

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

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN WATER COMPANY, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES TO) PSC DOCKET NO. 05-CPCN-03
A TOTAL OF 193 PARCELS OF LAND LOCATED) (SOUTHERN NEW CASTLE COUNTY
SOUTH OF THE C & D CANAL AND NORTH OF) FILL-IN)
THE TOWN OF MIDDLETOWN, NEW CASTLE)
COUNTY, DELAWARE (FILED JANUARY 14,)
2005 AND AMENDED APRIL 4, 2005))

ORDER NO. 6606

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

This 26th day of April, 2005, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Artesian Water Company, Inc. ("Artesian" or the "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 January 14, 2005, Artesian 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 a total of 199 parcels of land located south of the C & D Canal and north of the Town of Middletown, New Castle County, Delaware ("Proposed Service Area"), as specifically described by the tax parcel number identifications in paragraph 6 of the Application.

2. Staff reviewed the Application in accordance with the rules adopted in PSC Regulation Docket No. 51, Order No. 5730, effective July 10, 2001. During this review, Staff found that three parcels of land are in an existing service territory granted to another public utility, and, in two cases, the required notice was not sent to the correct property owner of record. The Applicant responded by submitting amended Exhibits A and C on April 4, 2005 that omitted the five parcels of land in question. As a result of the subdivision of a parcel of land, an additional parcel of land (New Castle County tax map no. 1105700228) is currently in the Applicant's existing service territory and was removed from the revised Exhibits.

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.

II. SUMMARY OF THE EVIDENCE

4. The record in this matter consists of the Application, with the April 4, 2005 amended Exhibits A and C, and includes the 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, as revised (§ 1(d));
- (ii) copies of the United States Postal Service's forms 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, as revised (¶ 6);
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area, as revised, and the related tax maps (¶ 7);
- (v) the Applicant's statement that its expansion of service to the parcels in the Proposed Service Area, as revised, 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)-(d));

5. The record also contains:

- (i) affidavits of publication of the public notice of the Application on March 21, 2005, in the Delaware State News and The News Journal newspapers;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated March 2, 2005), from the Office of the State Fire Marshal (dated March 25, 2005), and from the Department of Natural Resources and Environmental Control (printed e-mail dated March 2, 2005) reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) Staff's April 21, 2005 memorandum of its investigation and its recommendation that the Commission approve the Application as revised and grant the requested CPCN. Staff reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

6. Finally, the record does not contain any evidence that any person objects to or requests a hearing on the Application, nor did any property owner request to "opt-out" of the Proposed Service Area.¹

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

7. The Commission concludes it has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities if the water utility satisfies the legal and factual requirements. The Commission finds that the Applicant operates a water system for public use and, consequently, is a water utility.

8. 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 all owners of parcels 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 the Applicant 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.

¹Based upon the notice of the Application that Artesian sent by certified mail to all property owners in the Proposed Service Area prior to filing the CPCN application, two property owners sent notice to the Commission requesting to "opt-out" of the Proposed Service Area. An additional five property owners sent notices to the Commission both to "opt-out" of the Proposed Service Area and to object to the inclusion of their properties in the Application. The notices received from the five property owners appear to be "form letters," and the objection is not to the Application, but to the inclusion of their individual properties in the Application. Copies of these letters were sent to Artesian who responded by omitting those properties from its CPCN Application filed on January 14, 2005.

9. 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 services 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.

10. 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 statute's 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 No. 05-CPCN-03, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Artesian Water Company, Inc., to serve the area identified by the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That Artesian Water Company, 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 services 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/ Jaymes B. Lester
Commissioner

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

ARTESIAN WATER COMPANY, INC.
(SOUTHERN NEW CASTLE COUNTY FILL-IN)

NEW CASTLE COUNTY TAX MAP PARCELS NOS.

1105700004	1106100023	1300700042
1105700008	1106100024	1300700043
1105700010	1106100025	1300700044
1105700012	1106200003	1300700046
1106100002	1203500001	1300700052
1106100003	1203500004	1300700061
1106100004	1204200001	1300800005
1106100008	1204200002	1300800009
1106100009	1204200003	1300800020
1106100010	1204200004	1300800023
1106100011	1204200005	1300900001
1106100013	1204200006	1301100007
1106100015	1300300013	1301100008
1106100016	1300300015	1301100030
1106100017	1300700009	1301100010
1106100018	1300700010	1301100011
1106100019	1300700011	1301100012
1106100020	1300700027	1301100013
1106100021	1300700028	1301100014
1106100022	1300700033	1301100016

1301100017	1301200034	1301300004
1301100018	1301200038	1301300005
1301100019	1301200040	1301300006
1301100022	1301200043	1301300007
1301100023	1301300069	1301300012
1301100029	1301200044	1301300047
1301100031	1301200045	1301300051
1301100032	1301200046	1301300053
1301100042	1301200047	1301300055
1301200060	1301200049	1301300056
1301200054	1301200055	1301300057
1301100044	1301200054	1301300058
1301100045	1301200066	1301300059
1301100048	1301200093	1301300065
1301100049	1301200094	1301300230
1301100050	1301200102	1301300070
1301100051	1301200103	1301300072
1301200007	1301700013	1301300098
1301200009	1301200105	1301300116
1301200010M0001	1301200107	1301300164
1301200011	1301200108	1301300165
1301200013	1301200109	1301300166
1301200022	1301200111	1301300167
1301200024	1301200112	1301300168
1301200030	1301300001	1301300169
1301200031	1301300003	1301300170

1301300171	1301800261	1301900034
1301300172	1301700042	1301900035
1301300173	1301700043	1301900040
1301300174	1301700047	
1301300176	1301700048	
1301300179	1301700101	
1301300180	1301800001M0001	
1301300182	1301800057	
1301300185	1301800071	
1301300186	1301800074	
1301300188	1301800075	
1301300189	1301800142	
1301320174	1301800164	
1301320176	1301800165	
1301400200	1301800166	
1301410070	1301900003	
1301600156	1301900005	
1301700002	1301900006	
1301700075	1301900007	
1301700036	1301900020	
1301700037	1301900024	
1301700038	1301900029	
1301700039	1301900030	
1301700040	1301900031	
1301800003	1301900032	
1301800260	1301900033	