

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND) PSC DOCKET NO. 05-CPCN-11
NECESSITY TO PROVIDE WATER SERVICES) ("TUSCANY ESTATES")
TO A THREE PARCELS OF LAND LOCATED)
WEST OF THE TOWN OF FREDERICA, KENT)
COUNTY, DELAWARE (FILED MARCH 14, 2005))

ORDER NO. 6828

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

This 24TH day of January, 2006, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. Tidewater Utilities, Inc. ("Tidewater" or "Applicant"), is a water utility providing water services for public use that are subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On March 14, 2005, the Applicant 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 four parcels of land located west of the Town of Frederica, Kent County, Delaware ("Proposed Service Area"), as specifically described by the tax parcel number identifications in paragraph 6 of the Application. Staff found that one of the parcels of land, identified by Kent County tax parcel number SM00-140.00-01-75.00, is already in the certificated service territory of another regulated water provider and should not be considered part of the Application.

2. Staff reviewed the Application in accordance with the rules adopted in PSC Regulation Docket No. 51, Order No. 5730, effective July 10, 2001. As required by those rules, Staff solicited comments on the application from the Delaware Department of Natural Resources ("DNREC"), the Office of the State Fire Marshal ("SFM"), and the Office of Drinking Water of the Division of Public Health ("DPH"). Additionally, Staff directed Tidewater to publish a notice in The News Journal and Delaware State News newspapers, advising residents of the Company's application, that the application may be reviewed at the Commission's office during normal business hours, that a hearing in this matter would not be held unless a meritorious request for a hearing was received, and that property owners may object to, or "opt-out," of the proposed CPCN area. No "opt-outs," requests for hearing, or objections were received as a result of the newspaper notices.

3. On April 28, 2005 the Town of Frederica filed an objection to the Commission's granting of a CPCN to Tidewater for the two parcels of land identified by Kent County tax map parcels numbers SM00-140.00-01-76.00 and SM00-141.00-01-22.00, as well as several parcels requested by Artesian Water Company, Inc. ("Artesian") in another CPCN Application (PSC Docket No. 01-CPCN-01). The basis for the objection was the location of the parcels in the Town of Frederica's "growth zone" and its intent to annex the properties and provide municipal services in an "orderly fashion". The objection also indicated that, after discussions with the Town, the landowners of the parcels were desirous of annexation and municipal water

services, and in effect questioning whether services were requested from either Artesian or Tidewater.

4. In light of the Town's objection, on May 10, 2005, the Commission entered PSC Order No. 6616, referring both CPCN applications to a Hearing Examiner to build a more complete record for Commission consideration. After a period of discovery and pre-filed testimony, an Evidentiary Hearing was held July 26, 2005. Prior to the start of the Hearing, the Town of Frederica withdrew its objection entirely to the Tidewater application (PSC Docket No. 05-CPCN-11). At the end of the Hearing, and in his July 29, 2005 memo, the Hearing Examiner assigned to the matter recommended that Staff proceed with processing of the Artesian and Tidewater CPCN applications in the usual manner, with out further litigation.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, and includes the Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in *29 Del. C. § 10123* (¶ 3). In addition, the Application includes:

- (i) petitions signed by all of the landowners within the Proposed Service Area (¶ 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 of the Applicant's filing for a CPCN as prescribed by Water Utility CPCN Reg. 10.109 (¶ 5);
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area (¶ 6);

- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area and the related tax maps (¶ 7);
- (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) (¶ 8 (a)-(d));

6. The record also contains:

- (i) affidavits of publication of the public notice of the Application on February 11, 2005 in the Delaware State News and The News Journal newspapers;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated April 5, 2005), from the Office of the State Fire Marshal (dated April 21, 2005)¹, and from the Department of Natural Resources and Environmental Control (printed e-mail dated March 31, 2005) reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (vi) a July 29, 2005 memo from Senior Hearing Examiner William F. O'Brien, recommending Staff continue with its investigation of the Application in the usual manner; and
- (vii) Staff's January 13, 2005 memorandum of its investigation and its recommendation that the Commission approve the Application and grant the requested CPCN. Staff reports that, based upon its review, the Applicant

¹In its letter to Staff, the Office of the State Fire Marshal ("OSFM") indicated it had "no outstanding issues indicating that the applicant has been unwilling or unable to provide safe, adequate, and reliable drinking water services to existing customers." Staff has since become aware of fire protection issues raised by the OSFM regarding certain water systems operated by Tidewater. A memo from Staff Counsel Francis Murphy concludes that the presence of a dispute between the OSFM and Tidewater (which is now pending before the Superior Court of the State of Delaware) should not cause the Commission to suspend its consideration of Tidewater's pending CPCN applications.

has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

7. Finally, while there was an objection to the Application from the Town of Frederica, that objection was ultimately resolved.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

8. 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 Commission finds that Applicant operates a water system for public use and, consequently, is a water utility.

9. First, the Applicant obtained the consent of the majority, all in this case, of owners of the property within the Proposed Service Area 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 the Applicant will continue to meet the water pressure requirements for its existing customers, and 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 which would preclude it from expanding its operations or facilities.

10. 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.

11. 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)*, which the Commission's Staff has reviewed and found to be accurate. 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) (2004 Supp.)*. 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 parcels identified in its Application.

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

1. That, pursuant to *26 Del. C. § 203C(e) (2004 Supp.)*, the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket No. 05-CPCN-11, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Tidewater Utilities, Inc., to serve the area identified by the tax map parcel numbers SM00-141.00-01-23.00, SM00-141.00-01-22.00, and SM00-140.00-01-76.00.

2. That Tidewater Utilities, 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

/s/ Joann T. Conaway
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary