

**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) PSC DOCKET NO. 05-CPCN-21
AND NECESSITY TO PROVIDE WATER) ("EASTERN SUSSEX 1")
SERVICES TO TWENTY PARCELS OF LAND)
LOCATED EAST OF MILLSBORO, SUSSEX)
COUNTY, DELAWARE (FILED JULY 28,)
2005 AND AMENDED SEPTEMBER 14,)
2005))

ORDER NO. 6784

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

This 20th day of December, 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 July 28, 2005, the Company filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to 38 parcels of land distributed east of Millsboro, Sussex County, Delaware ("Proposed Service Area"). Artesian submitted petitions requesting water services signed by the owners of 20 of the 38 parcels of land. The remaining 18 properties were "included" in the Proposed Service Area.¹ As part of the initial review process, Staff verified that the

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.

majority of the landowners of the 38 parcels had executed petitions requesting water services from Artesian. On September 14, 2005, Artesian amended its application to include only the 20 parcels of land where the landowners had requested water services in its Proposed Service Area. At Staff's request, the landowners of the "included" parcels of land were notified by mail that their property was removed from the Application.

2. Staff undertook a review of the 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. 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").

4. Prior to the Company amending the Application, the Commission received two letters from landowners whose properties had been "included" and who were requesting to "opt-out" of the Proposed Service Area. The amended Application removes those properties from

the Proposed Service Area. On October 7, 2005, the Commission received "opt-out" requests for four properties where the owner had previously signed a petition requesting water services from the Company. "Opt-out" requests for another five properties were received from a second landowner who had previously signed a petition requesting water services; however, on October 28, 2005, that landowner rescinded his "opt-out" requests and indicated he does wish to be included in Artesian's proposed service area.

II. SUMMARY OF THE EVIDENCE

4. 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 (in this case, all) of the 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);
- (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));²

10. The record also contains:

- (i) affidavits reflecting publication of the notice of the Application on August 29, 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 August 29, 2005), from the Office of the State Fire Marshal (dated October 13, 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;
- (iii) "opt-out" requests from the owner of four parcels of land in the Proposed Service Area, as amended;
- (iv) Staff's December 2, 2005 memorandum of its investigation with the 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.

²The Application also contains Artesian's agreement to proceed under informal fact-finding procedures. (Appl. ¶ 3.)

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. 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 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-21 on July 28, 2005, and as amended on September 14, 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 23403300001703, 23403300001704, 23403300001801, and 23402800014900, 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 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

PSC Docket No. 05-CPCN-21, Order No. 6784 Cont'd.

/s/ Joann T. Conaway
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
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.
("EASTERN SUSSEX 1")

SUSSEX COUNTY TAX MAP PARCELS NOS.

23402800001607

23402800001608

23402800001609

23402800001610

23402800005900

23402800005901

23402800005902

23402800006000

23402800006900

23402800013602

23402800014700

23402900000500

23402900002900

23402900003700

23402900003907

23403300001600