

**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-39  
151 PARCELS OF LAND DISTRIBUTED NEAR ) ("MILLVILLE-DAGSBORO-  
THE TOWNS OF MILLVILLE, DAGSBORO, AND ) FRANKFORD")  
FRANKFORD, SUSSEX COUNTY, DELAWARE )  
(FILED DECEMBER 23, 2005 AND AMENDED )  
AUGUST 4, 2006)

**ORDER NO. 6998**

**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. 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 December 23, 2005,<sup>1</sup> Tidewater 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 187 parcels of land distributed near the towns of Millville, Dagsboro, and Frankford, Sussex County, Delaware

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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 December 23, 2005, which is thirty days after the latest date that a written notice was sent.

("Proposed Service Area").<sup>2</sup> The basis for the Application is Tidewater's possession of petitions requesting water services signed by a majority 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 ("Regulations") and found several deficiencies including typographical errors and several parcels that were included in a pending CPCN application of another water utility. The Commission has also received letters from the owners of thirteen parcels of land requesting to "opt-out" of the Proposed Service Area, with two of these landowners also indicating an objection to the CPCN being granted. Tidewater filed several updated listings of parcel numbers and property owners, with the most recent on August 4, 2006, correcting the noted deficiencies, removing the thirteen parcels of land where the landowners have requested to "opt-out," and removing eleven parcels of land that were in the other utility's CPCN application. The August 4, 2006 revised filing also removed from the Proposed Service Area area five parcels of land located within an area identified by the Town of Frankford for potential future annexation.<sup>3</sup>

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<sup>2</sup>During the initial review, Staff found that a number of parcels of land for which Tidewater had presented signed petitions were not shown on the listing of 156 parcel numbers and property owners. On January 12, 2006, four pages of missing parcel information were faxed by Tidewater, adding an additional thirty-one parcels to the proposed service area.

<sup>3</sup>While the Commission is not required to notify municipalities of pending CPCN applications, Staff believed special consideration was due in this case because certain portions of Tidewater's Proposed Service Area were located in an area identified for potential future annexation by the Town of Frankford in its certified Comprehensive Plan. The Town of Frankford sent a letter to the Commission dated April 7, 2006 requesting that the Application be denied because of the parcels located within their growth zone. Staff

3. Pursuant to Commission Regulations, comments were solicited 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.

4. In addition to the landowner notifications required by Statute, 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. No other comments or requests for a hearing were received as a result of the landowner notifications or the newspaper notices.

5. Additional written requests to "opt-out" of the Proposed Service Area have been received by the Commission from the owners of seven parcels of land. These parcels of land shall be excluded from the Proposed Service Area.

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

6. 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:

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informed Tidewater of the concerns expressed by the Town of Frankford, and encouraged the parties to resolve the potential conflict. In this circumstance, Tidewater has elected to remove the parcels of land within the growth zone rather than further delay processing of the Application.

- (i) petitions signed by a majority 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 amended;
- (iii) the County tax map 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, 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);

7. The record also contains:

- (i) affidavits of publication of the public notices of the Application in the Delaware State News newspaper on February 21, 2006, and in The News Journal newspaper on February 22, 2006;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated January 12, 2006), from the Office of the State Fire Marshal (dated January 18, 2006), and from the Department of Natural Resources and Environmental Control (printed e-mail dated January 11, 2006) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) written correspondence from the owners of Sussex County tax map parcels numbers 134-10.00-87.06, 134-11.00-41.00, 134-11.00-42, 134-11.00-221.00, 134-11.00-789.00, 134-15.00-15.00, 134-18.00-11.01, 134-18.00-

45.03, 134-18.00-53.00, 134-18.00-54.00, 533-5.00-15.00, 533-5.00-55.01, 533-5.00-66.00, 533-5.00-68.00, 533-5.00-80.00, 533-6.00-64.01, 533-6.00-86.00, 533-10.00-46.03, 533-10.00-51.00, and 533-10.00-76.00 requesting to "opt-out", or have their property excluded from the Proposed Service Area. No other comments, objections, or requests for a hearing were received as a result of either the landowner notifications or the newspaper notices;

- (iv) Staff's August 4, 2006 memorandum of its investigation recommending the Commission approve the amended Application and grant the requested CPCN, specifically excluding those parcels of land where the landowners have requested to "opt-out" of the Proposed Service Area. 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**

8. 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.

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

10. 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.

11. 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)*.

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-39 on December 23, 2005 and most recently amended on August 4, 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 area identified by the Sussex County Tax Map Parcels Numbers identified in Exhibit "A" to this Order.

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/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

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Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary

E X H I B I T "A"

APPROVED SERVICE AREA  
PARCELS WITHIN CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY

TIDEWATER UTILITIES, INC.  
PSC DOCKET NO. 05-CPCN-39

SUSSEX COUNTY TAX MAP PARCELS NUMBERS

134-6.00-49.00	134-11.00-84.00	134-14.00-13.00
134-10.00-45.04	134-11.00-94.00	134-14.00-39.05
134-10.00-62.01	134-11.00-100.02	134-15.00-6.00
134-10.00-88.02	134-11.00-101.00	134-15.00-6.03
134-10.00-92.00	134-11.00-107.00	134-15.00-9.04
134-10.00-95.01	134-11.00-111.00	134-15.00-10.08
134-10.00-96.00	134-11.00-152.00	134-15.00-10.09
134-10.00-108.02	134-11.00-226.00	134-15.00-16.00
134-10.00-110.00	134-11.00-226.03	134-15.00-17.07
134-10.00-113.00	134-11.00-231.00	134-15.00-17.08
134-11.00-40.00	134-11.00-234.00	134-15.00-18.00
134-11.00-57.00	134-11.00-694.00	134-15.00-19.00
134-11.00-61.00	134-11.00-695.00	134-15.00-20.07
134-11.00-65.00	134-11.00-781.00	134-15.00-20.09
134-11.00-66.00	134-11.00-784.00	134-15.00-91.00
134-11.00-67.00	134-11.00-806.00	134-15.00-92.00
134-11.00-69.00	134-11.00-821.00	134-15.00-92.03
134-11.00-73.00	134-12.00-308.01	134-15.00-93.00
134-11.00-74.00	134-12.00-380.00	134-15.00-109.00
134-11.00-78.00	134-14.00-11.00	134-15.00-115.00

134-15.00-116.01	134-18.00-29.02	533-5.00-44.00
134-15.00-117.00	134-18.00-32.06	533-5.00-44.02
134-15.00-117.01	134-18.00-63.00	533-5.00-44.03
134-15.00-117.02	134-18.00-65.00	533-5.00-49.02
134-15.00-118.00	134-18.00-66.00	533-5.00-49.04
134-15.00-119.00	134-19.00-1.00	533-5.00-52.00
134-15.00-120.00	134-19.00-2.01	533-5.00-64.03
134-15.00-121.00	134-19.00-113.00	533-5.00-73.00
134-15.00-122.00	233-12.00-27.00	533-5.00-75.00
134-15.00-123.00	433-6.00-94.02	533-5.00-82.04
134-16.00-3.00	433-6.00-94.04	533-5.00-82.06
134-16.00-17.00	433-6.00-94.07	533-5.00-83.00
134-16.00-19.00	433-7.00-18.00	533-5.00-87.00
134-16.00-19.01	433-7.00-21.00	533-5.00-88.00
134-16.00-19.02	433-7.00-21.01	533-6.00-3.00
134-16.00-20.00	433-7.00-22.00	533-6.00-3.01
134-16.00-20.01	433-7.00-23.01	533-6.00-18.00
134-18.00-1.00	533-1.00-16.00	533-6.00-28.00
134-18.00-2.04	533-1.00-21.01	533-6.00-29.00
134-18.00-8.00	533-1.00-26.00	533-6.00-30.00
134-18.00-11.04	533-2.00-12.03	533-6.00-33.00
134-18.00-11.05	533-5.00-11.00	533-6.00-33.01
134-18.00-11.06	533-5.00-11.01	533-6.00-44.00
134-18.00-11.07	533-5.00-11.02	533-6.00-53.02
134-18.00-11.08	533-5.00-18.01	533-6.00-78.13
134-18.00-15.00	533-5.00-30.05	533-6.00-79.00

533-6.00-84.00

533-6.00-98.01

533-6.00-98.02

533-6.00-130.00

533-10.00-33.01

533-10.00-37.00

533-10.00-48.00

533-10.00-59.00

533-10.00-61.00

533-10.00-74.01

533-10.00-74.03

533-11.00-27.02

533-11.00-74.00