

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES, INC.) PSC DOCKET NO.11-329WW
FOR AN INCREASE IN WASTEWATER)
RATES)
(Filed July 29, 2011)

ORDER NO. 8076

FOR ADMISSION AS AN INTERVENOR,
SUBJECT TO CONDITIONS

AND NOW, this 21st day of November, 2011, pursuant to the authority granted to this Hearing Examiner in PSC Order No. 8012 dated August 9, 2011, and having considered the Petition for Leave to Intervene ("the Petition") filed by the Town of Milton ("the Town"), this Hearing Examiner determines the following:

1. On November 17, 2011, the Town of Milton filed a Petition to Intervene by its attorney Seth L. Thompson, Esq., which was verified by the Town's Manager, Wilmer Abbott.

2. In PSC Order No. 8012, the Commission ordered that the deadline for filing petitions for intervention was September 16, 2011. (See Order, ¶4.)

3. Thus, the Town of Milton's Petition to Intervene was filed out of time.

4. However, in its Petition to Intervene, the Town of Milton persuasively alleges that the Town should be permitted to intervene. The Petition alleges that the Town is different from the six (6) other

communities involved in this docket.¹ The Town's Petition questions whether its proposed rate increase is properly proportional to the other affected communities. (See Petition to Intervene at ¶5.)

5. According to the Application filed by Tidewater Environmental Services, Inc. ("TESI"), each affected community was built at a different time and is served by a treatment plant with a different capacity, except Bay Front and Bay Pointe which are served by the same treatment plant. (See Application dated July 29, 2011, pp. 2-4.) Each community has a different number of homes, ranging from 55 homes at Breeders Crown to 1,274 customers being served at the Town of Milton, TESI's largest customer. (*Id.*) Some communities are fully built-out, while three (3) communities are only approximately 50% sold. (*Id.*)

6. The Town's Petition also alleges that the Town and TESI "entered into a Wastewater Services Agreement effective February 24, 2007, as amended on June 13, 2007, which essentially privatized the Town's wastewater system." (*Id.* at ¶3.) The Town's Petition further alleges that "[s]hould [TESI's rate] Application be granted, the terms and purpose of the Agreement would be circumvented."² (*Id.* at ¶5.)

7. Finally, the Town's Petition alleges that it was filed out of time because: 1) the Town has been immersed in a rather difficult

¹ The six (6) other communities involved are: The Retreat, Country Grove, Breeders Crown, Bay Front, Bay Pointe and Harts Landing. All are located in Sussex County except Breeders Crown, which is located in Kent County.

² The Town's Petition also alleges its interpretation of the provisions of the Wastewater Services Agreement between the Town and TESI. The Commission has jurisdiction to regulate and establish wastewater rates in this case since TESI is a public wastewater utility with over fifty (50) customers. See 26 Delaware Code §201(a); 74 Delaware Laws, Chapter 317. However, according to Delaware's Supreme Court, the Commission does not have jurisdiction to interpret the private Agreement between TESI and the Town, since it is a debt controversy. *E.g.*, *Artesian Water v. Cynwood Club Apartments*, 297 A.2d 387 (Del. 1972); *Bass Properties, Inc. v. Delaware Public Service Commission*, 2001 WL 2791129 (Del. Super. July 14, 2011).

budget review process resulting in a 20% increase in homeowner property taxes; and 2) the intervention deadline for this wastewater docket was confused with the intervention deadline for the pending water rate docket filed by TESI's affiliate, Tidewater Utilities, Inc., PSC Docket No. 11-399. (*Id.* at ¶8.)

8. Despite notice of the proposed intervention, no party opposed the Town's Petition to Intervene except TESI which opposed the proposed intervention because: 1) TESI believes that Staff and the DPA would adequately represent the Town's interest; and 2) costs could be increased if the Town was permitted to intervene. (See TESI Response dated November 18, 2011, ¶5.)

9. I received a communication from the Division of Public Advocate ("DPA") not opposing the Town's Petition to Intervene.

10. For purposes of considering the merits of the Town's Petition, I assume as true the representations made in its Petition by its attorney as verified by the Town's Manager, as well as TESI's Application. Specifically, as previously described herein, when considered with TESI's Application, in good faith, the Town has adequately alleged that it has particularized facts which may be valuable to the Commission in deciding the issues in this docket. Thus, the Town has satisfied the intervention requirements of Rule 21 of the Commission's *Rules of Practice and Procedure*.

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

1. Accordingly, the Town of Milton's Petition for Leave To Intervene is **GRANTED**.

2. The Town of Milton shall be added to the Service List for this Docket.

3. The Town of Milton is hereby placed on notice that it is required to comply in all respects with the Commission's *Rules of Practice and Procedure* as well as all Delaware statutes, rules and regulations pertinent to this Docket.

4. The Town of Milton's out of time intervention shall not, in any way, affect or change the Procedural Schedule which was agreed upon by the parties and issued in this docket.

BY ORDER OF THE COMMISSION

/s/ Mark Lawrence
Mark Lawrence
Hearing Examiner