

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF)	
TIDEWATER ENVIRONMENTAL SERVICES, INC.,)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY TO PROVIDE WASTEWATER)	
SERVICES TO THE "BAY FRONT" SUBDIVISION)	PSC DOCKET NO. 06-WW-017
LOCATED ON CAMP ARROWHEAD ROAD,)	("BAY FRONT")
SOUTHWEST OF REHOBOTH BEACH, SUSSEX)	
COUNTY, DELAWARE (FILED JUNE 26, 2006)	
AND AMENDED JULY 12, 2006))	

ORDER NO. 7056

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE WASTEWATER SERVICES**

This 31st day of October, 2006, the Commission determines and Orders the following:

1. By the provisions of 74 Del. Laws ch. 317 (July 6, 2004), the General Assembly and Governor included wastewater systems within the public utilities subject to the regulatory oversight of this Commission. 74 Del. Laws ch. 317 (2004) (amending "public utility" definition in 26 Del. C. § 102(2)).

2. The law includes a specific regime for the granting of Certificates of Public Convenience and Necessity ("CPCN") to begin the business of a wastewater public utility or to extend the system and operations of an existing wastewater public utility. 74 Del. Laws ch. 317 § 6, adding 26 Del. C. § 203D. Under the statute, specifically 26 Del. C. § 203D(d)(2), the Commission shall grant a CPCN to an applicant if it has submitted a petition requesting wastewater services signed by a majority of the landowners in the proposed service area, as well as proof that all of the landowners in the

proposed service area were notified of the application. Under 26 Del. C. § 203D(e), the Commission may deny a request for a CPCN if the applicant is currently subject to a Commission finding or if the Commission finds that the applicant is unable or unwilling to provide safe, adequate, and reliable service to existing customers.

3. On February 22, 2005, by PSC Order No. 6573, the Commission adopted final *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* ("Regulations") which govern the process that non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN.

4. Tidewater Environmental Services, Inc. ("TESI") is a public utility offering wastewater services and is subject to the regulatory oversight of this Commission. On June 26, 2006, TESI filed an application with the Commission requesting a CPCN to provide wastewater services to two parcels of land located on Cool Spring Road, east of Georgetown, and the "Bay Front" subdivision located on Camp Arrowhead Road, southwest of Rehoboth Beach, Sussex County, Delaware ("Proposed Service Area").

5. As required by 26 Del. C. § 203D(d)(2), and Commission Regulations, TESI included in its application: (a) petitions requesting wastewater services signed by the owners of the parcels of land comprising the Proposed Service Area; and (b) evidence, in the form of signed United States Postal Service certified mail receipts, showing that the landowners were sent notice of the Application. Also

included with the Application were Sussex County tax maps showing the locations of the Proposed Service Area. During review, Staff found that a CPCN to provide wastewater services had already been granted to TESI for the two parcels of land located on Cool Spring Road. On July 12, 2006, the company filed an amended parcel listing and corrected tax maps which remove those two parcels of land from the Proposed Service Area.

6. Pursuant to Commission Regulations, Commission Staff requested written comment from the Delaware Department of Natural Resources and Environmental Control ("DNREC") as to whether there are any outstanding issues with that Agency indicating TESI has been unwilling or unable to provide safe, adequate, and reliable wastewater services to its existing customers.¹ In its reply, DNREC indicated it had no objection to the Commission granting the requested CPCN to provide wastewater treatment and disposal services.

7. The Commission received a letter dated July 10, 2006 from the Sussex County Engineering Department ("the County") indicating that the "Bay Front" subdivision is located within the County's Angola Neck Study Area and that the County objects to a CPCN being granted to TESI. The letter further states that should the Commission grant the CPCN against the County's objection, that TESI would be required to

¹Under Commission rules, the utility is required to file a copy of its application with DNREC, the Office of State Planning ("OSP"), and: "a) any county within whose boundaries the proposed service territory would be located; and b) any municipality, town, or local authority: i) whose boundaries are adjacent to the proposed service territory; or ii) within whose boundaries or existing wastewater service territory the proposed service territory would be located." Staff copied the OSP and the County on its request for comment sent to DNREC. While written comment is only required from DNREC, by notifying the other agencies Staff can be alerted if an Application is not filed, or if there is a significant issue with an Applicant or Application that the Commission may wish to consider.

connect to the County's system and properly abandon any on-site treatment and disposal facilities. Following discussions between representatives of the County and TESI, the County filed a second letter dated October 13, 2006 which states, "in the spirit of cooperation, we are extending a statement of 'no objection' to the CPCN being granted in this case." Finally, the OSP did not offer comment on the Applicant or on the Application.

8. Consequently, consistent with the statutory requirement, the Commission shall grant a CPCN to TESI to provide wastewater public utility services within the Proposed Service Area, as amended.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to the provisions of 26 Del. C. § 203D(d)(2), a Certificate of Public Convenience and Necessity is granted to Tidewater Environmental Services, Inc., to provide wastewater public utility services to the "Bay Front" subdivision located on Camp Arrowhead Road, southwest of Rehoboth Beach, Sussex County, Delaware, and more specifically identified by the Sussex County tax map parcels numbers 234-18.00-24.00, 234-18.00-24.05, 234-18.00-24.06, 234-18.00-24.07, and 234-18.00-435.00 through 234-18.00-614.

3. The Commission does not here take any position on the validity of any "conditions" set forth in the County's initial comments. Any questions, and answers, about the ability of Sussex County to serve in the proposed service territory at a later time can be addressed when they arise.

3. That Tidewater Environmental Services, 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 wastewater 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