

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

IN THE MATTER OF THE APPLICATION OF)
THE TOWN OF MILLSBORO FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO PROVIDE WATER)
SERVICES TO ELEVEN PARCELS OF LAND) PSC DOCKET NO. 04-CPCN-19
ANNEXED BY THE TOWN OF MILLSBORO,) (TOWN OF MILLSBORO EXPANSION)
SUSSEX COUNTY, DELAWARE, BETWEEN)
1994 AND 2003 (FILED AUGUST 16,)
2004))
)

ORDER NO. 6496

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

This 19th day of October, 2004, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. The Town of Millsboro ("the Town" or "Millsboro") operates its own public water system. As a municipal public utility, the Town's water utility operations fall outside the regulatory jurisdiction of this Commission¹ except, in some instances, such a municipal utility must seek from this Commission a Certificate of Public Convenience and Necessity ("CPCN") as a condition of expanding or extending its operations or facilities. Since June 2003, the obligation to obtain a CPCN before expanding operations (as imposed by § 203C(a)) has been lifted in the situation where a municipality annexes property under the provisions of Chapter 1 of Title 22 and the

¹See 26 Del. C. § 202(a) (2002 Supp.).

municipal water utility will expand or extend its operations into such annexed territory. In such case, the municipality need only notify the Commission of the completion of such annexation.

2. On August 16, 2004, the Town of Millsboro filed an application asking this Commission to award it a CPCN that would allow the Town to expand and extend its water utility operations to a proposed additional service territory encompassing eleven parcels of land that were annexed into the Town prior to June 30, 2003, but have not yet been provided water services.

3. To support its application, the Town submitted a copy of a Resolution adopted by the Mayor and Council that authorized the preparation of an Application to expand the existing CPCN territory to include the eleven parcels of land. In addition, the Town submitted documents reflecting that, in June 2004, it had sent, by certified mail, notices to the landowners of record of the eleven parcels. The notices informed the landowners that the Town proposed to include their properties in the Town's expanded water service territory and explained the landowners' opportunities to object, request a hearing, or "opt-out" and have their parcel excluded from the proposed water utility service territory. Neither the Town nor the Commission received any such objection, request for a hearing, or petition to "opt-out" in response to these individualized notices.

4. At Staff's direction, the Town also published notices of its CPCN application in The News Journal and Delaware State News newspapers on September 10, 2004. Those published notices again announced the filing of the Town's CPCN application and reiterated the

opportunities to object, to request a hearing, or to "opt-out." These published notices did not generate any responses.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Town's application, correspondence from several State agencies, and Staff's memorandum. The record thus includes:

- (i) a copy of a Resolution of the Town (entered June 7, 2004) directing the Town Manager to file an application for the Town to obtain a CPCN authorizing the delivery of municipal water utility services to eleven parcels of land annexed into the Town of Millsboro prior to June 30, 2003 (App., Exh. 5);
- (ii) a copy of a United States Postal Service form verifying that the Town sent, by certified mail, notices to all landowners of the parcels proposed to be encompassed in the service territory under the CPCN, and a copy of such notice which provided the information required by Water Utility CPCN Reg. § 10.109 (App., Exhs. 3 & 4);
- (iii) a listing of the parcels (identified by Sussex County Tax Map parcel numbers) to be included in the service territory under this CPCN (App., Exh. 7);
- (iv) a listing of the landowners of record of each of the parcels to be included in the service territory (App., Exh. 7);
- (v) a certification by the Town Manager that the Town's expansion of service to the parcels in the proposed service territory will be in accord 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) (App. at ¶ 8 (a)-(d));
- (vi) correspondence from the Office of Drinking Water of the Division of Public Health (dated September 10, 2004), from the Office of the State Fire Marshal (dated

September 21, 2004), and from the Department of Natural Resources and Environmental Control (printed e-mail dated September 7, 2004) reporting that they have no outstanding issues with the Town that might preclude granting the requested CPCN;;

- (vii) affidavits of publication of the public notice of the Application on September 10, 2004, in the Delaware State News and The News Journal newspapers;
- (viii) Staff's memorandum, dated October 12, 2004, with its findings and recommendation that the Commission approve the application and grant the requested CPCN.

6. Finally, as recited earlier, the record does not contain any evidence that any person has objected to the application or requested a hearing. Similarly, it does not contain any "opt-out" petition filed by the landowner of any affected parcel.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

7. As noted in paragraph 1, in this context, the Commission has jurisdiction to consider the Town's application for a CPCN to expand its municipal water system to serve the listed parcels. See 26 Del. C. § 203(C)(a) (2003 Supp.).

9. Again, as noted earlier, the Town - as support for its CPCN request - has submitted a copy of a Resolution, adopted by the Town in June 2004, directing the Town (through its manager) to seek a CPCN to expand the existing CPCN territory to include eleven parcels of land annexed prior to June 30, 2003. Such Resolution satisfies the requirements of 26 Del. C. § 203(C)(e)(1)c. (2002 Supp. allows a CPCN to be premised on "a resolution from the governing body of a county or municipality requesting the applicant to provide service to the

proposed territory to be served.” 26 Del. C. § 203(C)(e)(1)c. (2002 Supp.).

12. As to the notice requirements imposed by 26 Del. C. § 203C(e)(1) and the Commission Water Utility CPCN Regulations, the record reflects that the Town sent, by certified mail, notices of its application to all the landowners of the parcels within its proposed service territory. These notices, consistent with the Commission’s rules, notified the landowners of their opportunities to object, to request a hearing, or to petition to “opt-out.” The record is devoid of any landowner filing an objection or request for a hearing. Similarly, the record is devoid of any petition by a landowner to remove the owner’s parcel from the service territory.

13. The Town has also submitted a certification that, in “expanding” its operations to this service territory, it will continue to meet the statutory water pressure requirements for both these “new” as well as its existing customers, and that no regulatory finding or Order bars the Town from expanding its water utility services.

14. Finally, the present record does not provide any basis for the Commission to consider undertaking any investigation into the quality of service that the Town is providing to its existing water service customers. See 26 Del. C. § 203C(f) (2002 Supp.).

15. In summary, the Town has submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1) & 203C(e)(3) (2002 Supp.). The Commission’s Staff has reviewed such documents and found them to be accurate. The Commission also finds no reason to disqualify the Town’s application under the provisions of either 26

Del. C. §§ 203C(f) or 203C(i) (2002 Supp.). Because the Town has satisfied the statutory requirements, the Commission shall issue a CPCN permitting the Town to expand its operations to provide water utility services to the parcels identified in Exhibit "A".

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 filed by the Town of Millsboro in PSC Docket Number 04-CPCN-19, is hereby approved. A Certificate of Public Convenience and Necessity is hereby granted to the Town of Millsboro to serve the area encompassing the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That the Town of Millsboro 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

E X H I B I T "A"

APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

TOWN OF MILLSBORO
(MILLSBORO EXPANSION AREA)

SUSSEX COUNTY TAX MAP PARCELS NOS.

133-17.00-2.00

133-17.00-3.00

133-17.00-4.00

133-17.00-62.00

133-17.00-62.01

133-17.00-63.00

133-17.00-64.00

133-17.09-5.03

133-17.09-5.04

133-17.13-16.00

133-17.14-12.00