

**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	)	
ONE PARCEL OF LAND LOCATED ON THE WEST	)	
SIDE OF LINDALE ROAD, SOUTHWEST OF	)	PSC DOCKET NO. 06-CPCN-13
MILFORD, AND TO ONE PARCEL OF LAND	)	( "NORTH-EAST SUSSEX" )
LOCATED ON THE EAST SIDE OF COASTAL	)	
HIGHWAY, SOUTHWEST OF LEWES, SUSSEX	)	
COUNTY, DELAWARE (FILED FEBRUARY 22,	)	
2006 AND AMENDED MAY 3, 2006)	)	

**ORDER NO. 6924**

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

This 23<sup>rd</sup> day of May, 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 February 22, 2006, 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 twelve parcels of land distributed throughout north-east Sussex County, Delaware ("Proposed Service Area"). The basis for the Application is Tidewater's possession of petitions requesting water services signed by a majority (in this case all) of the landowners in the Proposed Service Area as set forth in 26 Del. C. § 203C(e)(1)b.

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, the Office of the State Fire Marshal, and the Division of Water Resources of the Department of Natural Resources and Environmental Control. Additionally, Staff directed Tidewater to publish notice of the Application in two newspapers of general circulation, advising residents of the Application, that the Application may be reviewed at the Commission's office during normal business hours or the Commission's website, 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. On May 12, 2006, the owners of six parcels of land faxed to the Commission petitions requesting to "opt-out" of inclusion in Tidewater's proposed service area.

3. Based upon comments from the Town of Ellendale ("Ellendale"), Tidewater amended its CPCN application on May 3, 2006 by removing three parcels of land located near Ellendale. That amendment also removed an invalid parcel number from the list of parcel numbers initially filed with the Application.

## **II. SUMMARY OF THE EVIDENCE**

4. 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 a majority 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, as amended;
- (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);

5. The record also contains:

- (i) affidavits of publication of the public notices of the Application in the Delaware State News and in The News Journal newspapers on March 9, 2006;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated March 10, 2006), from the Office of the State Fire Marshal (dated March 22, 2006), and from the Department of Natural Resources and Environmental Control (printed e-mail dated March 3, 2006) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) Petitions from the owners of Sussex County tax map parcels numbers 235-8.00-26.00, 235-8.00-31.00, 235-8.00-35.03, 235-8.00-35.06, 235-8.00-35.10, and 235-8.00-35.11

requesting to "opt-out" of inclusion in the proposed service area;

- (iv) Staff's May 19, 2006 memorandum of its investigation recommending the Commission approve the Application and grant the requested CPCN, as amended. Staff reports that, based upon its review, Tidewater has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

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

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

7. First, the Applicant obtained the consent of a majority 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 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.

8. 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.

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)*, 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 Sussex County tax map parcels identified in its Application filed February 22, 2006 and amended on May 3, 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. 06-CPCN-13 on February 22, 2006, and amended on May 3, 2006, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Tidewater Utilities, Inc., to serve the two parcels of land identified by Sussex County Tax Map Parcel Numbers 130-5.00-21.00 and 334-6.00-36.00.

2. Excluded from the proposed service area based upon the requests of the landowners to "opt-out" are the six parcels of land identified by Sussex County tax parcel numbers 235-8.00-26.00, 235-8.00-31.00, 235-8.00-35.03, 235-8.00-35.06, 235-8.00-35.10, and 235-8.00-35.11.

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