

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

IN THE MATTER OF THE APPLICATION OF	)	
TIDEWATER ENVIRONMENTAL SERVICES,	)	
INC., FOR A CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY TO PROVIDE	)	
WASTEWATER SERVICES TO TWO PARCELS OF	)	PSC DOCKET NO. 05-WW-012
LAND TO BE DEVELOPED AS "THE RETREAT"	)	("THE RETREAT")
LOCATED WEST OF THE CITY OF REHOBOTH	)	
BEACH, SUSSEX COUNTY, DELAWARE	)	
(FILED JUNE 22, 2005)	)	

**ORDER NO. 6724**

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
TO PROVIDE WASTEWATER SERVICES**

This 20<sup>TH</sup> day of September, 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 (2004) (amending "public utility" definition in 26 Del. C. § 102(2)).<sup>1</sup>

2. The law includes a specific regime for the granting of Certificates of Public Convenience and Necessity ("CPCN") to begin the business of a wastewater public utility or to extend the system and operations of an existing wastewater public utility. 74 Del. Laws ch.

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

317 § 6, adding 26 Del. C. § 203D. Under the statute, specifically 26 Del. C. § 203D(d)(2), the Commission shall grant a CPCN to an applicant if it has submitted a petition requesting wastewater services signed by a majority of the landowners in the proposed service area, as well as the proof that all of the landowners in the proposed service area were notified of the application. Under 26 Del. C. § 203D(e), the Commission may deny a request for a CPCN if the applicant is currently subject to a Commission finding or, if the Commission finds, that the applicant is unable or unwilling to provide safe, adequate, and reliable service to existing customers.

3. On February 22, 2005, by PSC Order No. 6573, the Commission adopted final *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* ("Regulations") which govern the process that non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN.

4. Tidewater Environmental Services, Inc. ("TESI") is a public utility offering wastewater services, and is subject to the regulatory oversight of this Commission.<sup>2</sup> On June 22, 2005, TESI filed an Application with the Commission requesting a CPCN to provide wastewater services to two parcels of land to be developed as a 161 unit subdivision named "The Retreat," located west of the City of Rehoboth Beach, Sussex County, Delaware ("Proposed Service Area"), and

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<sup>2</sup>TESI was granted its first CPCN on August 9, 2005 by PSC Order No. 6703, and was deemed to possess the financial, operational, and managerial capability to operate as a wastewater utility.

more specifically identified by the Sussex County tax parcels numbers 334-11.00-83.00 and 334-11.00-86.00.<sup>3</sup>

5. As required by 26 Del. C. § 203D(d)(2), and Commission Regulations, TESI included in its Application: (a) petitions requesting wastewater services signed by all of the landowners in the Proposed Service Area; and (b) evidence in the form of a United States Postal Service certified mail receipt, showing that all of the landowners in the Proposed Service Area were sent notice of the Application. Also included with the Application was a Sussex County tax map showing the location of the Proposed Service Area, and a copy of the amended Construction and Operation permit issued by the Ground Water Discharges Section of the Department of Natural Resources and Environmental Control ("DNREC") to reflect a transfer of the permit from The Edge Group c/o Caldera Properties, LP (the developer/owner), to TESI (DNREC Permit No. 197427).

6. TESI is a newly regulated wastewater utility and, to the best of the Commission's knowledge, it is not presently providing wastewater services to any customers. Thus, there is no determination to be made as to whether or not the utility is unwilling or unable to provide safe, adequate, and reliable service to existing customers. Commission Staff did notify the Division of Water Resources of the Delaware Department of Natural Resources and Environmental Control ("DNREC"), the Delaware Office of State Planning ("OSP"), as well as the Sussex County Engineering Department. There were no comments from

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<sup>3</sup>The initial Application also listed parcel number 334-11.00-84.00. In a response to an inquiry from Commission Staff, TESI reported that the parcel should not be included as part of the Proposed Service Area.

any of these agencies indicating an objection to the Commission issuing a CPCN to TESI for these parcels of land.

7. Consequently, consistent with the statutory requirement, the Commission shall grant a CPCN to TESI to provide wastewater public utility services within the Proposed Service Area.

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

1. That, pursuant to the provisions of 26 Del. C. § 203D(d)(2), a Certificate of Public Convenience and Necessity is granted to Tidewater Environmental Services, Inc., to provide wastewater public utility services to two parcels of land to be developed as "The Retreat," located west of the City of Rehoboth Beach, Sussex County, Delaware, and more specifically identified by the Sussex County tax parcels numbers 334-11.00-83.00 and 334-11.00-86.00.

2. That Tidewater Environmental Services, 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

PSC Docket No. 05-WW-012, Order No. 6724 Cont'd.

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Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary