

**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)	
WASTEWATER SERVICES TO TWO PARCELS OF)	PSC DOCKET NO. 07-WW-020
LAND LOCATED ON THE WEST SIDE OF COOL)	("COOL SPRING MEADOWS")
SPRING ROAD, EAST OF GEORGETOWN,)	
SUSSEX COUNTY, DELAWARE)	
(FILED JUNE 1, 2007))	

IN THE MATTER OF THE APPLICATION OF)	
TIDEWATER ENVIRONMENTAL SERVICES,)	
INC., FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO PROVIDE)	
WASTEWATER SERVICES TO TWO PARCELS OF)	PSC DOCKET NO. 05-WW-025
LAND LOCATED ON THE WEST SIDE OF COOL)	("COOL SPRINGS")
SPRING ROAD, EAST OF GEORGETOWN,)	
SUSSEX COUNTY, DELAWARE)	
(FILED AUGUST 26, 2005))	

ORDER NO. 7243

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

This 7th day of August, 2007, the Commission determines and Orders the following:

1. This Commission exercises regulatory oversight over non-governmental wastewater public utilities that serve more than fifty customers. See 26 Del. C. § 102(6) (2006 Supp.). That regulatory oversight includes the authority to grant Certificates of Public Convenience and Necessity ("CPCN") to enable an entity to begin the business of a wastewater public utility or to permit an existing wastewater public utility to extend its system and operations. See 26 Del. C. § 203D (2006 Supp.), as now further amended by 76 Del. Laws ch. 57 (June 28, 2007) and 76 Del. Laws ch. 162 (July 18, 2007).

Under such statutory regime, and specifically 26 Del. C. § 203D(d)(2), a wastewater utility may obtain a CPCN for a new service territory if it submits petitions requesting the utility's wastewater services executed by the landowners of each parcel or parcels to be encompassed within such new service area.¹

2. In 2005, by PSC Order No. 6573 (Feb. 22, 2005), 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"). Those Regulations implement the CPCN regime for public wastewater utilities.

3. Artesian Wastewater Management, Inc. ("AWMI") is a public utility offering wastewater services, and is subject to the regulatory oversight of this Commission. On June 1, 2007, AWMI filed an application with the Commission requesting a CPCN to provide its wastewater services to a new service territory encompassing two

¹See 26 Del. C. § 203D(d)(2), as amended by 76 Del. Laws ch. 162 § 1 (July 18, 2007). In the case of this application (filed in March, 2007), the Commission will apply the provisions of § 203D(d)(2) as they exist as of the date of this Order. In doing so, the Commission notes that the application fulfills not only the present criteria for a Certificate under that provision, but would also meet the criteria under that provision which prevailed until June 28, 2007. In 76 Del. Laws ch. 162, the General Assembly did not offer any explicit guidance related to how the changes that such enactment made in such criteria (which mirror earlier amendments made in 76 Del. Laws ch. 57 § 3) should be applied to pending CPCN applications. In fact, earlier, in 76 Del. Laws ch. 57, the General Assembly directed that the changes made by that enactment would be "effective as of June 7, 2004 and shall apply to any submission to the Public Service Commission after June 7, 2004."

parcels of land located on the west side of Cool Spring Road, east of Georgetown, Sussex County, Delaware ("Proposed Service Area").²

4. The Proposed Service Area in this matter is located in the water service territory of Tidewater Environmental Services, Inc. ("TESI"), which service territory was granted by this Commission in PSC Order No. 6780 (Nov. 25, 2005). On July 18, 2007, Tidewater filed a written request with the Commission seeking to abandon its CPCN for the specific area in AWMI's application.³ The Commission finds that the owner of the properties comprising the Cool Springs subdivision is now agreeable to receiving water services from AWMI as shown by the signed petition requesting water services from that utility. Further, because TESI does not presently have any facilities or plant installed in the subdivision, and no customers would be adversely affected by TESI's request to abandon the service territory, the Commission finds, pursuant to 26 Del. C. § 203A(c)(3), the abandonment of this area now sought by AWMI will not be disruptive to the present or future public convenience and necessity.

5. As required by 26 Del. C. § 203D(d)(2) and Commission Regulations, AWMI included in its application: (a) a petition requesting wastewater services signed by the single owner of the two parcels of land comprising the Proposed Service Area; and (b) evidence, in the form of a signed United States Postal Service

²A proposal for the parcels was reviewed during 2005 under the Preliminary Land Use Service (PLUS), as outlined in Chapter 92 of Title 29 of the Delaware Code (PLUS Project No. 2005-07-13).

³This request is pursuant to a settlement agreement between TESI and AWMI entered, and approved, in another Commission proceeding. See PSC Docket No. 05-WW-021.

certified mail receipt, showing that the landowner was sent notice of AWMI's Application.⁴ A Sussex County Tax Map showing the location of the Proposed Service Area was also included with the Application.

6. 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 that would indicate that AWMI has been unwilling or unable to provide safe, adequate and reliable wastewater services to its existing customers.⁵ In its reply, DNREC reported that it had no objection to the Commission granting the requested CPCN to provide wastewater treatment and disposal services to the three parcels of land.

7. Consequently, consistent with the statutory requirement, the Commission now grants TESI's request to remove the parcels of land comprising the Cool Springs subdivision from the service territory granted TESI by Order No. 6780 on Nov. 25, 2005 in PSC Docket No. 05-

⁴Prior to June 28, 2007, § 203D(d)(2) required the utility to provide notice to affected landowners of its application for a wastewater Certificate. That statutory requirement of notice was not carried forward in the June and July, 2007 amendments to § 203D(d)(2).

⁵Under the Commission's Regulations, the utility was required to submit a copy of its application to 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." Here, Staff solicited comments from DNREC and, by copy, also gave both the OSP and the Sussex County Engineering Department ("the County") the opportunity to offer their views. In this case, the County stated that while the two parcels are located in its Western Sussex Planning Area related to its possible future sewer services, it currently had no objection to a CPCN being granted to AWMI. The comments from the OSP indicate that the parcels are located in an Investment Level 4 Area (according to the "Strategies for State Policies and Spending") where new development activities are not supported by the State.

WW-025, and grant a CPCN to AWMI to provide wastewater public utility services within the Proposed Service Area.

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

1. That, pursuant to 26 Del. C. § 203A(c)(3), the request for abandonment filed by Tidewater Environmental Services, Inc. on June 18, 2007 is hereby granted, and the parcels of land comprising the Cool Spring Meadows subdivision are hereby removed from the service territory granted Tidewater Environmental Services, Inc. by PSC Order No. 6780 on November 25, 2007.

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 proposed "Cool Spring Meadows" subdivision located on the west side of Cool Spring Road, east of Georgetown, Sussex County, Delaware, and more specifically identified by the Sussex County Tax Map Parcels Numbers 235-5.00-30.00 and 235-5.00-33.00.

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.

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