

**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	)	PSC DOCKET NO. 05-CPCN-01
TO A TOTAL OF TWENTY-TWO PARCELS OF	)	(CENTRAL KENT 2)
LAND LOCATED IN THE NORTH MURDERKILL,	)	
SOUTH MURDERKILL, AND MILFORD	)	
HUNDREDS, KENT COUNTY, DELAWARE (FILED	)	
JANUARY 10, 2005 AND AMENDED AUGUST 17,	)	
2005)	)	

**ORDER NO. 6702**

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

This 23<sup>rd</sup> day of August, 2005, the Commission finds, determines, and Orders the following:

**I. BACKGROUND**

1. Artesian Water Company, 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 January 10, 2005, 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 a total of thirty-one parcels of land located in the North Murderkill, South Murderkill, and Milford Hundreds in central Kent 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 the initial review, Staff found that one of the parcels in the Proposed Service Area (identified by Kent County tax parcel no. SM00-138.00-02-67.00) is within the Town of Felton's certificated water service territory, noted a discrepancy in ownership of a second parcel, and that the owner of parcel SM00-131.00-01-18.00 notified the Commission of his desire to "opt-out" of the Proposed Service Area. The Company submitted revised Exhibits A and C (the listing of parcel numbers and owner names and addresses) to the Application, dated February 7, 2005, to correct these deficiencies.

3. On February 8, 2005, Staff directed the Applicant to publish notice of the Application in two newspapers of general circulation, advising residents of the Company's application, that the application may be reviewed at the Commission's office during normal business hours, that a hearing in this matter would not be held unless a meritorious request for a hearing was received, and that property owners in the Proposed Service Area may object to, or "opt-out," of the proposed CPCN.

4. On February 22, 2005, Artesian submitted another revised Exhibits A and C, withdrawing from the Application two parcels of land that had been "included"<sup>1</sup> but where the landowner had signed a water service agreement with another utility. The owners of these two

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<sup>1</sup>When shown with quotation marks, the term "included" shall mean the landowner(s) did not sign a petition requesting water services, nor did the landowner(s) file a petition with the utility or the Commission requesting to "opt-out" of the Proposed Service Area prior to the Commission's consideration of this matter.

parcels later filed petitions to "opt-out" of Artesian's Proposed Service Area, and they then became part of a proposed service area for which a CPCN was requested by Tidewater Utilities, Inc. ("Tidewater") on March 14, 2005 (PSC Docket No. 05-CPCN-11).

5. In a letter dated February 22, 2005, the Town of Frederica ("Town") filed an objection to the Commission's issuance of a CPCN to Artesian for parcels located adjacent to, and in close proximity of, the Town's municipal boundaries. The objection specifically listed the following eight Kent County tax parcel numbers: SM00-131.00-01-16.00, SM00-131.00-01-17.00, SM00-131.00-01-18.00, SM00-140.00-01-24.00, SM00-140.00-01-76.00, SM00-141.00-01-06.00, SM00-141.00-01-21.00, and SM00-141.00-01-22.00. The basis for the objection is the location of the parcels in the Town's planned growth area and its intention to annex the properties and provide municipal services, including water.

6. On April 28, 2005, the Town filed a second objection, objecting to the Commission issuing a CPCN to Artesian or to Tidewater for the eight parcels of land listed in the Town's February 22, 2005 letter. Of the eight parcels, two were in a proposed service territory requested by Tidewater in PSC Docket No. 05-CPCN-11; and the remaining six were in Artesian's Proposed Service Area. In light of the Town's objection, the Commission entered PSC Order No. 6616 (May 10, 2005) referring both CPCN applications to a Hearing Examiner to build a more complete record for Commission consideration.

7. After a period of discovery and pre-filed testimony, an Evidentiary Hearing was held on July 26, 2005. Prior to the start of

the Hearing, the Town of Frederica withdrew it's objection entirely to the Tidewater application (PSC Docket No. 05-CPCN-11), and also withdrew its objection to a CPCN being granted to Artesian for two of the six disputed parcels. Artesian also agreed to withdraw one parcel from its Proposed Service Area after the landowner expressed during the hearing his desire to be served by the Town. The owners of the remaining three parcels of land subject to the Town's objection filed petitions with the Commission to "opt-out" of Artesian's Proposed Service Area.

