

**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	)	
CERTAIN PORTIONS OF KENT COUNTY TAX	)	PSC DOCKET NO. 06-CPCN-38
MAP PARCEL NUMBER ED00-96.00-01-12.00,	)	( "EAGLE HEIGHTS" )
LOCATED ON EITHER SIDE OF OLD LEBANON	)	
ROAD, NEAR DOVER AIR FORCE BASE, KENT	)	
COUNTY, DELAWARE (FILED JUNE 16, 2006)	)	

**ORDER NO. 7126**

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

This 23<sup>rd</sup> day of January, 2007, 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 certain portions of a parcel of land located on either side of Old Lebanon Road, near the Dover Air Force Base, Kent County, Delaware. The basis for the Application is Tidewater's possession of a petition signed by the owner of the parcel of land as set forth by 26 Del. C. § 203C(e)(1)b.<sup>1</sup> The Applicant has indicated

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<sup>1</sup>The basis for the initial Application was Tidewater's possession of a signed service agreement with the developer of a proposed development, which

that the developer of the property, Dover Air Force Base Properties, LLC, has requested water services from Tidewater solely for residential service connections, and that the Golf Course, Youth Center/Race Track, Chapel, and Pool areas of the parcel will continue to utilize water services from another source. Tidewater's CPCN request, therefore, excludes those specific areas of the parcel of land.

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 notice of the Application had been sent to the developer of the property, not to the landowner as required by Statute. Tidewater has provided the certified mail receipt showing that the landowner was sent the required notification on December 8, 2006.

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

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subdivision or development has been duly approved by the respective county government (26 Del. C. § 203C(e)(1)a. When unable to provide documentation that the subdivision had been approved by Kent County government, Tidewater revised the basis of the Application to meet the criteria set forth in 26 Del. C. § 203C(e)(1)b., and filed a petition requesting water services signed by the owner of the parcel of land.

request for a hearing was received, and that property owners may object to, or "opt-out," of the proposed CPCN area. The Commission has not received any comments regarding this application as a result of either the landowner notifications or the public notices.

## II. SUMMARY OF THE EVIDENCE

4. 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 and related documentation includes:

- (i) a petition requesting water services signed by the owner of the parcel of land;
- (ii) a copy of the United States Postal Service's forms verifying that the Applicant sent, via certified mail, a Commission approved notice to the landowner;
- (iii) the County tax map parcel identification number of the property;
- (iv) a listing of the landowner of record of the parcel and the associated tax map; and
- (v) the Applicant's statement that its expansion of service to the property 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 August 1, 2006), and from the Department of Natural Resources and Environmental Control (printed e-mail dated July 5, 2006) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;

- (iii) Staff's January 17, 2007 memorandum of its investigation recommending the Commission approve the 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 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. 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-38 on June 16, 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 Kent County Tax Map Parcel Number ED00-096.00-01-12.00, and specifically excluding the areas of the parcel where the Golf Course, Youth Center/Race Track, Chapel, and Pool are located.

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