



STATE OF DELAWARE
PUBLIC SERVICE COMMISSION
861 SILVER LAKE BLVD.
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Lisa B. Driggins, Public Utilities Analyst

DATE: July 14, 2014

SUBJECT: IN THE MATTER OF THE APPLICATION OF CAMDEN-WYOMING SEWER AND WATER AUTHORITY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 *DEL. C.* §203C (FILED SEPTEMBER 30, 2010; AMENDED MAY 18, 2011; AMENDED APRIL 3, 2012)
PSC DOCKET NO. 10-CPCN-28

Camden-Wyoming Sewer and Water Authority ("CWSWA" or "Company") is a utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission. On September 21, 2010, CWSWA filed an application ("Application") with the Delaware Public Service Commission ("Commission") seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to twelve parcels of land in Kent County, Delaware ("Proposed Service Area"), pursuant to 26 *Del. C.* §203C(e)(1)b. As noted below, the Application has been amended twice and, as amended, now requests a CPCN for only three parcels in Kent County.

As required by 26 *Del. C.* §203C(e)(1)b. and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 *Del. Admin. C.* §2002 (the "Regulations"), the Application contains the following documentation: (1) copies of petitions signed by all landowners of record included in the Proposed Service Area requesting to be included in the Proposed Service Area; (2) a list of the County tax map parcel identification numbers of the properties and identification

of all landowners of record included in the Proposed Service Area;¹ and (3) a copy of the associated tax map clearly marking the Proposed Service Area.² Additionally, the Application contains CWSWA's statement that its expansion of service to the Proposed Service Area will comply with the water pressure requirements of 26 *Del. C.* §§403(a) and (b) and that CWSWA is not barred by any of the restrictions set forth in 26 *Del. C.* §403(c).

The Application also includes a resolution from the Town of Camden dated in late 2010 which supports CWSWA's Application. In addition, the Application includes correspondence which states that some of the landowners of record for the parcels within the Proposed Service Area had been customers of CWSWA for over 50 years, while others had been customers for over four years.³ Hence, CWSWA alleged that its intent in filing the Application was as a house-keeping measure to confirm its proper legal right to continue serving these parcels with water utility services.⁴

After conducting an informal review of the Application, Staff sent CWSWA a letter dated September 30, 2010, which included a list of issues that needed to be resolved and requested additional information so that the Application could be processed. Although Staff stated at that time that sending opt-out notices to the affected landowners may be unnecessary,⁵ it nevertheless noted that the landowner notifications required by 26 *Del. C.* §203C(d)(1)⁶ were still necessary.

In response to a letter from Staff dated May 4, 2011, CWSWA amended its Application (the "Amended Application") on May 18, 2011, to remove nine parcels of land from the Proposed Service Area.⁷ Eight of the nine parcels were removed because a prior Commission order included these in the service territory of Tidewater Utilities, Inc. ("TUI").⁸ The ninth parcel was transferred to the Delaware Department of Transportation for a right-of-way future extension. There are now three parcels of land in the Proposed Service Area: The Hartz property (Kent County Tax Map Parcel Number

¹At Staff's request, CWSWA submitted a written certification that the Company (i) reviewed the appropriate tax or land record documents relating to the Proposed Service Area; (ii) confirmed that the landowner identified in the parcel listing is the landowner of record; and (iii) confirmed that the petitions included in the Application have been signed by each landowner of record.

² When CWSWA filed its Application on September 21, 2010, it requested an informal review as allowed by 26 *Del. Admin. C.* §2002-5.1. Staff responded on September 30, 2010, via a letter with a list of issues that needed to be resolved, but also noted that it had processed the fee for the Application as of that date. Hence, the Application was officially filed on September 30, 2010.

³ Staff notes that the landowners of the three remaining parcels in the Amended Application have not been customers for 50 years, but rather for over four years.

⁴ CWSWA also stated that its intention in filing the Application was partially based on a mapping error that excluded from its service territory the 7 parcels of land that were listed in the Application.

⁵ Staff's statement was based on the advice of counsel at that time.

⁶ This reference should have been to 26 *Del. C.* §203C(e)(1)a.

⁷ These parcels were Kent County Tax Map Parcel Number NM00-094.12-02-07.00, NM02-094.12-02-08.00, NM00-094.12-02-09.00, NM00-094.12-02-10.00, NM00-094.12-02-12.00, NM00-094.12-02-13.00, NM00-094.12-02-15.00, NM00-094.00-02-15.00, and NM02-103.00-01-10.01.

⁸ See Order No. 1190 (March 7, 1973) in PSC Docket No. 686.

NM00-103.06-01-81.00); the Vaina property (Kent County Tax Map Parcel Number NM02-103.00-01-10.00); and the Langford Bay property (Kent County Tax Map Parcel Number NM02-103.00-01-11.00).

