

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

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN WASTEWATER MANAGEMENT, INC.,)
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE) PSC DOCKET NO. 07-WW-003
WASTEWATER SERVICES TO ONE PARCEL OF) ("WINDSTONE")
LAND LOCATED ON GRAVEL HILL ROAD,)
SOUTHWEST OF MILTON, SUSSEX COUNTY,)
DELAWARE (FILED FEBRUARY 6, 2007))

ORDER NO. 7206

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE WASTEWATER SERVICES**

This 19th day of June 2007, the Commission determines and Orders the following:

1. By the provisions of 74 Del. Laws ch. 317 (July 6, 2004), the General Assembly and Governor included wastewater systems within the public utilities subject to the regulatory oversight of this Commission. See 74 Del. Laws ch. 317 (2004) (amending "public utility" definition in 26 Del. C. § 102(2)).

2. The law includes a specific regime for the granting of Certificates of Public Convenience and Necessity ("CPCN") to begin the business of a wastewater public utility or to extend the system and operations of an existing wastewater public utility. See 74 Del. Laws ch. 317 § 6, adding 26 Del. C. § 203D. Under the statute, specifically 26 Del. C. § 203D(d)(2), the Commission shall grant a CPCN to an applicant if it has submitted a petition requesting wastewater services signed by a majority of the landowners in the

proposed service area, as well as the proof that all of the landowners in the proposed service area were notified of the application.

3. On February 22, 2005, by PSC Order No. 6573, the Commission adopted final *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* ("Regulations") which govern the process that non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN.

4. Artesian Wastewater Management, Inc. ("AWMI") is a public utility offering wastewater services, and is subject to the regulatory oversight of this Commission. On January 12, 2007, AWMI filed an application with the Commission requesting a CPCN to provide wastewater services to one parcel of land located on Cave Neck Road, west of Lewes, Sussex County, Delaware ("Proposed Service Area"). By Order No. 6735 (Oct. 11, 2005) the Commission had previously granted to Tidewater Environmental Services, Inc. ("TESI") a CPCN to provide wastewater services for this parcel of land.

5. On request of the landowner to have the Commission revoke the CPCN granted to TESI, the Commission referred the matter to a Hearing Examiner (see PSC Order No. 7128 (Feb. 6, 2007)) to, among other things, evaluate the legal basis for revoking TESI's CPCN. After an evidentiary hearing on the matter, the parties (AWMI, TESI, and the landowner) entered into a settlement agreement ("Settlement") that would allow TESI to abandon its CPCN for wastewater services for this parcel of land and allow AWMI's CPCN application to continue. On

May 22, 2007 the Commission entered PSC Order No. 7188, approving the terms and conditions of the Settlement and the implementation of those terms.

6. As required by 26 Del. C. § 203D(d)(2) and Commission Regulations, AWMI included in its CPCN application: (a) a petition requesting wastewater services signed by the owner of the parcel of land comprising the Proposed Service Area; and (b) evidence, in the form of a signed United States Postal Service certified mail receipt, showing that the landowner was sent notice of the Application. A Sussex County Tax map showing the location of the Proposed Service Area was also included with the Application.

7. Pursuant to Commission Regulations, Commission Staff requested written comment from the Delaware Department of Natural Resources and Environmental Control ("DNREC") as to whether there are any outstanding issues with that Agency indicating AWMI has been unwilling or unable to provide safe, adequate, and reliable wastewater services to its existing customers.¹ In its reply, DNREC indicated it had no objection to the Commission granting the requested CPCN to

¹Under Commission rules, the utility is required to file a copy of its application with DNREC, the Office of State Planning ("OSP"), and: "a) any county within whose boundaries the proposed service territory would be located; and b) any municipality, town, or local authority: i) whose boundaries are adjacent to the proposed service territory; or ii) within whose boundaries or existing wastewater service territory the proposed service territory would be located." Staff copied the OSP and the Sussex County Engineering Department ("the County") on its request for comment sent to DNREC. While written comment is only required from DNREC, by notifying the other agencies Staff can be alerted if an Application is not filed, or if there is a significant issue with an Applicant or Application that the Commission may wish to consider. In this case, the County has stated that, although the parcel is located in its North Coastal Planning Area, it currently has no objection to a CPCN being granted. Finally, OSP did not offer comment.

provide wastewater treatment and disposal services to the parcel of land.

8. As agreed in the approved Settlement, on May 31, 2007 TESI filed a letter with the Commission seeking permission to abandon the CPCN for wastewater services to Sussex County Tax Map Parcel No. 235-22.00-24.00, otherwise identified as the "Windstone" subdivision.

Now, therefore, **IT IS ORDERED:**

1. The Commission hereby grants Tidewater Environmental Services, Inc. permission to abandon its CPCN for wastewater services to the "Windstone" subdivision granted by Order No. 6735 (Oct. 11, 2005).

2. That, pursuant to the provisions of 26 Del. C. § 203D(d)(2), a Certificate of Public Convenience and Necessity is granted to Artesian Wastewater Management, Inc., to provide wastewater public utility services to the "Windstone" subdivision, more specifically identified by the Sussex County Tax Map Parcel Number 235-22.00-24.00.

3. That Artesian Wastewater Management, 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 wastewater utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

4. 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