

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES, INC.)
FOR APPROVAL OF A WASTEWATER TARIFF)
RATE FOR WASTE WATER SERVICES TO BE) PSC DOCKET NO. 11-419WW
PROVIDED TO "HOLLAND MILLS")
DEVELOPMENT LOCATED ON THE SOUTH SIDE)
OF WALKER ROAD, SOUTHEAST OF MILTON)
SUSSEX COUNTY, DELAWARE)
(FILED SEPTEMBER 27, 2011))

ORDER No. 8095

DENYING ADMISSION INTERVENOR STATUS TO INDIVIDUAL HOMEOWNERS

AND NOW, this 20th day of December, 2011, pursuant to the authority granted to me in PSC Order No. 8091 dated December 20, 2011, this Hearing Examiner having considered the Petitions for Leave to Intervene ("the Petition") filed by Anthony Foschini, Edward I. Kay and Mark and Gertrude Schmidt ("the Petitioners");

WHEREAS, Tidewater Environmental Services, Inc. ("TESI") is a public utility providing wastewater service and is subject to the regulatory supervision of the Commission; and

WHEREAS, in 2005, the Commission granted TESI a Certificate of Public Convenience and Necessity ("CPCN") to begin operations and provide wastewater services to a development known as "Holland Mills" located on the south side of Walker Road, Southeast of the City of Milton, in Sussex County, Delaware. See PSC Order No. 6734 (October 11, 2005);¹ and

WHEREAS, in its September 27, 2011 Application, TESI asked the Commission to approve a wastewater tariff rate of \$1,380.00 per year for wastewater services to be provided for customers in Holland Mills; and

¹ In PSC Order No. 6734, the Commission granted TESI a CPCN to provide wastewater services to two parcels of land proposed for development as a 287 unit subdivision, referred to as the "Holland/Anthem Mills Project," located on both sides of Walker Road, Southeast of Milton, Sussex County, Delaware, and more specifically identified by Sussex County tax parcels numbers 235-26.00-07.00 and 235-26.00-008.00. This Order applies to only the development known as "Holland Mills."

WHEREAS, on November 8, 2011, by Order No. 8073, the Commission permitted the annual rate of \$1,380.00 per year to go into effect, on a temporary basis subject to refund in whole or in part, if the Commission later determined the rate was unjust or unreasonable.

NOW, THEREFORE,

1. The Petitions for Leave to Intervene are denied.
2. In their Petitions, the homeowners each argue that the Developer, Walker Road Development, LLC, and the Seller, Capstone Homes, failed to disclose material facts relating to the construction, operation, condition and payment obligations regarding the wastewater facilities at Holland Mills.
3. The Commission does not have jurisdiction over the homeowners' claims according to Delaware's Public Utility Act. See Title 26, *Del. C.*
4. However, the Commission does have jurisdiction over this wastewater rate case filed by a public wastewater utility with more than fifty (50) customers, according to 26 *Del. C.* § 201 and 203D(a)(1).
5. For purposes of considering the merits of the Petitions, I assume as true the representations made in the Petitions. However, none of the Petition allege specifically, or can be construed as adequately alleging, that any Petitioner has particularized expertise and experience which may be valuable to the Commission in deciding the issues which the Commission has jurisdiction over in this docket. Thus, The Petitioners have not satisfied the intervention requirements of Rule 21 of the Commission's *Rules of Practice and Procedure*.
6. I note that The Commission Staff and the Division of Public Advocate (DPA) are already parties to this Docket.² Each is represented by a Delaware Deputy Attorney General. These parties and their respective experts and attorneys, are

² The DPA intervened on November 14, 2011 pursuant to its statutory right of intervention. See 29 *Del. C.* §8716 (g).

experienced in utility regulation. Moreover, all documents filed in this docket are available for inspection by the Petitioners at the Commission's Dover office by appointment. Finally, the Petitioners are free to attend the evidentiary hearing.

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

1. Accordingly, the Petitions for Intervention filed by Petitioners are **DENIED**.

BY ORDER OF THE COMMISSION

/s/ Mark Lawrence

Mark Lawrence
Hearing Examiner