According to the Application, the landowners of the Hartz property filed an application on December 28, 2006, which requested water utility services from CWSWA. Because this parcel was within the service territory of TUI at that time, CWSWA requested (on behalf of the property owners) that TUI abandon its CPCN for this parcel. On February 5, 2007, TUI sent correspondence which indicated that it agreed to abandon its CPCN for this parcel. Staff notes that this correspondence is included in the Application. Thereafter, this parcel was connected to CWSWA's water main, and CWSWA stated that the landowner has been its water utility customer since March 29, 2007.

According to Application, the landowners of the Vaina property filed an application on June 13, 2008, which requested water and sanitary sewer services from CWSWA. Because this parcel was within the service territory of TUI at that time, CWSWA requested (on behalf of the property owners) that TUI abandon its CPCN for this parcel. On November 30, 2006, TUI sent correspondence which indicated that it agreed to abandon its CPCN for this parcel. Staff notes that this correspondence is included in the Application. CWSWA stated in the Application that this landowner has been one of its water service customers since October 1, 2008.

According to Application, the Langford Bay property was annexed into the incorporated limits of the Town of Camden via Resolution No. 2009-R-003 on March 9, 2009. In addition, the Application states that on April 27, 2009, the landowners of the Langford Bay property filed an application requesting water and sanitary sewer services from CWSWA. In addition, the Application states that on August 19, 2009, TUI agreed to abandon its CPCN for this parcel. Staff notes that this correspondence is included in the Application. Finally, the Application states that the landowners of this parcel have been a CWSWA water and sewer utility customer since November 1, 2009.

In response to a letter from Staff dated March 23, 2012, CWSWA requested on April 5, 2012, a waiver of the landowner notifications required by 26 *Del. C.* §203C(d)(1)⁹ and Section 2002-3.5.1 of the Regulations. CWSWA requested a waiver of the statutory landowner requirement based on the "special circumstances surrounding CWSWA's Application, including, but not limited to, the filing of the Application at a time when the legal requirements pertaining to opt-out notices, signed petitions, landowner notifications, etc., were changing...." In addition, CWSWA also requested a waiver of the regulatory landowner notification requirement "based on the timing of the filing of the Application as well as the special circumstances" explained in the letter to Staff dated May 18, 2011 (i.e., CWSWA's "objective in filing the CPCN Application was to simply assist the PSC with the correction of its CPCN maps to accurately reflect

⁹ Because the Application is based on 26 *Del. C.* §203C(e)(1), the waiver request is actually based on 26 *Del. C.* §203C(e)(1).a.

existing realities. After all, it must have been an error in the drafting of the CPCN maps that resulted in the inadvertent exclusion of these properties from the CWS&WA service area.")

After further review of the Amended Application, Staff later noticed that CWSWA failed to publish the required public notices within 10 days of filing the Application and/or Amended Application in accordance 26 *Del. Admin. C.* §2002-10.7.¹⁰ Based on the length of time spent processing the Amended Application and given that CWSWA has been providing water services to the landowners of the three parcels included in the Amended Application, Staff recommends that the Commission excuse this regulatory requirement, pursuant to Section 1.5 of the Regulations,¹¹ since the landowners in the Proposed Service Area have been receiving water services from CWSWA since before 2010 and two of the three parcels have been annexed into the service territory of the Town of Camden. Because the landowners have been long-time customers of CWSWA and already know who their water service provider is, published notice of the Amended Application seems unnecessary at this time.

Staff has completed its review of the Amended Application and finds that it is in compliance with the provisions of 26 *Del. C.* §203C and the Regulations apart from (i) the requested waiver of the landowner notifications as required by 26 *Del. C.* §203C(d)(1) and (ii) the publication in two newspapers of a public notice of CWSWA's Application as required by Section 2002-10.7 of the Regulations, which Staff recommends be excused. No other errors or omissions were found. Finally, to determine whether the Commission should deny the requested CPCN as allowable under 26 *Del. C.* §203C(f), Staff solicited comments from the Delaware Department of Natural Resources, the Office of the State Fire Marshal, and the Office of Drinking Water of the Division of Public Health. All three agencies responded by indicating that they have no issues relating to CWSWA's ability to provide safe, adequate, and reliable water services to its existing customers.

In conclusion, Staff recommends that the Commission grant CWSWA's requested waiver of the required landowner notifications, excuse the regulatory requirement that a notice of the Amended Application be published in two newspapers, and grant the CPCN requested in PSC Docket No. 10-CPCN-28 as filed on September 30, 2010, amended May 18, 2011, and amended April 3, 2012.

¹⁰ The former member of Staff who had been reviewing the Amended Application changed jobs and left in 2013. Afterwards, a different member of Staff took over the task of reviewing this Amended Application, and only then was this inadvertent error discovered.

¹¹ Section 1.5 of the Regulations provides as follows: "The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision."

