

**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 )  
NECESSITY TO PROVIDE WATER SERVICES TO ) PSC DOCKET NO. 05-CPCN-30  
TWENTY-THREE PARCELS OF LAND LOCATED ) ("DELMAR")  
WEST OF DELMAR, SUSSEX COUNTY, )  
DELAWARE (FILED NOVEMBER 2, 2005 AND )  
AMENDED NOVEMBER 22, 2005) )

**ORDER NO. 6835**

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

This 7<sup>th</sup> day of February, 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 is subject to the regulatory jurisdiction of this Commission. On November 2, 2005,<sup>1</sup> 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 twenty-six parcels of land located west of Delmar, Sussex County, Delaware ("Proposed Service Area").

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<sup>1</sup>Section 10.107(b) of the *Regulations Concerning Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity* (adopted June 5, 2001 by PSC Order No. 5730) states, "the written notice required by 26 Del. C. § 203C(d)(1) and (e)(1) shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application." During Staff's review, it was found that the Application had been filed with the Commission less than thirty days after this written notice was sent to two landowners. Consequently, Staff has amended the filing date of the application to November 2, 2005, which is thirty days after the latest date that a written notice was sent.

2. Staff reviewed the application in accordance with the rules adopted in PSC Regulation Docket No. 51, Order No. 5730, effective July 10, 2001, and also directed the Applicant to publish notice of the Application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the date of publication.

3. During its review, Staff found one parcel of land in the proposed service area that is in the certificated service territory of the Town of Delmar, and two other parcels of land are already in Tidewater's service territory. Additionally, there was a signed petition for, and evidence of landowner notification, for two parcels of land not shown on the initial parcel listing. A revised "Exhibit C" to the Application, removing the three parcels and adding the other two parcels, was filed with the Commission on November 22, 2005. The application also includes another parcel of land located very close to the Town of Delmar's ("Town" or "Delmar") certificated service area. Staff notified the Town of the Application, and the Town did not file any objection to the Commission granting the requested CPCN to Tidewater.

4. The owner of two parcels of land submitted a written request to the Commission to "opt-out" of the proposed service area. This letter also contains an objection to the issuance of a CPCN to Tidewater, and a request for a public hearing.<sup>2</sup> No other comments,

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<sup>2</sup>Under Delaware law, 26 Del. C. § 203C(i), the Commission cannot grant a CPCN to a water utility if a majority of the landowners in a proposed service

requests for a hearing, objections, nor "opt-outs" were received as a result of the landowner notifications or the newspaper notices.

## II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, including 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, as amended;
- (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 Proposed Service Area as prescribed by Water Utility CPCN Reg. 10.109;
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area;
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area, as amended, and the associated tax maps; 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);

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area object to the issuance of the CPCN. No reason was offered by the landowner regarding the request for a hearing on the matter.

6. The record also contains:

- (i) affidavits of publication of the public notice of the Application in the Delaware State News newspaper on December 15, 2005, and in The News Journal newspaper on December 16, 2005;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated November 28, 2005), from the Office of the State Fire Marshal (dated November 18, 2005), and from the Department of Natural Resources and Environmental Control (printed e-mail dated November 27, 2005) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) A letter from the owner of Sussex County tax parcels numbers 532-13.00-7.05 and 532-13.00-7.06 requesting to "opt-out" of the proposed service area;
- (iv) Staff's January 31, 2006 memorandum of its investigation recommending the Commission approve the Application, as amended, and grant the requested CPCN. Staff reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

7. The Commission has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities, and Applicant operates a water system for public use and, consequently, is a water utility.

8. First, the Applicant obtained the consent of all of the landowners 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 of land 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.

9. 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 service to its existing customers. The present record does not provide a basis for the Commission to believe further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding.

10. 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)*. 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 paragraph 1 of this Order.

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-30, and amended, 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 Sussex County Tax Map Parcels Numbers:

532-5.00-23.00	532-18.00-17.00	532-18.00-49.00
532-11.00-6.04	532-18.00-27.06	532-19.00-12.10
532-11.00-6.07	532-18.00-42.01	532-19.00-37.00
532-11.00-38.01	532-18.00-42.04	532-19.00-5.01
532-11.00-70.02	532-18.00-43.00	532-19.00-8.00
532-12.00-1.00	532-18.00-44.00	532-19.00-85.00
532-12.00-51.00	532-18.00-45.00	532-20.00-15.03
532-12.00-55.00	532-18.00-46.00	

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/ Jaymes B. Lester  
Commissioner

PSC Docket No. 05-CPCN-30, Order No. 6835 Cont'd.

/s/ Joann T. Conaway  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary