

**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. 07-CPCN-01
THIRTEEN PARCELS OF LAND DISTRIBUTED) ("BRENFORD AREA 2")
SOUTH OF KENTON, AND TO ONE PARCEL)
LOCATED EAST OF FREDERICA, KENT)
COUNTY, DELAWARE (FILED JANUARY 11,)
2007 AND AMENDED FEBRUARY 6, 2007)

ORDER NO. 7146

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

This 20th day of March, 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 January 11, 2007, 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 twenty-eight parcels of land distributed south of Kenton, to one parcel located west of Frederica, and to one parcel located east of Frederica, 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. In this case, Tidewater had included in its

Application petitions requesting water services signed by the owners of seventeen parcels of land, and had "included" the remaining thirteen parcels of land (that is, none of these landowners had signed petitions requesting water services from the Company).

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 one parcel of land is already in Tidewater's approved service territory, and that one parcel of land is in the certificated service territory of another water utility. The Company was also notified of several other minor errors found during this initial review, including the omission of a parcel of land from the original parcel listing filed with the Application. The Commission has also received written requests from the owners of thirteen parcels of land requesting to "opt-out" of Tidewater's Proposed Service Area, including a request from the owner of one parcel of land who had previously signed a petition requesting water services. An amended parcel listing, dated January 25, 2007, corrected all deficiencies noted by Staff, removed the one parcel of land in the other utility's service area, and added the parcel of land that had been left off the initial parcel listing. On February 6, 2007, the Company filed another amendment to the Application, removing the remaining "included" parcels of land where no landowners had signed petitions requesting water service. The final Proposed Service

area, therefore, consists of a total of fourteen parcels of land where all of these landowners have requested water services from Tidewater.¹

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. Aside from the written requests to "opt-out" discussed previously, the Commission has not received any other comments, requests for hearing, or objections 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 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). The Application, as amended, includes:

- (i) petitions signed by a majority of the landowners (in this case all) within the Proposed Service Area, as amended;

¹Although the parcel of land that was found to be in Tidewater's existing service territory (granted by PSC Order No. 7098 (Dec. 19, 2006)) was not removed from the February 6, 2007 parcel listing, it will be excluded from the final approved service area granted by this Order.

- (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 amended, 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, as amended;
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area, as amended, and the associated tax maps; and
- (v) the Applicant's statement that its expansion of service to the parcels in the Proposed Service Area, as amended, 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 newspaper on February 5, 2007, and in The News Journal newspaper on February 1, 2007;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated January 23, 2007), from the Office of the State Fire Marshal (dated February 2, 2007), and from the Department of Natural Resources and Environmental Control (printed e-mail dated January 23, 2007) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iv) Staff's March 15, 2007 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

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 all 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. 07-CPCN-01 on January 11, 2007, and amended on February 6, 2007, 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 Parcel Numbers:

ED00-055.00-01-04.04	KH00-044.00-02-04.00
ED00-055.00-01-30.00	KH00-064.00-01-05.01
ED00-088.01-01-02.00	MD00-143.00-01-55.00
ED00-088.01-01-02.01	SM00-130.00-01-66.00
KH00-044.00-01-01.00	WD00-064.00-01-31.00
KH00-044.00-01-04.00	WD00-064.00-01-11.01
KH00-044.00-01-14.00	WD00-064.00-02-14.00

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