

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

IN THE MATTER OF THE COMMISSION'S )  
INVESTIGATION OF THE WATER SUPPLY )  
AVAILABLE TO COMMISSION REGULATED ) PSC DOCKET NO. 323-02  
WATER UTILITIES DURING THE DROUGHT )  
OF 2002 (OPENED NOVEMBER 19, 2002) )

**ORDER NO. 6068**

This 19<sup>th</sup> day of November, 2002, the Commission determines and Orders the following:

1. During the year 2002, Delaware (and its neighboring mid-Atlantic states) were plagued by a drought. In March, Governor Minner warned of the possibility of such a drought and urged the public to undertake specific voluntary water conservation measures. Executive Order No. 29 (Mar. 5, 2002). When drought conditions persisted over the ensuing months, the Governor declared a state of emergency for the area north of the Chesapeake and Delaware Canal in New Castle County and imposed mandatory restrictions on the use of water in such area. Executive Order No. 32 (Aug. 2, 2002). Two weeks later, the Governor expanded the restrictions on water use in northern New Castle County. Executive Order No. 33 (Aug. 15, 2002). Those restrictions remained in force until October 11, 2002 when the Governor, upon advice of her advisory committee, deemed it appropriate to terminate the state of emergency and lift the mandatory water use restrictions. In doing so, the Governor continued the drought warning for the area. Executive Order No. 34 (Oct. 11, 2002).

2. During the time the mandatory water restrictions prevailed, questions were raised in, and by, the popular press as to whether actions - or inactions - by the water utilities serving northern New Castle County might have contributed to the need for the Governor to impose the water usage limitations. In particular, questions were posed whether one or more of such water utilities might have failed to procure sufficient reserve sources of water supply that could be looked to if the utility's "normal" sources suffered due to drought conditions. The public, newspaper commentators, newspaper editorial boards, and even the utilities, offered their own, often divergent, views on the question.

3. Several entities supply water services to residents living in northern New Castle County. Two major supplies, the Cities of Wilmington and Newark, are not subject to the regulatory jurisdiction of this Commission. In contrast, two others, Artesian Water Company, Inc. ("Artesian"), and United Water Delaware, Inc. ("United"), are Commission-jurisdictional utilities.

4. The Commission believes it is in the public interest to now initiate an investigation to ascertain what water supplies Artesian and United had available to serve their subscribers in northern New Castle County during the recent drought period. The investigation should seek to develop the facts about such water supply on three levels. First, the investigation should determine what volume of water supply was actually available to each utility during the drought period from its own "in-house" sources, whether such source be subsurface wells, surface water diversion and capture, or pre-existing

water purchase agreements with other entities. Second, the investigation should ascertain what other volume of supply (and from what sources) was utilized by, or available to, each utility in order to meet shortfalls during the period? Third, the investigation should determine what other sources were potentially available to supply water to each utility during the period, even if such supply was not specifically previously contractually obligated to supply that particular utility. On the one hand, this analysis should measure "available" supply against the actual demand for water service during the drought period. At the same time, because such actual demand might have been depressed due to the mandatory water use restrictions, the investigation should also develop facts focusing on the adequacy of available supply to meet demand if those water restrictions had not been imposed.<sup>1</sup> In addition, the investigation should develop facts surrounding the cost to each utility of procuring the additional supplies from non-"in-house" sources.

5. Of course, one substantial benefit of investigating the past is to gain wisdom to prepare for the future. Consequently, in addition to developing facts about the availability of supply in 2002, Staff should develop facts reflecting: (a) the expected demand for water supply from Artesian and United in the northern New Castle

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<sup>1</sup>It is for this reason that the Commission, in Exhibit "A", solicits information about demand during the corresponding March-October period in the year 2001. The Commission asks for such information in the tentative belief that such prior year demand (not skewed by water use restrictions) might provide a benchmark for calculating demand in 2002 if the water restrictions had not been imposed. However, if Staff deems it appropriate, Staff is free to look to some other period - or some other method - to calculate such "non-water restriction" demand in 2002.

County area over the next five years; and (b) the supply which will be available to each of those utilities to meet that forecasted demand over that future period.

6. Once it has developed this factual foundation, Staff can then provide the Commission with its appraisal of what happened during the year 2002. But just as importantly, the Staff can provide its views on what further steps, if any, the Commission might require of the two utilities to ensure that they fulfill the statutory obligation (26 Del. C. § 308(b)) to provide efficient, sufficient, and adequate water utility services. The Commission emphasizes that the initiation of this investigation should not be construed as endorsing the view that prior inactions by utilities might have "contributed" to the need for mandatory water restrictions. Rather, the investigation represents an attempt by the Commission to obtain an accurate picture of what water was indeed actually available during the recent drought period.<sup>2</sup> Of course, those facts may - or may not - reveal that one (or both) Commission jurisdictional utilities should - or might - have done more to be able to provide water supply during the drought period. If so, the Commission, once it has that clear, accurate picture, can determine what response or actions might be appropriate.

7. The Commission has the jurisdiction to undertake this investigation and to request the utilities to provide relevant information. See 26 Del. C. §§ 201(a), 205-207. The Commission

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<sup>2</sup>Similarly, the investigation should not be seen as an opportunity for either of the utilities to "boast" about their own conduct or "finger-point" about the other utility's deficiencies. The investigation's goal is to develop facts, not restate a utility's opinions.

delegates to its Staff the authority to conduct this investigation and to gather the needed information. 26 Del. C. § 501(a). Staff shall collect the necessary information and submit a report to the Commission reflecting its findings. In addition, Staff shall, with those findings, submit proposed conclusions and recommendations. While the Commission does not now impose a deadline for Staff's report, this investigation should proceed expeditiously. Staff shall submit to the Commission a report on the status of the investigation every ninety (90) days.

8. The Division of the Public Advocate is invited to participate with Staff in this investigation.

9. In order to move the investigation forward promptly, the Commission directs Artesian and United to file with the Staff the information described in Exhibit "A" to this Order. Such information shall be filed on or before Friday, January 17, 2003. In addition, on or before such date, Artesian and United shall submit a narrative report chronicling: (a) any difficulties with supply the utility might have suffered during the period March 5, 2002 through October 11, 2002; (b) the utility's response to such difficulties; and (c) the utility's actions to procure additional supply to meet actual or expected shortfalls during the March-October 2002 period. Staff is authorized to extend, for good cause, the date for submitting the above information and narrative report. In order to ensure that Staff and the two utilities share a common understanding of what information is sought by Exhibit "A", Staff shall conduct a mandatory conference with representatives of Artesian and United within two weeks of the

date of this Order. The purpose of the mandatory conference is to discuss the scope of the information sought by Exhibit "A".<sup>3</sup> The Public Advocate is invited to participate in that conference.

10. The Commission emphasizes the information sought by Exhibit "A" is intended only as a start. Staff is empowered to request and seek additional information from the utilities either before, or after, the submission of the information and reports described in the preceding paragraph and Exhibit "A".<sup>4</sup>

11. In conducting its investigation and compiling its report, Staff is empowered to seek both information and technical assistance from other resources, including the Department of Natural Resources and Environmental Control, the Delaware Geological Survey, the Water Resources Agency at the University of Delaware, and the Water Supply Coordinating Council. The Commission requests those other entities to provide such assistance to its Staff.

12. Similarly, the Commission solicits the Cities of Newark and Wilmington to provide their views on the availability of water supply during the relevant time periods and to provide information relevant to this investigation.

13. Finally, in initiating this investigation, the Commission does not seek to intrude upon, or duplicate, the work of the Water

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<sup>3</sup>Such conference may, at Staff's discretion, be held at the Commission's office or by teleconferencing.

<sup>4</sup>In particular, Staff can develop a time-line for the utilities to provide information about each other's forecast of demand in northern New Castle County over the next five years and the sources of supply that will be available to such utility to meet its demand over that time.

Supply Coordinating Council and the Temporary Water Coordinator for New Castle County. See 26 Del. C. §§ 1305-06, 1308. Rather, the purpose of this investigation is to gather facts to determine what actions utilities subject to this Commission's regulatory authority should take, during times of drought, to fulfill the duty to provide reliable, sufficient, and adequate water supplies to their subscribers.

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

1. That the Commission opens this docket to initiate the investigation described in the body of this Order. Such investigation shall focus on determining the water supply available to Artesian Water Company, Inc., and United Water Delaware Inc., to meet subscriber demand: (a) during the drought period from March 5, 2002 to October 11, 2002; and (b) over the next five years.

2. That the Commission Staff shall conduct the investigation described in the body of this Order. The Commission Staff shall submit a status report on the progress of the investigation every ninety (90) days. In conducting such investigation, the Commission Staff shall, under 26 Del. C. § 207, have access to information and records held by Artesian Water Company, Inc., and United Water Delaware Inc., and may also require such utilities to submit special reports under 26 Del. C. § 205(a). The Commission Staff may also solicit and obtain relevant information from all appropriate other resources. In addition, the Commission Staff may notice and thereafter conduct such public hearings and proceedings that Staff

believes will assist it in its investigation and in the preparation of its report to the Commission.