8. In a memo dated July 29, 2005, the Hearing Examiner recommended that Staff continue to process the CPCN Application in the usual manner, without further litigation.

## **II. SUMMARY OF THE EVIDENCE**

9. The record in this matter consists of the Application, 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<sup>2</sup>, as amended (¶ 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

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<sup>2</sup>On July 14, 2005 and August 5, 2005, the Company faxed several signed petitions for properties that had been "included" in the original filing.

Proposed Service Area, as amended  
(¶ 6);

- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area, as amended, and the related tax maps (¶ 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)-(d));

10. The record also contains:

- (i) affidavits of publication of the public notice of the Application on February 11, 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 August 18, 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 February 8, 2005) reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) a letter from Herbert Robbins, owner of Kent County tax parcel number SM00-131.00-01-18.00, requesting to "opt-out" of the Proposed Service Area;
- (iv) a letter from James Sloan, owner of Kent County tax parcel number SM00-141.00-01-21.00, requesting to "opt-out" of the Proposed Service Area;
- (v) a letter from Davis Wood, a partner in Sandbox Farm LLC, owner of tax parcel number SMOO-141.00-01-06, requesting to "opt-out" of the Proposed Service Area;
- (vi) a July 29, 2005 memo from Senior Hearing Examiner William F. O'Brien, recommending

Staff continue with its investigation of the Application in the usual manner; and

- (vii) Staff's August 19, 2005 memorandum of its investigation and its recommendation that the Commission approve the Application 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.

11. Finally, while there was an objection to the Application from the Town of Frederica, that objection was resolved and the Application was amended to reflect the agreements made between the parties during the Evidentiary Hearing.

### **III. FINDINGS OF FACT & CONCLUSIONS OF LAW**

12. 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 Applicant operates a water system for public use and, consequently, is a water utility.

13. First, the Applicant obtained the consent of the majority of owners of the property within the Proposed Service Area, as amended, 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 the Applicant's statement that the Applicant will continue to meet the water pressure requirements for its existing customers, and 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.

14. 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.

15. 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) (2004 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) (2004 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" of this Order.

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

1. That, pursuant to *26 Del. C. § 203C(e) (2004 Supp.)*, the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket No. 05-CPCN-01, 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 the properties identified by Kent County tax map parcel numbers SM00-131.00-01-18.00, SM00-141.00-01-06.00, and SM00-141.00-01-21.00 are excluded from the service area based upon the requests of the landowners to "opt-out."

3. 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.

4. 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

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Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

PSC Docket No. 05-CPCN-01, Order No. 6702 Cont'd.

/s/ Dallas Winslow  
Commissioner

ATTEST:

/s/ Norma J. Sherwood  
Acting Secretary

E X H I B I T "A"

APPROVED SERVICE AREA  
PARCELS WITHIN CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY

ARTESIAN WATER COMPANY, INC.  
(CENTRAL KENT GROWTH AREA 2)

KENT COUNTY TAX MAP PARCELS NOS.

NM 00-104.00-02-66.00	MD 00-163.00-01-55.00
NM 00-104.00-02-67.00	
NM 00-104.00-02-69.00	* "Included"
SM 00-122.00-02-16.11	
SM 00-130.00-02-03.03	
SM 00-130.00-02-03.04	
SM 00-130.00-02-03.05	
SM 00-131.00-01-16.00	
SM 00-140.00-01-03.00	
SM 00-140.00-01-24.00	
MD 00-142.00-01-15.03	
MD 00-143.00-01-12.00	
MD 00-151.00-01-06.00 *	
MD 00-151.00-01-03.00	
MD 00-151.00-01-42.00	
MD 00-161.00-02-40.00	
MD 00-162.00-01-03.00	
MD 00-162.00-01-22.01 *	
MD 00-162.00-01-43.00	
MD 00-162.00-01-64.00	
MD 00-162.00-01-68.00 *	