

**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) PSC DOCKET NO. 06-CPCN-52
NECESSITY TO PROVIDE WATER SERVICES TO) ("BRENFORD AREA")
FIFTEEN PARCELS OF LAND DISTRIBUTED)
WEST AND SOUTH OF KENTON, KENT COUNTY,)
DELAWARE (FILED SEPTEMBER 6, 2006)

ORDER NO. 7072

**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. 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 September 6, 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 sixteen parcels of land distributed west and south of Kenton, Kent County, Delaware ("Proposed Service Area"). 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, and found no errors or omissions. During its review,

Staff did note that one of the parcels of land currently lies within a Tidewater certificated service area granted by the Commission by PSC Order No. 1190 (Mar. 7, 1973).

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. 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 on 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.

4. The Commission has received written correspondence from the owners of one parcel of land requesting to "opt-out" of the Proposed Service Area. No other comments, requests for hearing, or objections have been received by the Commission as a result of either the landowner notifications or the public notices.

II. SUMMARY OF THE EVIDENCE

5. 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 map parcel identification numbers of the properties in the Proposed Service Area;
- (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);

6. The record also contains:

- (i) affidavits of publication of the public notices of the Application in the Delaware State News and The News Journal newspapers on October 5, 2006;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated September 29, 2006), from the Office of the State Fire Marshal (dated September 19, 2006), and from the Department of Natural Resources and Environmental Control (printed e-mail dated September 26, 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 the parcel of land identified by Kent County tax map parcel number KH00-055.00-01-13.00 requesting to "opt-out" of the Proposed Service Area;
- (iv) Staff's November 6, 2006 memorandum of its investigation recommending the Commission

approve the Application and grant the requested CPCN, specifically excluding the parcel of land where the landowners have requested to "opt-out." Staff reports that, based upon its review, Tidewater has complied with all the statutory and regulatory requirements necessary for granting the CPCN. Staff also notes that it believes that by including the parcel of land as described in paragraph 2 of this Order in the Commission's approval of this CPCN Application, the service area will be defined more definitively than by PSC Order No. 1190 which used then existing landmarks (such as roads) rather than county parcel numbers.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

7. 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.

8. 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.

9. 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.

10. 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. 06-CPCN-52 on September 6, 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 following Kent County Tax Map Parcels Numbers:

ED00-055.00-01-06.00	KH00-044.00-01-29.03
ED00-055.00-01-20.01	KH00-044.00-02-53.00
KH00-044.00-01-06.00	KH00-044.00-02-53.02
KH00-044.00-01-06.02	KH00-045.00-01-66.03
KH00-044.00-01-07.00	KH00-054.00-01-47.00
KH00-044.00-01-15.00	KH00-055.00-01-09.00
KH00-044.00-01-29.00	KH00-044.00-02-08.00
KH00-044.00-02-02.00	

For the reason described in paragraph 6(iv) of this Order, a portion of this CPCN service territory will overlap portions of an existing CPCN service territory currently held by Tidewater Utilities, Inc.

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/ Jeffrey J. Clark
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary