

**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) PSC DOCKET NO. 06-CPCN-37
NECESSITY TO PROVIDE WATER SERVICES TO) ("BOHEMIA DEVELOPMENT")
ONE PARCEL OF LAND LOCATED ON CHOPTANK)
ROAD, NORTH OF MIDDLETOWN, NEW CASTLE)
COUNTY, DELAWARE (FILED JUNE 14, 2006)

ORDER NO. 6971

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

This 8th day of August, 2006, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. Artesian Water Company, Inc. ("Artesian" or "Applicant"), is a water utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission. On June 14, 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 one parcel of land located on Choptank Road, north of Middletown, New Castle County, Delaware ("Proposed Service Area"). The basis for the Application is Artesian's possession of a petition requesting water services signed by the owner of the one parcel of land comprising the Proposed Service Area as set forth in 26 Del. C. § 203C(e)(1)b. Included with the application was a petition from Artesian for "fast-track" approval of the CPCN because a group home serving mentally-challenged youth has been constructed and would

be in need of water services before a full review of the application could be completed. The application was apparently delayed due to some miscommunication between Artesian and the landowner. Given the unusual and pressing needs of the landowner, on June 22, 2006, Commission Staff sent a letter to Artesian allowing the utility to connect only the group home prior to the granting of the CPCN, and with the understanding that should the Commission deny the requested CPCN, Artesian must immediately discontinue all water services to the property.

2. Staff reviewed the Application in accordance with 26 Del. C. § 203C and Commission regulations adopted in PSC Regulation Docket No. 51, Order No. 5730, effective July 10, 2001. In this case, rather than provide evidence that the landowner was notified of the application, Artesian filed a waiver of the right to "opt-out" of the Proposed Service Area signed by the owner of the parcel of land. Commission regulations also speak to the timing between the notice to the landowner and the filing of the application. Due to the need for quick approval of the CPCN application, these timing requirements have been waived.¹

3. 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.

¹Staff generally requests the Applicant publish notice of a CPCN application in two newspapers of general circulation; however, in this circumstance the request was waived.

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) a petition signed by the owner of the parcel of land comprising the Proposed Service Area;
- (ii) a waiver of the right to "opt-out" of the Proposed Service Area signed by the owner of the parcel of land comprising the Proposed Service Area, in lieu of a copy of the United States Postal Service's forms verifying that the Applicant sent, via certified mail, a Commission approved notice to the landowner;
- (iii) the County tax map parcel identification number of the property in the Proposed Service Area;
- (iv) a listing of the landowner of record of the parcel of land included in the Proposed Service Area, and the associated tax map; and
- (v) the Applicant's statement that its expansion of service to the parcel of land 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) correspondence from the Office of Drinking Water of the Division of Public Health (dated June 19, 2006), from the Office of the State Fire Marshal (dated July 31, 2006), and from the Department of Natural Resources and Environmental Control (printed e-mail dated June 19, 2006) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN; and

- (ii) Staff's August 4, 2006 memorandum of its investigation recommending the Commission approve the Application and grant the requested 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 the owner of the parcel of land comprising the Proposed Service Area, in compliance of 26 Del. C. § 203C(e)(1)(b). Second, a waiver of the "opt-out" provision signed by the landowner was filed with the application, and will be accepted as the evidence required by 26 Del. C. § 203C(e)(1).² 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.

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 a basis for the Commission to believe

²Twenty-six Del. C. § 203C(g)(2) permits the Commission to establish an alternative means of demonstrating compliance with the notification requirement.

further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding.

9. In summary, the Commission 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).

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-37 on June 14, 2006 is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Artesian Water Company, Inc., to serve the area identified by the New Castle County Tax Map Parcel Number 1301700067.

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

