, Inc. ("AUDI") to manage the Lea Eara Farms' system.

5. The Commission held the noticed-hearing during its regular public meeting on July 3, 2007. No customer appeared. At such hearing, the Commission heard from AUDI (representing Bass Properties) about the need for the increase in the rate element and how the new rate element was linked to, and derived from, the rate element utilized by New Castle County for its residential public sewer service since June, 2006. In addition, the Commission considered the Staff memorandum (Exh. 4) and oral presentation of LeFeisha Williamson, the assigned Staff analyst. Staff reported that even with the proposed rate element increase, the revenues from rates would not meet the system's operating costs. Staff reported that the new rate element mirrored the similar rate element currently used by New Castle County for its residential services. According to Staff, under a Trust Declaration entered in 1990, Bass Properties agreed with New Castle County to charge rates no greater than that being charged by New Castle County for its services.⁴ Staff recommends approval of the increase in the rate element to \$4.64787 per thousand gallons.⁵

6. Based on the evidence presented, and Staff's recommendation, the Commission finds the increase in the rate element appropriate and not unreasonable. In doing so, the Commission notes

⁴The same provision in the Trust Declaration also directs that rates cannot be below the actual cost of operating the system.

⁵In Order No. 7075 n. 5, the Commission declined to approve any late fee or other administrative charges for Bass Properties given that those charges were apparently not in effect in June, 2004. However, in December, 2006, when AUDI filed its compliance tariff for Bass Properties, the tariff included a late fee, a returned check charge, and a restoration of service charge. Those charges were also included in the tariff revisions filed by AUDI when the Commission allowed the increase in the rate element to go into effect on June 1, 2007. Staff has no objection to the inclusion of these charges or the level of the specific fees. To clarify the situation, the Commission now approves those administrative fees effective as of June 1, 2007.

that the revenues anticipated from the rate increase might still not meet the system's operating costs. However, consistent with the "upper" limit imposed under the 1990 Trust Declaration, Bass Properties has not sought any increase above the level now being charged New Castle County's sewer services. The Commission will not impose any rate higher than the one sought. In doing so, the Commission assumes that Bass Properties will bear full responsibility for any short-fall in revenues. More importantly, the Commission expects that Bass Properties will fulfill its statutory obligations to provide sufficient and adequate services and facilities under the now increased higher rate.⁶

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

1. That, the application of Bass Properties, Inc. filed on March 12, 2007, that seeks to increase the rate element in Part I, Section A of its Tariff from \$3.24517 per thousand gallons to \$4.64787 per thousand gallons is hereby finally approved. Such adjusted rate shall be deemed to be in effect on June 1, 2007. Bass Properties, Inc. shall not be obligated for any refunds under PSC Order No. 7161 (Apr. 24, 2007). In addition, the "Late Fee Penalty," "Returned Check Charge," and "Restoration of Service Charge" charges set forth in Part I of such Tariff are also finally approved, as of June 1, 2007.

⁶The Commission need not now explore the interplay between the 1990 Trust Declaration's rate "floor" and "cap" limits and the general authority granted to the Commission in 2004 to supervise the rates charged by private wastewater utilities.

2. That Bass Properties, Inc. shall make any necessary compliance filing to reflect this final decision within ten days of this Order. Staff shall approve such compliance filing.

3. 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:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary