

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

IN THE MATTER OF THE APPLICATION OF )  
ARTESIAN WASTEWATER MANAGEMENT, INC., )  
FOR A CERTIFICATE OF PUBLIC CONVEN- )  
IENCE AND NECESSITY TO PROVIDE WASTE- )  
WATER SERVICES TO FOUR PARCELS OF )  
LAND TO BE DEVELOPED AS THE STONE- ) PSC DOCKET NO. 04-WW-008  
WATER CREEK DEVELOPMENT, LOCATED WEST )  
OF LONG NECK, INDIAN RIVER HUNDRED, )  
SUSSEX COUNTY, DELAWARE, PURSUANT TO )  
26 DEL. C. § 203D(a)(2) )  
(FILED OCTOBER 22, 2004) )

**ORDER NO. 6589**

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
TO BEGIN OPERATIONS AS A WASTEWATER PUBLIC UTILITY**

This 8<sup>th</sup> day of March, 2005, the Commission determines and Orders the following:

1. By the provisions of 74 Del. Laws ch. 317 (July 6, 2004, the General Assembly and Governor included wastewater systems within the "public utilities" subject to the regulatory oversight of this Commission. 74 Del. Laws ch. 317 § 1 (2004) (amending "public utility" definition in 26 Del. C. § 102(2)).<sup>1</sup> The same enactment also instituted a specific regime for the Commission to grant Certificates of Public Convenience and Necessity ("CPCNs") to permit an entity to begin the business of a wastewater public utility or to allow an

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<sup>1</sup>The 2004 amendments continued, in the context of wastewater systems, exemptions from Commission oversight systems owned or operated by municipalities and statutory water and sewer districts. See 74 Del Laws Ch. 317 §§ 3, 5 (2004) (amending 26 Del. C. § 202(b)). The new law also exempted from Commission supervision those wastewater utilities serving fewer than fifty customers in the aggregate. 74 Del. Laws ch. 317 § 4 (2004), adding 26 Del. C. § 202(h).

already certificated wastewater utility to extend its operations and systems to an expanded service territory. 74 Del. Laws ch. 317 § 6, adding 26 Del. C. § 203D.

2. On November 12, 2004, Artesian Wastewater Management, Inc. ("AWMI" or "the applicant"), filed a written application asking the Commission to grant to AWMI a CPCN to begin operations as a wastewater public utility and to allow it to provide wastewater services to four parcels of land to be developed as the "Stonewater Creek" development. The planned development lies west of Long Neck, Indian River Hundred, in Sussex County ("the proposed service territory"). AWMI is a newly incorporated, wholly-owned subsidiary of Artesian Resources Corporation.<sup>2</sup> As noted above, it has not previously been granted a CPCN to operate as a wastewater public utility, and it does not presently operate any regulated wastewater facilities nor presently serve any customers in Delaware.

3. As required by 26 Del. C. § 203D(d) (2004 Supp.), AWMI included the following in its Application:

- (a) petitions signed by the landowners of record of the four parcels of land that would compose AWMI's initial service territory;<sup>3</sup>
- (b) evidence, consisting of copies of the United States Postal Service's certified mail receipts, reflecting that the owners of the four parcels of

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<sup>2</sup>Artesian Resources Corporation is also the corporate parent of Artesian Water Company, Inc., a regulated public water utility that provides public water services throughout this State.

<sup>3</sup>26 Del. C. § 203D(d)(2) (2004 Supp.).

land were provided notice of the Application;<sup>4</sup>  
and

- (c) documents to demonstrate that AWMI possesses the "financial, operational, and managerial capacity to serve the public convenience and necessity and to comply with all state and federal regulations."<sup>5</sup>

The latter evidence included:

- (a) copies of AWMI's certificate of incorporation (Oct. 5, 2004) and its corporate articles, and bylaws (App. ¶¶ 5, 15);
- (b) information related to Artesian Resources Corporation's (the parent company of AWMI) current operation of two wastewater systems serving approximately 4000 customers in New Castle County (App., ¶ 6);
- (c) a statement that Artesian Resources Corporation will initially invest \$500,000 in paid-in-capital to support AWMI's operations and that such amount will be in addition to a \$1.5 million line of credit available to AWMI (Appl., ¶ 16);
- (d) a statement that licensed wastewater systems operators employed by Artesian Utility

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<sup>4</sup>26 Del. C. § 203D(d)(2) (2004 Supp.).

<sup>5</sup>26 Del. C. § 203D(d)(4) (2004 Supp.) (describing additional evidence to be submitted in the case of a "new wastewater utility").

Development, Inc. (another subsidiary of Artesian Resources Corporation) will be shared with AWMI and utilized to operate AWMI's wastewater facilities in the proposed service area (App., ¶ 18);

(e) a description of the wastewater treatment facilities that will serve the proposed service area (App., ¶¶ 19-24);

(f) a proposed tariff to govern AWMI's services in the proposed service territory (App., ¶ 25); and

(g) projected five and ten-year income and balance sheets demonstrating that the proposed system will become viable as the system becomes built-out, based on the assumptions presented. (App., ¶ 26).

4. In addition, the application includes documents reflecting that the wastewater treatment system that will serve the proposed service territory has already received the following regulatory approvals (App., ¶¶ 11-13): (a) a Statement of Feasibility (Dec. 2, 2002) from the Department of Natural Resources and Environmental Control ("DNREC"); (b) a Permit to Construct (Permit 202221) from DNREC (June 26, 2004); and (c) a Building Permit and Engineering Certification from Sussex County (Sept. 30, 2004).

5. The Commission's Staff has reviewed AMWI's application, first to determine whether AWMI possesses the financial, operational, and managerial capabilities to serve the public convenience and

necessity and to comply with all State and federal regulations and then to confirm that it has complied with all the statutory requirements under 26 Del. C. § 203D for its initial proposed service territory. In two memoranda, Staff has concluded that AWMI meets all the statutory requirements to operate as a wastewater utility in its proposed service territory and recommends that the Commission grant the requested CPCN.<sup>6</sup> In particular, Staff reports that it believes that AWMI has the long-term viability to render safe and reliable wastewater services to the Stonewater Creek development. Staff suggests that this conclusion is primarily based on the financial integrity of AWMI's parent, Artesian Resources Corporation, and the several representations contained in the application indicating that the corporate parent and other AWMI corporate siblings will provide necessary operational and financial resources to AWMI.<sup>7</sup> At the same time, Staff notes that its review and ultimate recommendation should not be read to express any opinion concerning the fairness, equity, or adequacy of the rates for wastewater services as proposed by AWMI in its application or any opinion about the proposed allocation of shared operating costs. According to Staff, such questions related to the just and reasonable rates to be charged by AWMI are to be addressed in a separate subsequent proceeding.<sup>8</sup>

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<sup>6</sup>Staff Mem. from Andrea B. Maucher (Feb. 16, 2005) and Staff Mem. From Robert Ambrose Mem. (Jan. 13, 2005).

<sup>7</sup>Ambrose Mem.

<sup>8</sup>Ambrose Mem.

6. Staff reports that it also solicited comments from DNREC's Division of Water Resources<sup>9</sup> regarding that agency's views concerning the financial, operational, and managerial capabilities of AWMI to serve the public convenience and necessity and to comply with all State and federal regulations. In its comments of January 26, 2005, DNREC reported that AWMI was able to satisfy the regulatory Performance Bond requirements required by DNREC. In addition, DNREC reported that the wastewater system operators to be utilized by AWMI have consistently maintained their respective operators' licenses in good standing. Finally, DNREC reported that it did not have any objection to the Commission issuing the requested CPCN to AWMI to provide wastewater services to the proposed service area.

7. The Commission sat to consider AWMI's application and the Staff memoranda at its public meeting on March 8, 2005. Based on the materials in the application, the information solicited by Staff, and Staff's analysis, the Commission concludes that AWMI has the financial, managerial, and operational capacities to begin and operate a wastewater system to serve the proposed initial service territory. AWMI's service in the proposed service territory will serve the public convenience and necessity. In addition, AWMI has the ability to comply with all federal and state laws and regulations related to its operation of a wastewater system as a public utility. See 26 Del. C. § 203D(d)(4) (2004 Supp.).<sup>10</sup>

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<sup>9</sup>DNREC is the state agency charged with supervising the operation of wastewater systems under the provisions of Title 7 of the Delaware Code.

<sup>10</sup>The Commission notes that Staff's analysis of AWMI's capacities focuses on its ability to render wastewater services within this four-parcel

8. Consequently, consistent with the statutory requirements, the Commission now grants a CPCN to AWMI to begin operations as a wastewater public utility. As a public utility, AWMI shall be subject to all the relevant provisions of 26 Del. C. ch. 1 as well as the original supervision and regulations of this Commission. This Certificate shall authorize AWMI to construct facilities and to provide wastewater public utility services to a service territory composed of parcels identified as Sussex County Tax Map Parcel numbers 234-16.00-19.00, 234-17.00-21.00, 234-17.00-22.00, and 234-17.00-657.00.

9. In addition, the Commission finds that AWMI has provided sufficient documentation for the Commission to award it a CPCN for its initial service territory encompassing the above four parcels to be known as the "Stonewater Creek" development. AWMI has submitted petitions signed by the landowners of record of those parcels and has provided evidence that those landowners were notified of the filing of AWMI's application. 26 Del. C. § 203D(d)(2) (2004 Supp.).<sup>11</sup> Moreover, as noted above, the public convenience and necessity will be served by

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service territory. Technically, if AWMI might make a subsequent application to serve a different, or expanded, service territory, one could say that AWMI would no longer be a "new wastewater utility" given that it will, by then, already hold this Certificate. However, the Commission believes that the General Assembly did not intend that the Commission should be foreclosed from again examining the financial, operational, or managerial capabilities of a once "new" utility if it later undertakes a significant expansion of its system and service territory. The Commission cannot now forecast AWMI's ability to serve larger service areas. Thus, until a certain tip point is passed (when AWMI's financial, operational, and managerial capacities are significant enough to ensure adequate service to large service areas), the Commission reserves the right to again examine those capabilities in later service territory applications by AWMI.

<sup>11</sup>With all the landowners executing petitions, there is no basis to deny this application under the provisions of 26 Del. C. § 203D(h) (2004 Supp.).

AWMI providing wastewater services to the Stonewater Creek development.

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

1. That, pursuant to the provisions of 26 Del. C. § 203D, a Certificate of Public Convenience and Necessity is granted to Artesian Wastewater Management, Inc., to begin operations as a wastewater public utility subject to the provisions of 26 Del. C. ch. 1 and the original supervision and regulation of this Commission. This Certificate authorizes Artesian Wastewater Management, Inc., to provide wastewater public utility services and to operate the wastewater public utility facilities as described in its request filed November 12, 2004. This Certificate shall encompass a service territory encompassing parcels identified as Sussex County Tax Map Parcels numbers 234-16.00-19.00, 234-17.00-21.00, 234-17.00-22.00, and 234-17.00-657.00.

2. That Artesian Wastewater Management, Inc., shall comply with all the obligations and duties of a public utility, as set forth in 26 Del. C. ch. 1, and any relevant rules, regulations, or Orders of this Commission. Artesian Wastewater Management, Inc., shall forthwith provide to the Commission, and thereafter keep current, the name and address of its resident agent.

3. That, by this Order, the Commission does not approve the tariff and rates submitted by Artesian Wastewater Management, Inc., with its application. The Commission shall review the rates, terms, and conditions for services by Artesian Wastewater Management, Inc., in a separate proceeding to be initiated hereafter. Artesian

Wastewater Management, Inc., shall not provide to the public any wastewater services until the Commission has approved (on an interim or final basis) just and reasonable terms, conditions, and rates for the utility.

4. That Artesian Wastewater Management, 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 wastewater utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

5. 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/ Jaymes B. Lester  
Commissioner

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Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary