

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

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|---------------------------------------|---|--------------------------|
| IN THE MATTER OF THE APPLICATION OF |) | |
| TIDEWATER ENVIRONMENTAL SERVICES, |) | |
| INC., FOR A CERTIFICATE OF PUBLIC |) | |
| CONVENIENCE AND NECESSITY TO PROVIDE |) | |
| WASTEWATER SERVICES TO ALL PROPERTIES |) | PSC DOCKET NO. 07-WW-021 |
| WITHIN THE CORPORATE BOUNDARIES OF |) | ("TOWN OF MILTON") |
| THE TOWN OF MILTON, SUSSEX COUNTY, |) | |
| DELAWARE |) | |
| (FILED JUNE 8, 2007) |) | |

ORDER NO. 7244

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

This 21st 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).

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. Tidewater Environmental Services, Inc. ("TESI") is a public utility offering wastewater services, and is subject to the regulatory oversight of this Commission. On June 8, 2007, TESI filed an application with the Commission requesting a CPCN to expand its operations and facilities to serve a service area encompassing all the properties located within the corporate boundaries of the Town of Milton, Sussex County, Delaware. TESI premises its application on the provisions of 26 Del. C. § 203D(d)(4) which currently authorize the Commission to grant a CPCN if the utility submits a:

certified copy of a resolution or ordinance from the governing body of a county or municipality that requests, directs or authorizes the applicant to provide wastewater utility services to the proposed territory to be served, which must be located within the boundary of such county or municipality.¹

With its application, TESI submitted a copy of the "Resolution Requesting Wastewater Service" adopted by the Town Council of the Town of Milton ("Town") at a council meeting held on June 7, 2007. In that resolution, the Town requests TESI "to provide wastewater services to the territory within and defined by the Town's boundaries."² TESI also

¹See 26 Del. C. § 203D(d)(4), as amended by 76 Del. Laws ch. 162 § 1 (July 18, 2007). In the case of this application (filed in June, 2007), the Commission will apply the provisions of § 203D(d) as they exist on the date of this Order. The current text of § 203D(d)(4) mirrors the language of previous § 203D(d)(3) as enacted by 76 Del. Laws Ch. 57 § 3 (June 28, 2007). Prior to June 28, 2007, the provisions of § 203D(d)(3) authorized the award of a CPCN based upon a county or municipal ordinance or resolution but did not contain the explicit limitation that the service territory authorized by the governing body's action must lie within the political boundaries of the authorizing county or municipality.

²The resolution recites that the Town and TESI had earlier, in February, 2007, entered into a wastewater service agreement under which TESI is to

submitted a map depicting the proposed service territory as the entire area within the Town's current boundaries.³

4. Aside from a few minor typographical errors in the application, which were later corrected by TESI, Staff found no errors or omissions with the Application, as filed. Pursuant to the Commission's Regulations, Commission Staff requested written comment from the Delaware Department of Natural Resources and Environmental Control ("DNREC") related to whether that agency had any outstanding issues with TESI that would indicate that TESI has been unwilling or unable to provide safe, adequate, and reliable wastewater services to its existing customers. In its reply, DNREC reported that it did not have any objection to the Commission granting the requested CPCN for TESI to provide wastewater treatment and disposal services to the Town of Milton.⁴

provide wastewater services to an area that includes the area within the boundaries of the Town.

³In its June 7, 2007 resolution, the Town Council had recited that "it is in the Town's interest for TESI to obtain a wastewater CPCN for the area defined by the Town's current boundaries." (emphasis added)

⁴Under 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 those 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 it currently had no objection to a CPCN being granted to TESI and the OSP did not offer comment. As noted, the Town of Milton supports TESI's application.

5. The Commission finds that TESI has submitted the requisite documents to support a CPCN under 26 Del. C. § 203D(d)(4).⁵ In addition, on this record, the Commission cannot discern any basis to refuse to grant a CPCN under 26 Del. C. § 203D(e) (2006 Supp.). Consequently, consistent with the statutory requirement, the Commission now grants a CPCN to TESI to permit it to provide its wastewater public utility services to the area within the current corporate boundaries of the Town of Milton.

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

1. That, pursuant to the provisions of 26 Del. C. § 203D(d)(4), a Certificate of Public Convenience and Necessity is hereby granted to Tidewater Environmental Services, Inc. authorizing it to provide its wastewater public utility services to all properties located within the corporate boundaries (as of June 7, 2007) of the Town of Milton in Sussex County.

2. That Tidewater Environmental Services, 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.

⁵In doing so, the Commission presumes the validity of the June 7, 2007 resolution and any prior wastewater agreement between the Town and TESI as it relates to services to be provided within the Town's corporate limits. Historically, the Commission has not conducted inquiries into whether a certified ordinance or resolution has been properly adopted or enacted by the relevant governing body.

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