

**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-16
TO A TOTAL OF 119 PARCELS OF LAND)	(ROUTE 54, PHASE 6)
LOCATED BETWEEN THE TOWNS OF MILL-)	
VILLE, FRANKFORD, SELBYVILLE, AND)	
FENWICK ISLAND, SUSSEX COUNTY,)	
DELAWARE (FILED MAY 18, 2005 AND)	
AMENDED AUGUST 31, 2005))	

ORDER NO. 6718

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

This 6th day of September, 2005, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. Artesian Water Company, Inc. ("Artesian" or "the Company"), is a public water utility subject to the regulatory jurisdiction of this Commission. On May 18, 2005, the Company 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 258 parcels of land distributed between the towns of Millville, Frankford, Selbyville and Fenwick Island, Sussex County, Delaware ("Proposed Service Area"). Artesian submitted petitions requesting water service signed by the owners of 119 of the 258 parcels of land. The remaining

139 properties were "included" in the Proposed Service Area.¹ As part of the initial review process, Staff verified that the majority of the landowners of the 258 parcels had executed petitions requesting water services from Artesian.

2. Staff undertook a review of the initial Application in accordance with the water utility CPCN rules adopted in PSC Order No. 5730 (June 30, 2001; eff. July 10, 2001). Staff also solicited comments from the Office of Drinking Water of the Department of Public Health ("ODW"), the Office of the State Fire Marshal ("SFM"), and the Division of Water Resources of the Department of Natural Resources and Environmental Control. None of the three agencies offered any issue regarding Artesian's unwillingness or inability to provide safe, adequate, and reliable water services to its existing customers.

3. At Staff's direction, Artesian published notice of this application in The News Journal newspaper. The notice outlined the ability of a landowner in the proposed service territory to object, request a hearing, or to remove his or her property from the service territory ("opt-out").

4. The Commission initially sat to consider this Application (jointly with two others) at its public meeting on August 9, 2005. At that time, the Commission took no final action on the Application.²

¹When shown with quotation marks, the term "included" reflects that the landowner(s) of the property did not sign a petition requesting the utility's water services.

²At such meeting, the Commission considered Staff's concerns that the parcels sought to be included in the Proposed Service Area were too dispersed and unrelated to compose a "proposed territory to be served" under 26 Del. C. § 203C(e)(1)b. The Commission declined to withhold action on this (and the two other applications) based on Staff's position.

5. Through August 25, 2005, a total of twenty-one landowners submitted requests to "opt-out." These requests removed twenty-seven parcels of land from the Proposed Service Area. The owners of six of the parcels of land who have now requested to "opt-out" had previously signed petitions requesting water services.

6. On August 31, 2005, subsequent to the Commission's discussions at its meeting on August 9, 2005, the Company filed revised Exhibits A and C to its Application. The effect of these August 31, 2005 revisions was to remove from the Company's Proposed Service Area all of the 139 "included" parcels of land where the Company lacked a petition by the owners requesting water services. With such amendment, the service territory would include only those parcels of land where one or more of the landowners had signed a petition asking Artesian to provide water service to the property.³

II. SUMMARY OF THE EVIDENCE

7. The record in this matter consists of the Application, as amended, and various other documents filed during the course of the proceedings. The Application, as amended, includes:

- (i) petitions for service signed by a majority of landowners within the Proposed Service Area, as amended (Appl. ¶ 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 informing the landowners of the Applicant's filing for a CPCN as

³The revised Exhibits did not delete the six parcels where the landowners had previously petitioned for service but then filed "opt-out" requests.

prescribed by Water Utility CPCN Reg. 10.109 (Appl. ¶ 5);⁴

- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area, as amended (Appl. ¶ 6);
- (iv) a listing of the landowners of record of each of the parcels included in the original and amended Proposed Service Area, with the related tax maps (Appl. ¶ 7); and
- (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) (Appl. ¶ 8 (a)-(d));⁵

8. The record also contains:

- (i) affidavits reflecting publication of the notice of the Application on July 21, 2005 in The News Journal newspaper;⁶
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated June 13, 2005), from the Office of the State Fire Marshal (dated June 1, 2005), and from the Department of Natural Resources and Environmental Control

⁴During the course of Staff's review, Staff discovered that in the case of six petitioning landowners, the "return receipts" for the delivery of the Commission-required notice reflect that the return receipt was not signed, the return receipt was not returned, or the receipt was "mis-signed" by an Artesian agent. In light of these failures which suggest non-delivery, the Commission will, in six of these instances, include the parcels within this service territory on a conditional basis, subject to further verification or renotification. See ¶ 12 below.

⁵The Application also contains Artesian's agreement to proceed under informal fact-finding procedures. (Appl. ¶3.)

⁶While Staff directed the Company to publish notice in the Delaware State News and The News Journal newspapers, the Company informed Staff on August 17, 2005 that through an oversight, the notice had not been published in the Delaware State News. Considering the public attention that has been drawn to this matter by various news articles, the Commission is satisfied that the public has been adequately informed of the Application.

(printed e-mail dated June 7, 2005) reporting that none of these agencies have any outstanding issues with the Applicant that might preclude granting the requested CPCN;

- (iii) "opt-out" requests from the owners of six parcels of land in the Proposed Service Area, as amended;⁷ and
- (iv) Staff's August 31, 2005 memorandum of its investigation with its recommendation that the Commission approve the Application, as amended, and grant the requested CPCN.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

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

10. First, the Applicant has obtained the consent of the majority (in this case all) of the 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, as amended. Third, the record reflects 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 that would preclude it from expanding its operations or facilities.

⁷As noted earlier, "opt-out" requests were filed for twenty-seven parcels. Twenty-one of these parcels were "included" ones which were, by Artesian's August 31, 2005 amendment, removed from the Proposed Service Area.

11. 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.

12. As noted earlier (n. 4 above), in the case of six petitioning landowners, "return receipts" for the required notices explaining the landowners' entitlement to object or "opt-out" have been returned as apparently undelivered. At Staff's direction, Artesian sought to contact these landowners to confirm that they still requested water service to be furnished by Artesian. In the short time frame, Artesian was unable to obtain explicit confirmations from the landowners. Consequently, the Commission will include the parcels listed below in the service territory only on a conditional basis. Within forty-five days from this Order, Artesian shall file, as to each such parcel, either: (a) a certification that it has contacted the current landowners of such parcel and that those current landowners have confirmed that they continue to desire their property to be served by Artesian; or (b) proof that Artesian re-sent, by certified mail (restricted delivery), the obligatory notice to such landowners and that such notice was delivered. If, by the end of the forty-five day period, Artesian has not filed as to any parcel, a certification or proof of re-delivery of the required notice, then the

Commission shall, by subsequent Order, remove such parcel from the service territory granted by this Order. If Artesian provides certification or proof of re-delivery, then the Commission will confirm, by subsequent Order, the inclusion of such parcel within the service territory granted by this Order. The affected parcels are:

13401900002300

53301000007804

53301100008802

53301800005502

13402100001103

53301100001801

13. 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). 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). 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 Sussex County tax parcels numbers identified in Exhibit "A" hereto.

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

1. That, pursuant to 26 Del. C. § 203C(e), the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket No. 05-CPCN-16 on May 18, 2005, and as amended on August 31, 2005, is hereby approved to the extent it is consistent with this Order. A Certificate of Public Convenience and Necessity is hereby

granted to Artesian Water Company, Inc., to serve the area identified by the Sussex County tax parcels numbers set forth in Exhibit "A" to this Order.

2. That the properties identified by Sussex County Tax Parcels numbers 13401800003300, 13401800005300, 13401900000100, 13401900000201, 13401900011300, and 53300600013000, are hereby excluded from any service area granted here based upon the requests of the landowners of such designated parcels to "opt-out."

3. That the following parcels are included in this service territory on a conditional basis at this time:

13401900002300

53301000007804

53301100008802

53301800005502

13402100001103

53301100001801

Within forty-five days of this Order, Artesian Water Company, Inc., shall file, as to each of the above parcels, a certification or proof of re-delivery of notice as more completely described in paragraph 12 of the body of this Order. If Artesian Water Company, Inc., files such certification or proof of delivery as to a parcel, the Commission will, by later Order, confirm that parcel as being within the service territory granted by this Order. If, as to any parcel, Artesian Water Company, Inc., does not file either a certification or proof of re-delivery, then the Commission will, by later Order, remove such parcel from the service territory granted by this Order.

4. 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.

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

Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
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.
(ROUTE 54, PHASE 6)

SUSSEX COUNTY TAX MAP PARCELS NOS.

13401500002003	13401900002903	53300600006901
13401500010800	13401900002906	53300600007102
13401500011202	13401900002907	53300600007103
13401500011204	13401900002908	53300600007106
13401500011300	13401900002910	53300600007107
13401500012400	13401900004901	53300600007801
13401800002100	13401900007100	53300600007803
13401800002701	13401900007102	53300600007807
13401800002703	13401900007103	53300600007809
13401800002800	13401900008000	53300600007901
13401800003001	13401900008400	53300600008101
13401800003200	13401900008500	53300600008102
13401800003204	13401900009300	53300600009803
13401800003205	13401900009700	53300600010500
13401800004000	13401900009800	53300600011701
13401800005500	13401900010905	53300600011703
13401900002904	13401900011701	53300600011705
13401900008200	13401900014401	53300600011800
13401900002300	13402100000403	53300600012300
13401900002601	13402100001103	53300600013802
13401900002603	53300600012000	53301000007700
13401900002606	53300600005401	53301000007804
13401900002901	53300600006402	53301100000303

53301100001501	53301800005502
53301100001801	53301800005701
53301100002200	53301800006900
53301100004009	53301800006902
53301100004700	53301900000200
53301100005500	53301900000803
53301100006700	53301900003500
53301100007900	53301900003504
53301100008101	53301900005300
53301100008802	53301900012103
53301100009101	53301900012801
53301100009801	53302000002400
53301200000200	53302000002500
53301200000201	53302000002600
53301200001700	53302000002700
53301200001800	
53301200002001	
53301200002004	
53301200006900	
53301200006901	
53301200007000	
53301200008300	
53301200008400	
53301200008500	
53301200008700	
53301800001600	
53301800001702	
53301800005402	
53301800005404	