

**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. 06-CPCN-39
ONE PARCEL OF LAND LOCATED ON GOVERNOR) ("SKY VIEW ESTATES")
STOCKLEY ROAD, NORTHWEST OF MILLSBORO,)
SUSSEX COUNTY, DELAWARE)
(FILED JUNE 16, 2006 AND AMENDED
SEPTEMBER 7, 2006)

ORDER NO. 7085

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

This 5th day of December, 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 June 16, 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 Governor Stockley Road, northwest of Millsboro, Sussex County, Delaware ("Proposed Service Area"). The basis for the Application is Tidewater's possession of a signed service agreement with the developer of a proposed development, which subdivision or development has been duly approved by the respective county government (26 Del. C. § 203C(e)(1)(a)).

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 the statutory requirements of 26 Del. C., § 203C ("Statute"). During its review, Staff requested the Applicant provide documentation showing the subdivision had been approved by Sussex County, as required by statute. When unable to fulfill that request, on September 7, 2006, Tidewater amended its application by changing the basis for the application to meet the requirements of 26 Del. C. § 203C(e)(1)(b) which is possession of a petition requesting water services signed by a majority of the landowners in the Proposed Service Area. With the amended application,¹ Tidewater also filed a petition signed by the owner of the parcel of land, who, in this case, is also the developer,

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 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 comments,

¹Regardless of the basis of a CPCN application, the statute requires notification of the application be provided to all landowners in the Proposed Service Area. Evidence that the owner of this parcel of land had been notified was filed with the initial Application on June 16, 2006.

requests for hearing, objections, or requests to "opt-out" of the Proposed Service Area have been received by the Commission as a result of either the landowner notification or the newspaper notices.

II. SUMMARY OF THE EVIDENCE

4. The record in this matter consists of the amended 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 amended Application includes:

- (i) a petition signed by the owner of the parcel of land comprising the Proposed Service Area;
- (ii) a copy of the United States Postal Service's form verifying that the Applicant sent, via certified mail, a Commission approved notice to the landowner as prescribed by Water Utility CPCN Reg. 10.109;
- (iii) the County tax parcel identification number of the property in the Proposed Service Area;
- (iv) a listing of the landowner of record of the parcel of land comprising the Proposed Service Area, and the associated tax maps; and
- (v) the Applicant's statement that its expansion of service to 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) affidavits of publication of the public notices of the Application in the Delaware State News newspaper on July 3, 2006 and in The News Journal newspaper on July 2, 2006;

- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated June 29, 2006), from the Office of the State Fire Marshal (dated July 12, 2006), and from the Department of Natural Resources and Environmental Control (printed e-mail dated September 7, 2006) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) Staff's November 27, 2006 memorandum of its investigation recommending the Commission approve the amended Application and grant the requested CPCN. 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

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 landowner of the property within the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(b). Second, the Applicant sent by certified mail an approved notice of its Application to the owner of the parcel of land comprising 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.

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

9. 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-39 on June 16, 2006 and amended on September 7, 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 Sussex County Tax Map Parcel Number 133-10.00-30.01.

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

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary