

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

IN THE MATTER OF THE APPLICATION OF EXCEL)
PROPERTY MANAGEMENT, LLC, FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO CONTINUE PROVIDING WASTEWATER)
SERVICES TO THE DEVELOPMENT OF BETHANY) PSC DOCKET NO. 04-WW-006
BETHANY BAY, LOCATED NEAR THE TOWN OF)
OCEAN VIEW, SUSSEX COUNTY, DELAWARE,)
PURSUANT TO THE PROVISIONS OF 26 DEL. C.)
§ 203D(a)(2) (FILED OCTOBER 22, 2004))

IN THE MATTER OF THE APPLICATION OF)
BETHANY BAY WASTEWATER TREATMENT PLANT FOR)
APPROVAL OF RATES TO GOVERN THE PROVISION) PSC DOCKET NO. 04-479WW
OF WASTEWATER SERVICES IN DELAWARE)
(FILED DECEMBER 21, 2004))

ORDER NO. 6905

This 25th day of April, 2006, the Commission determines and Orders the following:

1. In PSC Order No. 6519 (Nov. 23, 2004), the Commission granted a Certificate of Public Convenience and Necessity to Excel Property Management, LLC ("Excel"), to continue to operate as a wastewater public utility in the service territory encompassing the development of Bethany Bay, located near the town of Ocean View in Sussex County, Delaware. See 26 Del. C. § 203D(a)(2) (2004 Supp.).

2. During Staff's investigation of the reasonableness of Excel's current rates, questions arose whether Excel was in fact the actual entity either owning or operating the wastewater system serving the certificated service territory. See 26 Del. C. § 301(c) (2004 Supp.). The questions focused on whether the "utility" was actually either owned or operated by the developer (Linder & Company, Inc.),

the management agency (Excel), or a homeowners' association (Bethany Bay Homeowners Association, Inc.).

3. Consequently, Staff, on September 12, 2005, wrote to Excel asking for it to file a written response to several questions focusing on the identity of the owner and operator of the wastewater system. Despite several requests from Staff, Excel failed to provide any response to Staff's inquiries about asset ownership and the actual entity providing utility services.

4. Given Excel's failure to respond, the Commission, in Order No. 6833 (Feb. 7, 2006), directed Excel to file with the Commission written responses to the questions in Staff's letter dated September 12, 2005, no later than 4:30 P.M. on Tuesday, February 21, 2006. 26 Del. C. § 215(a)(1).

5. The developer, Linder & Company, Inc. ("Linder"), sent a letter to Staff dated February 9, 2006 in which Linder clarified the status of the ownership of the Bethany Bay wastewater system. The letter, which was signed by David H. Crowley, a Vice President of Linder, states, as follows:

Linder & Company, Inc. (Linder) owns Bethany Bay. Linder controls the three condominium associations that are not turned over and also controls the Bethany Bay H.O.A.

Linder as the Developer of Bethany Bay is the "Declarant". The Developer owns the BBSTP [Bethany Bay Sewage Treatment Plant] and all the lines in Bethany Bay. The developer has easements throughout the project. The Developer requires the unit owners to pay for the maintenance of the BBSTP. The Developer may turn over ownership of the plant to the unit owners or dispose of it if it is no longer needed. All the lines have been built to ordinance 38 specifications and will be turned over to the county when and if we get central sewer.

These issues are pointed out in the FOURTH AMENDMENT OF COVENANTS AND RESTRICTIONS FOR BETHANY BAY. I have enclosed a copy and highlighted the parts, which pertain to the Developers rights and the BBSTP.

In closing I will reiterate that Linder & Company, Inc., owns the Community Wastewater Collection, Treatment and Disposal system and all the sanitary lines. The unit owners pay for the maintenance in the form of dues to the Bethany Bay H.O.A. The H.O.A. has always decided the budget in the past. Linder does not touch the funds nor does Linder make a profit on the funds generated by the H.O.A. These funds are used for maintenance of the plant and for reserves. Linder owns the ground the plant is on but Linder does not charge any ground rent. Excel Property Management collects the funds and oversees expenses with David Baldo as operator. The form of ownership and Linder's control is necessary in a condominium development this large. The intention is to get public sewer as soon as possible and do away with the onsite BBSTP. The owners bear the expenses in exchange for their use.

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

1. That, in light of the foregoing information, the Commission hereby revokes the Certificate of Public Convenience and Necessity awarded to Excel Property Management, LLC, in Order No. 6519 (Nov. 23, 2004), and instead grants the Certificate of Public Convenience and Necessity to Linder & Company, Inc., in its existing service territory encompassing the development of Bethany Bay, located near the town of Ocean View in Sussex County, Delaware. The service territory is described in Exhibit "A" to this Order.

2. Linder & Company, Inc. shall comply with any and all federal, state, county, and local statues, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services

provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. The Commission retains jurisdiction in this matter, including the authority to enter such further Orders and conduct such further proceedings as it deems just, proper, or appropriate.

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

E X H I B I T "A"

APPROVED SERVICE AREA
PARCEL WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

BETHANY BAY
SUSSEX COUNTY, DELAWARE

SUSSEX COUNTY TAX MAP PARCEL NO.

134-8.00-42.00