

**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-23
SIXTY-FOUR PARCELS OF LAND DISTRIBUTED) ("NCC SMYRNA")
NORTH AND WEST OF SMYRNA, NEW CASTLE)
COUNTY, DELAWARE (FILED MAY 7, 2007)
AND AMENDED MAY 23 AND JUNE 5, 2007))

ORDER NO. 7227

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

This 24th day of July, 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 May 7, 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 seventy-one parcels of land distributed north and west of Smyrna, New Castle County, Delaware ("Proposed Service Area"). The basis for the Application is Tidewater's possession of petitions requesting water services signed by all the landowners in the Proposed Service Area as set forth in 26 Del. C. § 203C(e)(1)b.¹

¹On June 28, 2007, the criteria for awarding a Certificate to a water utility to enable it to serve a particular service territory were somewhat altered. See 76 Del. Laws ch. 55 § 1 (June 28, 2007), amending text of 26 Del.

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 several issues with the Application which were brought to the attention of the Company in a May 18, 2007 e-mail from Staff. On May 29, 2007 the Company filed revisions (dated May 23, 2007) to the Application correcting all noted issues, including removing six parcels of land where the landowners had requested to "opt-out" of Tidewater's Proposed Service Area and two parcels of land that were in a pending CPCN application of another water utility. This revision also added two parcels of land to the parcel listing ("Exhibit C" of the Application) where signed petitions and proof of notice to the landowners had been included in the Application but the parcel information was not shown in the listing. Finally, six landowner notification letters had been returned to the Company by the U.S. Postal Service, one "Undeliverable as Addressed" and the remaining unclaimed. To address concerns of due process, Staff directed Tidewater to re-send the landowner notification letters via first-class mail. As a result of the second mailing, one landowner did file a written request to "opt-out" of Tidewater's

C. § 203C(e)(1). However, while the new law made its changes generally effective upon enactment, it also indicated that those changes should govern "any application of [sic] a Certificate of Public Convenience and Necessity filed . . . after the date of enactment." 76 Del. Laws ch. 55 § 5 (emphasis added). The application in this matter was filed prior to June 28, 2007, and hence has been judged by the statutory criteria in effect before the amendments made on that date. In any event, this application, because it is premised on petitions executed by all the landowners of each parcel encompassed within the service territory, passes muster under the prior criteria as well as the June 28th changes. Compare 26 Del. C. § 203C(e)(1)b. (2006 Supp.) (petitions signed by majority of landowners in proposed service territory) with 26 Del. C. § 203C(e)(1)b., as amended by 76 Del. Laws ch. 55 § 1 (petitions signed by the landowners of each parcel to be encompassed within the proposed service territory).

Proposed Service Area. This "opt-out" was reflected in a June 5, 2007 amended parcel listing filed by Tidewater.

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. All three agencies responded indicating that they have no issues relating to Artesian's ability to provide safe, adequate, and reliable water services to its existing customers.

4. In addition to the required landowner notification, 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. The Commission has not received requests for hearing, objections, or additional requests to "opt-out."

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). The Application includes:

- (i) petitions signed by all of the landowners in the Proposed Service Area, as amended, requesting water services from the Company;

- (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 in 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 the Proposed Service Area, as amended, and the associated tax maps; and
- (v) the Applicant's statement that its expansion of service to 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 May 23, 2007, and in The News Journal newspaper on June 7, 2007;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated May 22, 2007), from the Office of the State Fire Marshal (dated May 15, 2007), and from the Department of Natural Resources and Environmental Control (printed e-mail dated May 18, 2007) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iv) Staff's July 19, 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 landowners in 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 landowners in the Proposed Service Area, as amended. 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-23 on May 7, 2007 and amended on May 23 and June 5, 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 New Castle County Tax Map Parcels Numbers shown in Exhibit "A" to this Order.

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/ Dallas Winslow
Commissioner

PSC Docket No. 07-CPCN-23, Order No. 7227 Cont'd.

Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

TIDEWATER UTILITIES, INC.
PSC DOCKET NO. 07-CPCN-23
"NCC SMYRNA"

NEW CASTLE COUNTY TAX MAP PARCELS NOS.

1401800021	1501600005	1502100191
1401800062	1502000044	1502100194
1401800064	1502000071	1502200002
1401900123	1502000074	1502200149
1401900171	1502000082	1502200154
1401900188	1502000117	1502200177
1401900235	1502000126	1502500001
1402000036	1502100005	1502500004
1402100038	1502100018	1502500034
1402200090	1502100021	1502500035
1402400001	1502100045	1502500041
1402400005	1502100046	1502500048
1402400026	1502100050	1502500055
1402500007	1502100064	1502600019
1402700006	1502100091	1502600043
1501500033	1502100102	1502600044
1501500045	1502100113	1502600047
1501500088	1502100114	1502600048
1501500149	1502100124	1502600049
1501600004	1502100129	1502600095

1502600111

1502600145

1502600155

1502600167