

**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)
TWENTY-TWO PARCELS OF LAND DISTRIBUTED) PSC DOCKET 05-CPCN-35
BETWEEN FRANKFORD AND MILLVILLE,) ("EASTERN SUSSEX 3")
SUSSEX COUNTY, DELAWARE (FILED)
NOVEMBER 30, 2005 AND AMENDED)
FEBRUARY 21, 2006)

ORDER NO. 6857

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

This 14th day of March, 2006, 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 November 30, 2005, the Company 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-three parcels of land distributed between Frankford and Millville, Sussex County, Delaware ("Proposed Service Area"). The application includes petitions signed by a majority (in this case all) of the landowners in the Proposed Service Area in accordance with the provisions of 26 Del. C. § 203C(e)(1)b.

2. Staff reviewed the Application in accordance with the water utility CPCN rules adopted in PSC Order No. 5730 (June 30, 2001; eff. July 10, 2001). Exhibits A and C of the Application were revised on February 21, 2006, as signed petitions and proof of notice for eight additional properties were included with the Application when filed, but these Exhibits did not reflect those eight properties. The Commission also received a letter from one of those landowners stating, "I do not want Artesian water," and the revised Company exhibits do not include that owner's parcel of land.

3. 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"). Additionally, at Staff's direction, Artesian published notice of this application in The News Journal and Delaware State News newspapers, outlining the ability of a landowner in the Proposed Service Area to object, to request a hearing, or to remove his or her property from the service territory ("opt-out").

II. SUMMARY OF THE EVIDENCE

4. Artesian has included as part of its Application:

- (i) petitions requesting water services 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 parcels comprising the Proposed Service Area, as amended;

- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area, as amended;
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area, as amended, with the related 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);¹

5. The record also contains:

- (i) affidavits reflecting publication of a notice of the Application on December 9, 2005 in The News Journal and the Delaware State News newspapers;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated December 9, 2005), from the Office of the State Fire Marshal (dated December 19, 2005), and from the Department of Natural Resources and Environmental Control (printed e-mail dated December 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 February 28, 2006 memorandum of its investigation with its recommendation the Commission approve the Application and grant the requested CPCN, as amended.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

6. 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

¹The Application also contains Artesian's agreement to proceed under informal fact-finding procedures. (Appl. ¶ 3.)

requirements. The Applicant operates a water system for public use and, consequently, is a water utility.

7. First, the Applicant has obtained the consent of the majority (in this case all) of the 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 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.

8. 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.

9. 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 its application filed November 30, 2005, and amended February 21, 2006.

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-35 on November 30, 2005, and amended February 21, 2006, 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 following Sussex County tax map parcels numbers:

134-14.00-39.01	533-4.00-41.00	533-10.00-1.00
134-14.00-40.01	533-5.00-31.00	533-10.00-3.00
134-14.00-40.08	533-5.00-35.01	533-10.00-7.00
134-15.00-7.03	533-5.00-43.00	533-10.00-35.00
134-15.00-20.05	533-5.00-49.08	533-10.00-42.00
134-18.00-2.01	533-5.00-75.02	533-10.00-46.01
533-4.00-29.00	533-6.00-58.00	
533-4.00-40.00	533-6.00-59.01	

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

/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