

**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 A TOTAL OF TWENTY-TWO PARCELS OF ) PSC DOCKET NO. 05-CPCN-20  
LAND LOCATED WEST OF THE TOWN OF ) ("NORTH MIDDLETOWN")  
MIDDLETOWN, AND TO SIX PARCELS OF LAND )  
LOCATED SOUTHWEST OF DELAWARE CITY, )  
NEW CASTLE COUNTY, DELAWARE (FILED )  
JUNE 2, 2005 AND AMENDED OCTOBER 7 )  
AND NOVEMBER 3, 2005) )

**ORDER NO. 6768**

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

This 8<sup>th</sup> day of November, 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 2, 2005, the Company filed an Application  
("Application") with the Commission seeking a Certificate of Public  
Convenience and Necessity ("CPCN") to provide water services to  
seventy-seven parcels of land located west of the Town of Middletown,  
and to six parcels of land<sup>1</sup> located southwest of Delaware City, New  
Castle County, Delaware ("Proposed Service Area"). Artesian submitted  
petitions requesting water service signed by the owners of 35 of the

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<sup>1</sup>Portions of one of these parcels of land, identified by New Castle  
County tax map parcel number 1202800011, are within the certificated  
territory granted to Delaware City by the Department of Natural Resources and  
Environmental Control by CPCN No. 98-CPCN-14, dated December 10, 1998. The  
Company is requesting a CPCN for the portions of the parcel that lie outside  
of that certificated area.

83 parcels of land. The remaining 48 properties were "included" in the Proposed Service Area.<sup>2</sup> As part of the initial review process, Staff verified that the majority of the landowners of the 83 parcels had executed petitions requesting water services from Artesian. On August 5, 2005, the Company submitted petitions requesting water services signed by the owners of three parcels of land "included" in the June 2, 2005 filing. Signed petitions requesting water services for several of the initially "included" parcels of land were received on October 5, 7, and 21, 2005.

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). As required by those rules, Staff 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 ("DNREC"). 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. Through June 20, 2005, Staff received letters from the owners of five parcels of land.<sup>3</sup> The owners of two parcels of land, one of whom had earlier signed a petition requesting service, requested to "opt-out" (have their property excluded) of the Proposed

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<sup>2</sup>When 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.

<sup>3</sup>A sixth letter was received from a landowner who had been sent notice of the intent to file an Application by the Company, but whose property was ultimately not part of the June 2, 2005 filing.

Service Area. The owners of two other properties requested to "opt-out" of the Proposed Service Area, and also indicated an objection to a CPCN being granted to the utility. The owners of a fifth parcel of land, who had previously signed a petition requesting water services from the Company, wrote to object to receiving water from Artesian.

5. At Staff's direction, Artesian published notice of this application in the Delaware State News and The News Journal newspapers. 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").

6. On October 5, 2005, and then on October 7, 2005, Artesian filed revised Exhibits A and C to the initial Application, removing the majority of the "included" parcels, those properties where the owners had either objected or requested to "opt-out," as well as a number of properties where the landowners had signed petitions. On November 3, 2005, the Company informed Staff that the owner of an "included" parcel was now requesting that his property be withdrawn from the Proposed Service Area. Additionally, the Company sent via facsimile a signed petition requesting water services from a landowner whose property had been "included" in the initial filing, but later withdrawn by the Company. Revised Exhibits A and C, dated November 3, 2005, were filed to reflect these changes.

7. On August 26, 2005, the Company sent, via facsimile, copies of the signature cards from the United States Postal Service certified mail receipts as evidence that landowners in the Proposed Service Area were notified of the Application. Based on Staff's review of this

evidence, it appeared that the owners of nine of the initial 83 parcels of land had not received the notice required by both statute and Commission rules. Two of the landowners shown in the October 7, 2005 revised Exhibits A and C had not received said notice, but had earlier signed petitions requesting water services from the Company. At Staff's request, Artesian sent two letters, dated October 20 and 21, 2005, stating that the landowners were contacted by telephone and still want to be in Artesian's water service territory.<sup>4</sup>

8. At Staff's request, the Company sent notice to those landowners whose properties were part of the Proposed Service Area as filed in the June 2, 2005 Application, but were ultimately removed from the October 7, 2005 revised Exhibits A and C. One form of notice was sent to owners of "included" properties, and a different form of notice was sent to owners who had signed a petition but whose property was removed from the revised service area.

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

9. 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

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<sup>4</sup>Because of this apparent lack of notice in two recent CPCN Applications filed by the Company, PSC Orders Nos. 6718 and 6720 granted conditional approval to twelve parcels of land, pending receipt by Staff of either proof of mailing and delivery of the required notice, or a certified statement from the Company that the current landowners of the parcels were contacted and have expressed a desire to receive water services from the Company.

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);

- (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));<sup>5</sup>

10. The record also contains:

- (i) affidavits reflecting publication of the notice of the Application on August 22, 2005 in The News Journal and Delaware State News newspapers;
- (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 16, 2005), and from the Department of Natural Resources and Environmental Control (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; and
- (iv) Staff's October 27, 2005 memorandum of its investigation with its recommendation that

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

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 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. 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 New Castle 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-20 on June 2, 2005, and as amended on October 7 and November 3, 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 New Castle 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 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

/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.  
("NORTH MIDDLETOWN")

NEW CASTLE COUNTY TAX MAP PARCELS NOS.

1202800011*	1302100015
1300400008	1302100026
1300900010	1302100038
1300900015	1302100045
1300900017	1302100078
1300900024	1302100084
1301600005	1302600026
1301600017	*Those portions of parcel number 1202800011 that lie outside of the certificated territory granted to Delaware City by the Department of Natural Resources and Environmental Control by CPCN No. 98-CPCN-14, dated December 10, 1998.
1301600036	
1301600042	
1301600045	
1301600091	
1301600157	
1301700004	
1301700050	
1301700052	
1301700054	
1301700093	
1301700107	
1301700119	
1302100009	