

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

IN THE MATTER OF THE APPLICATION OF)
THE TOWN OF SMYRNA FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY TO) PSC DOCKET NO. 06-CPCN-42
PROVIDE WATER SERVICES TO TWO PARCELS) ("BLENDT FARM")
OF LAND LOCATED ON THE SMYRNA-LEIPSIC)
ROAD IN THE TOWN OF SMYRNA, KENT)
COUNTY, DELAWARE (FILED JULY 3, 2006))

ORDER NO. 7068

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

This 21st day of November, 2006, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. The operation of municipal water systems generally fall outside the regulatory jurisdiction of this Commission; however, when seeking to expand or extend water services beyond its corporate boundaries, a municipal water utility must be granted a Certificate of Public Convenience and Necessity ("CPCN") by this Commission to provide water services to those properties. Since July 2001, the obligation to obtain a CPCN before expanding operations (as imposed by § 203C(a)) has been lifted when a municipality annexes property under the provisions of chapter 1 of Title 22 and the municipal water utility will expand or extend its operations into that annexed territory. In that circumstance, the municipality need only notify the Commission of the completion of such annexation. The Town of Smyrna ("Town" or "Smyrna") operates its own public water system and, on July 3, 2006, filed an application ("Application") with this

Commission seeking a CPCN to provide water services to two parcels of land located on the Smyrna-Leipsic Road in the Town of Smyrna, Kent County, Delaware ("Proposed Service Area"). These parcels of land were annexed into the Town of Smyrna prior to July 2001, therefore Smyrna's existing CPCN area must be expanded to include these additional parcels. The basis for the Application is Smyrna's possession of a petition requesting water services signed by the owners of the two parcels of land 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, and found that the evidence showing the landowner was provided notice of the Application was not included as required. Because the Town was unable to locate the certified mail receipt, Staff has accepted a signed letter from the landowner, dated June 21, 2006, stating that they are in receipt of the required landowner notification letter.

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. All three agencies responded indicating that they have no issues relating to the Town's ability to provide safe, adequate, and reliable water services to its existing customers.

4. Staff directed the Town 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. The Town submitted an affidavit of publication from the Delaware State News newspaper, and has informed Staff that a miscommunication between the Town and The News Journal newspaper resulted in the public notice not being printed in that newspaper. Considering that the usage from the project is expected to be approximately half of the daily flow of a normal single family home, and that the Commission has not received any comments on the Application, Staff believes in this case there has been sufficient notice of the Application.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, including the Town'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 two parcels of land comprising the Proposed Service Area;
- (ii) a letter from the landowner, dated June 21, 2006, stating that he has received the Commission approved notice to the landowner;
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area;
- (iv) a listing of the landowner of record of each of the parcels included in the

Proposed Service Area, and the associated tax maps; and

- (v) the Town'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 that it is not barred by any of the restrictions set forth in 26 Del. C. § 403(c);

4. The record also contains:

- (i) an affidavit of publication of the public notices of the Application in the Delaware State News newspaper on July 19, 2006;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated July 12, 2006), from the Office of the State Fire Marshal (dated October 27, 2006), and from the Department of Natural Resources and Environmental Control (printed e-mail dated July 10, 2006) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) Staff's October 27, 2006 memorandum of its investigation recommending the Commission approve the Application and grant the requested CPCN. Staff reports that, based upon its review, the Town of Smyrna has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

5. The Town of Smyrna operates a water system for public use, and the Commission has jurisdiction to grant a CPCN to a municipal water utility to expand its operations and facilities to areas annexed by the municipality prior to 2001.

6. First, the Town obtained the consent of the landowners of the properties comprising the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(b). Second, the Town sent an approved notice

of its Application to the owner of the two parcels of land comprising the Proposed Service Area. Third, the record reflects the Town's statement that the Town will continue to meet the water pressure requirements for its existing customers, and the Town'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.

7. The Commission's Staff has investigated the Town and has not discovered that the Town is currently subject to any Commission finding that the Town 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 Town's service quality is necessary in order to render a decision in this proceeding.

8. In summary, the Town of Smyrna 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 Town 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-42 on July 3, 2006, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to the

Town of Smyrna to serve the area identified by Kent County Tax Map
Parcels Numbers DC17-019.00-01-69.00 and DC17-019.00-01-09.02.

2. That the Town of Smyrna 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/ Jeffrey J. Clark
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary