

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
THE WOODLANDS OF MILLSBORO HOMEOWNERS)
ASSOCIATION, INC. FOR ABANDONMENT OF)
WASTEWATER SYSTEM AND SERVICES) PSC DOCKET NO. 10-440
OPERATED UNDER THE AUTHORITY GRANTED)
BY PSC ORDER NO. 7014)
(FILED DECEMBER 28, 2010))

IN THE MATTER OF THE APPLICATION OF)
UTILITY SYSTEMS, INC. FOR APPROVAL OF)
RATES TO GOVERN THE PROVISION OF) PSC DOCKET NO. 04-475WW
WASTEWATER SERVICES IN DELAWARE)
(FILED DECEMBER 17, 2004))

ORDER NO. 8324

AND NOW, this 19th day of March, 2013, the Public Service Commission (the "Commission") determines and orders the following:

WHEREAS, on November 23, 2004, the Commission granted a Certificate of Public Convenience and Necessity ("CPCN") by PSC Order No. 6521 to Utility Systems, Inc. ("USI") to operate and maintain a wastewater system for the residents living in The Woodlands of Millsboro, Delaware, located west of the town of Millsboro, Sussex County, Delaware (the "Woodlands of Millsboro"); and

WHEREAS, on December 17, 2004, USI filed an application to approve wastewater service rates for the Woodlands of Millsboro in PSC Docket No. 04-475WW; and

WHEREAS, on or about May 8, 2006, USI filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware; and

WHEREAS, prior to the filing of the Chapter 7 bankruptcy, USI contracted with White Marsh Environmental Systems, Inc. ("White

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Marsh") to operate the wastewater system at the Woodlands of Millsboro in exchange for payments to White Marsh pursuant to the contracts; and

WHEREAS, 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; and

WHEREAS, USI illegally abandoned and discontinued its regulated public utility business, operations, and services at the Woodlands of Millsboro by failing to operate and maintain the wastewater system at the Woodlands of Millsboro, failing to pay White Marsh under its contracts, and ceasing all operations of any kind; and

WHEREAS, on August 22, 2006, the Commission granted permission via Order No. 7014 to The Woodlands of Millsboro Homeowners Association, Inc. ("WHOA") to operate and provide wastewater services to the residents living in the Woodlands of Millsboro; and

WHEREAS, on December 28, 2010, WHOA filed with the Commission a request to abandon the wastewater operations and services for the residents of the Woodlands of Millsboro; and

WHEREAS, pursuant to 26 *Del. C.* §203A(c)(1), 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 otherwise which are subject to the jurisdiction of the Commission without first having received Commission approval for such abandonment or discontinuance; and

WHEREAS, pursuant to 26 *Del. C.* §203A(c)(2), applications seeking such Commission approval must be made to the Commission in writing, verified by oath or affirmation, and be in such form and contain such

information as the Commission may from time to time require; and

WHEREAS, 26 *Del. Admin. C.* §1001-1.7.2 further provides that all petitions and other filings that allege facts not otherwise in the record must be accompanied by a signed, sworn verification and that where the filer is a corporation or an association, the verification shall be signed by a bona fide officer thereof; and

WHEREAS, Staff has repeatedly requested that WHOA submit a verified application signed by a bona officer thereof, but WHOA has failed to do so;¹ and

WHEREAS, WHOA has already transferred all of its wastewater facilities, operations, and services for the Woodlands of Millsboro to Sussex County and therefore is no longer providing any wastewater services to the residents of the Woodlands of Millsboro; and

WHEREAS, pursuant to 26 *Del. C.* §203A(c)(3), the Commission shall approve an application for abandonment when it finds that the utility has met its burden of proving that the abandonment or discontinuance is reasonable, necessary, and not unduly disruptive to the present or future public convenience and necessity; and

WHEREAS, although WHOA has not filed with the Commission a verified application signed by a bona fide officer thereof, the Commission nevertheless finds that WHOA's abandonment of wastewater services to the Woodlands of Millsboro is, in this situation, reasonable, necessary, and not unduly disruptive to the present or future public convenience and necessity because Sussex County has been

¹ Such requests were made by Staff on April 28, 2011, July 19, 2011, October 13, 2011, November 23, 2011, and November 26, 2011.

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providing such wastewater services to the customers in The Woodlands of Millsboro; and

WHEREAS, because neither USI nor WHOA are operating or providing wastewater systems to the customers in the Woodlands of Millsboro, the rate proceeding in PSC Docket No. 04-475WW is moot and should be closed;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. The Commission hereby grants The Woodlands of Millsboro Homeowners Association, Inc.'s request to abandon and discontinue operating and maintaining a wastewater system for the residents living in the Woodlands of Millsboro, Delaware, located west of the town of Millsboro, Sussex County, Delaware, pursuant to Order No. 7014 and such request is approved effective with the date of this Order.

2. The Commission also hereby closes PSC Docket No. 04-475WW as a moot matter.

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/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary