

**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 )  
TWENTY-SEVEN PARCELS OF LAND ) PSC DOCKET 05-CPCN-31  
DISTRIBUTED ON EITHER SIDE AND WEST OF ) ("BURTONS POND/WELSH RUN")  
JOHN J. WILLIAMS HIGHWAY, NORTHEAST OF )  
MILLSBORO, SUSSEX COUNTY, DELAWARE )  
(FILED NOVEMBER 16, 2005)

**ORDER NO. 6851**

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

This 28<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 1, 2005,<sup>1</sup> the Applicant filed an application ("Application") with the Commission seeking a Certificate of Public Convenience and

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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 the written notice was sent to one of the two landowners. Consequently, Staff has amended the filing date of the application to November 16, 2005, which is thirty days after the latest date that written notice was sent. Additionally, the notice sent to the second of the landowners had been mailed more than sixty days prior to the November 1, 2005 filing of the CPCN Application. Staff therefore directed Tidewater to re-send the written notice to that landowner. Tidewater has submitted evidence that this second notice was sent by certified mail on December 23, 2005.

Necessity ("CPCN") to expand its facilities and operations in order to provide water services to twenty-seven parcels of land distributed on either side and west of John J. Williams Highway, northeast of Millsboro, Sussex County, Delaware ("Proposed Service Area").

2. Staff reviewed the application in accordance with the rules adopted in PSC Regulation Docket No. 51, Order No. 5730, effective July 10, 2001. Staff has 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"). Additionally, Staff directed Tidewater to publish notice of the Application in two newspapers of general circulation, 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.

3. The Commission received letters from the owners of seven parcels of land who had previously signed petitions requesting service who are now requesting to "opt-out" of the proposed service area. No other comments, requests for a hearing, nor objections, were received as a result of the landowner notifications or the newspaper notices.

4. During review of the Application, Staff has also found that one parcel of land, and portions of two other parcels, currently lie within a Tidewater certificated service area granted by the Delaware Department of Natural Resources and Environmental Control ("DNREC") in

Secretarial Order 83-W-15 (Dec. 27, 1983). In the case of the two parcels, Staff recommends they be included entirely in this CPCN Application to more definitively define the Company's service area, as the DNREC Order relies upon then existing landmarks rather than the county parcel numbers which is the practice of this Commission. Since the third parcel is located wholly within the existing service area, it need not be considered as part of the service area requested in this Application.

## 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;
- (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, 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);

6. The record also contains:
- (i) affidavits of publication of the public notice of the Application in the Delaware State News newspaper and in The News Journal newspaper on December 14, 2005;
  - (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated February 21, 2006), from the Office of the State Fire Marshal (printed e-mail dated November 18, 2005),<sup>2</sup> and from the Department of Natural Resources and Environmental Control (printed e-mail dated February 21, 2006) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
  - (iii) Staff's February 15, 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 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

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<sup>2</sup>After receiving some clarifying information, the Office of the State Fire Marshal e-mailed Staff indicating it did not have any outstanding issues with the Applicant.

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, 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 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 the Application.

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-31, 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:

234-10.00-12.07	234-11.00-93.04	234-17.00-17.00
234-10.00-15.00	234-11.00-97.00	234-17.00-29.00
234-10.00-135.00	234-11.00-98.00	234-17.00-31.03
234-10.00-163.00	234-15.00-30.03	234-21.00-213.00
234-10.00-199.00	234-15.00-84.00	234-21.00-214.00
234-11.00-57.00	234-16.00-1.01	234-22.00-13.06
234-11.00-78.03	234-16.00-1.02	234-22.00-13.11
234-11.00-81.00	234-16.00-12.00	
234-11.00-91.00	234-16.00-25.00	
234-11.00-93.02	234-17.00-11.09	

2. That Sussex County Tax Map Parcels Numbers 234-10.00-130.13, 234-10.00-130.14, 234-11.00-99.01, 234-15.00-40.00, 234-17.00-13.00, 234-17.00-31.00, and 234-17.00-31.02, are excluded from the approved service area based upon the written requests of the landowners to "opt-out."

3. 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.

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

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary