

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES TO) PSC DOCKET NO. 03-CPCN-31
BAY FARM AND PALISADES LOCATED IN) (BAY FARM AND PALISADES)
INDIAN RIVER AND BALTIMORE HUNDREDS,)
RESPECTIVELY, SUSSEX COUNTY, DELAWARE)
(FILED DECEMBER 30, 2003))

ORDER NO. 6369

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE PUBLIC WATER UTILITY SERVICES**

This 24th day of February, 2004, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. Tidewater Utilities, Inc. ("Applicant"), is a water utility providing water services for public use that are subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On December 30, 2003, the Applicant filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to Bay Farm and Palisades ("Proposed Service Area") located in Indian River and Baltimore Hundreds, respectively, Sussex County, Delaware, as specifically described by the tax parcel number identifications in paragraph 6 of the Application.

2. The Application includes a petition signed by a majority of the parcel owners and evidence that the required Commission notice of

the Application was sent via certified United States mail to each owner within the Proposed Service Area. The notice explained each owner's opportunity to object, request a hearing, and "opt-out," that is, to exclude any parcel from the Applicant's Proposed Service Area.

3. Staff directed the Applicant to publish notice of the Application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the publication. The notice was published on January 14 and 15, 2004, in the The News Journal and Delaware State News newspapers, respectively.

4. The Commission did not receive any "opt-out" notice from an owner, any request for a hearing on the application, or any objection to the application.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, including Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in 29 Del. C. § 10123 (¶ 3). In addition, the Application includes:

- (i) Petitions signed by a majority of landowners within the Proposed Service Area (¶ 1(d));
- (ii) A copy of the United States Postal Service form verifying that the Applicant sent, via certified mail, a Commission approved notice to all landowners of the affected parcels of the Applicant's filing for a CPCN as prescribed by Water Utility CPCN Reg. 10.109 (¶ 5);

- (iii) The County tax parcel identification numbers of the properties in the Proposed Service Area (§ 6);
- (iv) A listing of the landowners of record of each of the parcels included in the Proposed Service Area and the tax maps locating the parcels (§ 7);
- (v) The Applicant's statement that its expansion of service to the parcels in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a) & (b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (§ 8 (a)-(c));

6. The record also contains:

- (i) Affidavits of publication of the public notice of the Application on January 14 and 15, 2004, in the The News Journal and Delaware State News newspapers, respectively, and;
- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested that any written comments on the application be submitted to the Commission by January 20, 2004;
- (iii) Correspondence from the Office of Drinking Water of the Division of Public Health (dated January 8, 2004) and the Office of the State Fire Marshall (dated January 6, 2004) reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN; and
- (iv) Staff's February 18, 2004 memorandum of its investigation and its recommendation that the Commission approve the application and grant the requested CPCN. In its memorandum, Staff indicates that the Department of Natural Resources and Environmental Control ("DNREC") has informed Staff that it would provide

written comments on proposed CPCN applications only if it has an objection to an application. Staff notes that the Commission did not receive from DNREC any written comments on this application. Staff further reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

7. Finally, the record does not contain any evidence that any person objects to the application or requests a hearing.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

8. The Commission has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities, and the Applicant operates a water system for public use and, consequently, is a water utility.

9. First, the Applicant obtained the consent of the majority of owners of the property within the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(b). Second, the Applicant sent by certified mail an approved notice of its Application to the owner of the parcel within the Proposed Service Area. Third, the record reflects: (a) no objection to this application; (b) no request for a hearing on this application; (c) the Applicant's statement that it will continue to meet the water pressure requirements for its existing customers; and (d) the Applicant's statement that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

10. Finally, the Commission's Staff has investigated the Applicant and has not discovered that the Applicant is currently

subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water service to its existing customers. The present record does not provide any basis for the Commission to believe that any further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding.

11. In summary, the Applicant has submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1), 203C(e)(1) b., & 203C(e)(3) (2002 Supp.), which the Commission's Staff has reviewed and found to be accurate. The Commission also finds no reason that the Applicant is not entitled to a CPCN under the provisions of either 26 Del. C. §§ 203C(f) or 203C(i) (2001 Supp.). Since the Applicant has satisfied the statutory requirements, the Commission shall issue a CPCN permitting the Applicant to expand its operations to provide water utility services to the parcels identified in Exhibit "A" hereto.

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

1. That, pursuant to 26 Del. C. § 203C(e) (2002 Supp.), the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket Number 03-CPCN-31, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Tidewater Utilities, Inc., to serve the area identified by the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That Tidewater Utilities, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may

become applicable, to any matter involving water utility service provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. 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"

APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

INDIAN RIVER AND BALTIMORE HUNDREDS
SUSSEX COUNTY, DELAWARE

SUSSEX COUNTY TAX MAP PARCELS NOS.

1-34-19-104

1-34-19-104.01

1-34-19-114

1-34-19-115

1-34-21-12

2-34-29-248

2-34-29-249

2-34-29-256

2-34-29-259