

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

IN THE MATTER OF THE REQUEST OF )  
ARTESIAN WATER COMPANY, INC. TO )  
ABANDON THE CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY GRANTED BY )  
THE DEPARTMENT OF NATURAL RESOURCES )  
AND ENVIRONMENTAL CONTROL FOR FORMER )  
KENT COUNTY TAX MAP PARCEL NUMBER )  
LC00-37.00-01-19.00 BY CERTIFICATE NO. )  
01-CPCN-03 (MAY 16, 2001) AND THE ) PSC DOCKET NO. 07-CPCN-27  
APPLICATION OF TIDEWATER UTILITIES, ) ("HAZEL FARM")  
INC., FOR A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO PROVIDE )  
WATER SERVICES TO THE "HAZEL FARM" )  
SUBDIVISION LOCATED ON THE NORTH SIDE )  
OF FAST LANDING ROAD, BOUNDED ON THE )  
WEST BY ROUTE 1, EAST OF CHESWOLD, )  
KENT COUNTY, DELAWARE )  
(FILED JUNE 8, 2007)

**ORDER NO. 7245**

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

This 7<sup>th</sup> day of August, 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 June 8, 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 the "Hazel Farm" subdivision located on the north side of Fast Landing Road, and bounded on the west by Route 1, east of

Cheswold, Kent County, Delaware ("Proposed Service Area"). The Application is based on Tidewater's possession of a petition requesting water services signed by the landowner of the parcel. See 26 Del. C. § 203C(e)(1)b. (2006 Supp.).<sup>1</sup>

2. The Proposed Service Area in this matter is located in the water service territory of Artesian Water Company, Inc. ("Artesian") which was granted by the Department of Natural Resources and Environmental Control ("DNREC") by Certificate No. 01-CPCN-03 (May 16, 2001). On July 25, 2007, Artesian filed a written request with the Commission seeking to abandon its CPCN for the specific area in Tidewater's application.<sup>2</sup>

3. Staff reviewed Tidewater's Application in accordance with the rules adopted in PSC Regulation Docket No. 51, Order No. 5730, effective July 10, 2001. Staff found no errors or omissions. Staff also 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 Tidewater's ability to provide safe, adequate, and reliable water services to its existing customers.

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<sup>1</sup>The provisions of 26 Del. C. § 203C(e) were amended on June 28, 2007. See 76 Del. Laws ch. 55 § 1 (June 28, 2007). Those changes appear to be applicable only to applications submitted after that date. Id. § 5. Here, Tidewater's application satisfies the criteria for a Certificate under the provisions of § 203C(e)(1)b. under both its pre-June 28<sup>th</sup> formulation and the formulation adopted in 76 Del. Laws ch. 55.

<sup>2</sup>This request is pursuant to a settlement agreement between Tidewater and Artesian entered, and approved, in another Commission proceeding. See PSC Docket No. 05-WW-021.

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. The notices also announced that property owners may object to, or "opt-out," of the proposed CPCN area. The public notices also stated that Artesian had agreed to relinquish its CPCN for the service area. The Commission has not received any comments on the Application, requests for hearing, objections, or 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) a petition signed by the landowner requesting water services for the parcels of land comprising the Hazel Farm subdivision;
- (ii) a copy of the United States Postal Service's forms verifying that the Applicant sent, via certified mail, a Commission approved notice to the landowner as prescribed by Water Utility CPCN Reg. 10.109;
- (iii) the County tax map parcel identification numbers of the properties comprising the Hazel Farm subdivision;
- (iv) a listing of the landowner of record of the parcels and the associated tax maps; and

(v) the Applicant's statement that its expansion of service to the parcels of land 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 June 15, 2007, and in The News Journal newspaper on June 27, 2007;

(ii) correspondence from the Office of Drinking Water of the Division of Public Health (dated June 18, 2007), from the Office of the State Fire Marshal (dated June 25, 2007), and from the Department of Natural Resources and Environmental Control (printed e-mail dated June 15, 2007) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;

(iii) a written request, dated July 25, 2007 from Artesian Water Company, Inc. to abandon its CPCN authority for the Hazel Farm subdivision previously granted by the Department of Natural Resources and Environmental Control by Certificate No. 01-CPCN-03 (May 16, 2001);

(iv) Staff's August 2, 2007 memorandum of its investigation, recommending the Commission approve Artesian's request to abandon its CPCN and grant to Tidewater the CPCN requested in its Application. Staff reports that there are presently no customers in the Hazel Farm subdivision that would be affected by Artesian's abandonment of its service territory. 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 finds that the owner of the properties comprising the Hazel Farm subdivision is now agreeable to receiving water services from Tidewater as shown by the signed petition requesting water services from that utility. Further, because Artesian does not presently have any facilities or plant installed in the subdivision, and no customers would be adversely affected by Artesian'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 Artesian will not be disruptive to the present or future public convenience and necessity. The Commission thereby grants Artesian's request to remove the parcels of land comprising the Hazel Farm subdivision from the service territory granted Artesian by the Department of Natural Resources and Environmental Control in Certificate No. 01-CPCN-03 on May 16, 2001.

8. Tidewater has obtained the consent of the landowner in compliance of 26 Del. C. § 203C(e)(1)(b) and has sent by certified mail an approved notice of its Application to the owner of the parcels of land. The record further reflects Tidewater's statement that it will continue to meet the water pressure requirements for its existing customers and 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. Staff has investigated Tidewater and has discovered that Tidewater is currently not subject to any Commission finding that it is unwilling or unable to provide adequate and reliable water services

to its existing customers. In addition, 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. In summary, the Commission finds no reason that the Tidewater 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. § 203A(c)(3), the request for abandonment filed by Artesian Water Company, Inc. on July 25, 2007 is hereby granted, and the parcels of land comprising the Hazel Farm subdivision are hereby removed from the service territory granted Artesian Water Company, Inc. by the Department of Natural Resources and Environmental Control in Certificate No. 01-CPCN-03 on May 16, 2001.

2. 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-27 on June 8, 2007, is hereby approved to the extent it is consistent with this Order, and a Certificate is granted to Tidewater Utilities, Inc., to serve the area identified as the Hazel Farm subdivision.

3. 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.

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