

**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-19
TO A TOTAL OF 99 PARCELS OF LAND) (INDIAN RIVER, PHASE 3)
LOCATED BETWEEN THE TOWNS OF GEORGE-)
TOWN AND REHOBOTH BEACH, SOUTH OF THE)
TOWN OF MILTON, AND NORTH OF THE TOWN)
OF MILLSBORO, SUSSEX COUNTY, DELAWARE)
(FILED JUNE 7, 2005 AND AMENDED)
AUGUST 31, 2005))

ORDER NO. 6720

**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 June 7, 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 202 parcels of land distributed between the towns of Georgetown and Rehoboth Beach, south of the Town of Milton, and north of the Town of Millsboro, Sussex County, Delaware ("Proposed Service Area"). Artesian submitted petitions requesting water service signed by the owners of 100 of the 202 parcels of land. The remaining 102

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 202 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 nine landowners submitted requests to "opt-out." These requests removed twelve parcels of land from the Proposed Service Area. The owner of one parcel of land who has now requested to "opt-out" had previously signed a petition requesting water service.

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 102 "included" parcels of land where the Company lacked a petition by the owners requesting water services. This revised exhibit also deleted the one parcel where the landowners had previously petitioned for service but then filed an "opt-out" request. 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.

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 prescribed by Water Utility CPCN Reg. 10.109 (Appl. ¶ 5);³

- (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));⁴

8. The record also contains:

- (i) affidavits reflecting publication of the notice of the Application on July 21, 2005 in The News Journal newspaper;⁵
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated August 29, 2005), from the Office of the State Fire Marshal (dated June 23,

³During the course of Staff's review, Staff discovered that in the case of seven petitioning landowners, the "return receipts" for the delivery of the Commission-required notice reflects 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 seven of these instances, include the parcels within this service territory on a conditional basis, subject to further verification or renotification. See ¶ 12 below.

⁴The Application also contains Artesian's agreement to proceed under informal fact-finding procedures. (Appl. ¶ 3.)

⁵While 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.

2005), and from the Department of Natural Resources and Environmental Control (printed e-mail dated August 22, 2005) reporting that none of these agencies have any outstanding issues with the Applicant that might preclude granting the requested CPCN; 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.

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 seven 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 reports that it was able to reach, by telephone, one landowner who indeed confirmed that he desired his parcel (no. 23400500004600) to be served by Artesian. In the other instances, Artesian was unable to obtain explicit confirmations from the landowners. Consequently, the Commission will include the seven 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) 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:

23400900002900

23401100007904

33401000006019

23401100010002

23401000012900

23401100009500

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-19 on June 7, 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 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 following parcels are included in this service territory on a conditional basis at this time:

23400900002900

23401100007904

33401000006019

23401100010002

23401000012900

23401100009500

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 re-delivery as to a parcel, the Commission will, by later Order, then 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 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.
(INDIAN RIVER, PHASE 3)

SUSSEX COUNTY TAX MAP PARCELS NOS.

13501700000800	23400500005300	23401000007504
13501700001100	23400500007700	23401000007508
13501700001101	23400600000200	
13501700001300		23401000013012
23400100000700	23400900004700	23401000020000
23400200000100	23400900004702	23401100007902
23400200000102	23401000000102	
23400400001001	23401000000105	23401100007906
23400400001002	23401000000109	23401100008000
23400400001006	23401000000110	23401100008004
23400400001015	23401000000111	
23400400001016	23401000000300	23401100009601
23400400001017	23401000001102	
23400400001018	23401000001103	23401600000616
23400400001030	23401000001107	23401600000617
23400400001400	23401000001202	23401600001001
23400400003000	23401000001205	23401600001002
23400500001200	23401000002100	23401600001302
23400500001900	23401000004900	23401600002501
23400500004403	23401000007008	23401600005500
23400500004600	23401000007011	23401700001106

23401700001108	33401000003022
23401700001200	33401000005800
23401700001201	33401000006010
23401700001202	33401000006017
23402200000307	
23402200000312	33401000006022
23402200000317	33401000006023
23402200000318	33401000006024
23402200000319	33401000006200
23402300000400	
23402300001000	
23402300001600	
23402300003300	
23402300003600	
23503000005600	
23503000006900	
23503000005901	
23503000012201	
23503000012300	
23503100001001	
23503100001002	
23503100001004	
23503100001007	
23503100001009	
23503100001106	
33401000002301	
33401000003005	