3. At the conclusion of its fact-gathering, the Commission Staff shall submit a Report to the Commission as described in the body of this Order.

4. That Artesian Water Company, Inc., and United Water Delaware Inc., shall file the information sought by Exhibit "A" with the Commission on or before January 17, 2003. Artesian Water Company, Inc., and United Water Delaware Inc., shall also file with the Commission a narrative report, as described in paragraph 9 of the body of this Order, on or before January 17, 2003. The staff may, for good cause, extend either or both of the above deadlines.

5. That the Secretary shall serve, by United States mail, a copy of this Order on:

- (a) Artesian Water Company, Inc.;
- (b) United Water Delaware Inc.;
- (c) Chair, Water Supply Coordinating Council;
- (d) Temporary Water Coordinator for New Castle County;
- (e) Director, Division of Water Resources, Department of Natural Resources and Environmental Control;
- (f) Manager, Water Supply Section, Division of Water Resources, Department of Natural Resources and Environmental Control;
- (g) Commissioner of Public Works, City of Wilmington;
- (h) Director, Water and Waste Water Department, City of Newark; and
- (i) The Division of the Public Advocate.

The Secretary shall also post, for a period of thirty days, a copy of this Order on the Commission's Internet website denoted by an appropriate heading.

6. That the Public Advocate is invited to participate with Staff in the conduct of this investigation.

7. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joshua M. Twilley  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Donald J. Puqlisi  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary

E X H I B I T "A"

For purposes of these requests, the following definitions shall apply:

"affected area" = the portion of northern New Castle County subject to the water restrictions imposed by Executive Orders Nos. 32 and 33.

"drought period" - the period from March 5, 2002 through October 11, 2002.

"storage facility" - any means, including tanks, surface reservoirs, or injected aquifers, which you own, operate, or utilize to store water in order to provide water utility services to your subscribers.

"subscribers" - service connections in the affected area to which you provide water utility services.

"supply source" - any means, including wells, reservoirs, and surface water traps or diversions, which you own or operate to provide water supply to your subscribers.

"you" - Artesian Water Company, Inc., or United Water Delaware, Inc.

1. Provide a map of the affected area marked with the location of all supply sources and storage facilities which you owned, operated, or utilized, and which you used during the year 2001 to provide water utility services to your subscribers. Each supply source or storage facility should be identified by a specific name or some other separate specific designation.
2. Provide a map of the affected area marked with the location of all supply sources and storage facilities which you owned, operated, or utilized, and which you used during the drought period to provide water utility services to your subscribers. Each supply source or storage facility should be identified by a specific name or some other separate specific designation.
3. For each subsurface supply source identified on the maps provided under paragraphs 1 and 2, provide:
  - (a) a description of the source;
  - (b) a description of the amount of supply (by both volume and water level limits) which can be withdrawn from such source under applicable permits;
  - (c) a description of the area within the affected area which is served by this source; and

- (d) the number of subscribers served by such source.
4. For each surface supply source identified on the maps provided under paragraphs 1 and 2, provide:
- (a) a description of the source;
  - (b) a description of the amount of supply (by both volume and stream flow level limits) which can be withdrawn from such source under applicable permits;
  - (c) a description of the area within the affected area which is served by this source; and
  - (d) the number of subscribers served by such source.
5. For each storage facility identified on the maps required under paragraphs 1 and 2, provide:
- (a) a description of the facility (tank, reservoir, aquifer, etc.);
  - (b) a description of the area within the affected area which is served by such storage facility; and
  - (c) the total storage capacity of such facility: (i) during 2002; and (ii) during the drought period.
6. Provide copies of all contracts or agreements you may have had with other utilities or entities to provide water supply to you during 2001.
7. Provide copies of all contracts or agreements you may have had with other utilities or entities to provide water supply to you during the drought period.
8. Provide, for each day during the drought period:
- (a) the amount of water supply taken or withdrawn from each supply source identified in paragraphs 2 and 3-4;
  - (b) the water level for each subsurface well identified in paragraphs 2 and 3;
  - (c) the stream flow level for each surface source identified in paragraphs 2 and 4;
  - (d) the amount of water taken or received under any contracts identified in paragraph 7; and
  - (e) the amount of supply stored in each storage facility identified in paragraphs 2 and 5, including the continued water level charts or graphs for each storage tank or similar facility.
9. Provide, for each day during the drought period:
- (a) the total demand from your subscribers for water supply in the affected area; and
  - (b) the demand from your subscribers served by each supply source identified in paragraphs 2, 3, & 4.

10. Provide the same information requested in paragraphs 8(a), 8(d), 9(a), and 9(b) for each day during the period March 5, 2001 through October 11, 2001.