

## MEMORANDUM

**TO:** The Chair and Commissioners

**FROM:** Lisa B. Driggins, Public Utilities Analyst

**DATE:** June 30, 2014

**SUBJECT:** IN THE MATTER OF THE APPLICATION OF TIDEWATER ENVIRONMENTAL SERVICES, INC., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES TO FIVE PARCELS OF LAND LOCATED BETWEEN BEAVER DAM AND ROBINSVILLE ROADS, WEST OF THE TOWN OF REHOBOTH BEACH, SUSSEX COUNTY DELAWARE (FILED JUNE 24, 2005)  
**PSC DOCKET NO. 05-WW-014 “MARINE FARM PROJECT”**

IN THE MATTER OF THE APPLICATION OF TIDEWATER ENVIRONMENTAL SERVICES, INC. TO ABANDON UNDER 26 DEL. C. § 203A(d) WASTEWATER SERVICES PROVIDED UNDER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR COASTAL CLUB F/K/A MARINE FARM PROJECT IN SUSSEX COUNTY, DELAWARE (FILED APRIL 21, 2014 AND AMENDED MAY 15, 2014)  
**PSC DOCKET NO. 14-WW-002**

Tidewater Environmental Services, Inc. (“TESI” or “Company”) is a utility providing wastewater services for public use that is subject to the regulatory jurisdiction of this Commission. On August 23, 2005 the Commission granted via Order No. 6704 TESI’s application for a Certificate of Public Convenience and Necessity (“CPCN”) for wastewater services to Coastal Club F/K/A Marine Farm Project, more specifically identified by the Sussex County Tax Map Parcels Numbers 334-11.00-3.01, 334-11.00-5.00, 334-11.00-8.00, 334-11.00-12.00, and 334-11.00-43.01. Also since the original CPCN was granted the five parcels have been subdivided into parcels 334-11.00-5.00, 334-11.00-5.01, 334-11.00-311.00 through 334-11.00-396.00. On April 21, 2014, TESI filed an application (“Application”) with the Commission seeking to abandon or discontinue its CPCN to provide wastewater operations or services to Coastal Club F/K/A Marine Farm Project.

On May 15, 2014, at the request of Staff, TESI supplied additional information to support its Application. In addition, a resident whose family are landowners in a community adjacent to the parcels involved in this application contacted Staff to express her concerns with the requested CPCN abandonment. The individual who contacted the Commission expressed her concern that if the Commission grants the abandonment, Sussex County may provide service to the development and require other property owners in the area to connect to the public sewer as well. The individual stated that the property owners could not afford the sewer charges. In addition, Staff received a letter from Sussex County filed June 11, 2014, which states they are willing and able to serve these parcels if the developer installs regional infrastructure to obtain a connection to the existing county facilities. Staff also received an email from Sussex County dated July 2, 2014, which states one of the Conditions of Approval required by County Council for the Coastal Club project is that sewer connections are made available to the parcels along Jimtown Road. This is a condition placed on the developer regardless of whether they connect through the County or another utility provider. Therefore, the developer will have sewer made available to the residents along Jimtown Road, but connections to the system by said residents will be made on a voluntary basis. Sussex County has confirmed that there will not be a mandate to force residents to connect to the sewer system.

Delaware law provides that no public utility shall abandon or discontinue, in whole or in part, any regulated public utility business, operations or services provided under a certificate of public convenience and necessity without first having received Commission approval for such abandonment or discontinuance. 26 *Del. C.* §203A(d)(1). Such applications 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. 26 *Del. C.* §203A(d)(2). Finally, the Commission must approve any such application 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. 26 *Del. C.* §203A(d)(3).

Staff reviewed the Application for abandonment and found it complies with all Delaware statutory and regulatory requirements. The Company provided a verified application that requests to abandon wastewater services to five parcels of property for which the Company was previously-granted a CPCN (i.e. Coastal Club F/K/A Marine Farm Project). The Company stated that Coastal Club F/K/A Marine Farm Project has no existing customers and is an undeveloped area in Sussex County, Delaware. Staff believes the abandonment is reasonable because there are no existing TESI customers located on Coastal Club F/K/A Marine Farm Project and TESI has not built any plant to provide wastewater services to these parcels. The abandonment is necessary because the current landowner of Coastal Club F/K/A Marine Farm Project requested that TESI remove such parcel from TESI's CPCN area. Finally, the abandonment will not be unduly disruptive to the present public convenience and necessity because no existing TESI customers are located on Coastal Club F/K/A Marine Farm Project. In addition, TESI has asserted that the landowner of Coastal Club F/K/A Marine Farm Project intends to seek wastewater services from another public utility. Hence, if the Commission grants

the Application's request, the abandonment would not be unduly disruptive to the future public convenience and necessity because future customers would not be impeded (in general) from receiving wastewater services from another public utility or by Sussex County.

Staff does not believe the concerns stated by the resident warrant Commission denial of the CPCN abandonment because, as noted above, there are no customers in the service territory to be abandoned, the landowner of record has requested that TESI abandon this particular service territory, the resident is not a landowner in TESI's service territory, Sussex County's provision of services is speculative at this time and even if Sussex County ultimately became the wastewater service provider for these parcels, the Commission has no jurisdiction over Sussex County. Nevertheless, Staff advised the resident that the Commission will consider the abandonment request at its July 8, 2014 meeting in the event she would like to attend and provide public comment.

For these reasons, Staff recommends that the Commission grant TESI's request to abandon its CPCN at the Marine Farm Project.