

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN WATER COMPANY, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND) PSC DOCKET NO. 07-CPCN-29
NECESSITY TO PROVIDE WATER SERVICES TO) ("SOUTHERN SUSSEX")
NINE PARCELS OF LAND DISTRIBUTED FROM)
DAGSBORO TO FENWICK ISLAND, SUSSEX)
COUNTY, DELAWARE (FILED MAY 25, 2007)

ORDER NO. 7250

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

This 21st day of August, 2007, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. Artesian Water Company, Inc. ("Artesian" or "Applicant"), is a water utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission. On May 25, 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 ten parcels of land distributed from Dagsboro to Fenwick Island, Sussex County, Delaware ("Proposed Service Area"). The basis for the Application is Artesian's possession of petitions requesting water services signed by all of 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. C. § 203C(e)(1). However, while the new law made its changes generally

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 one parcel of land is already located within Artesian's existing service territory and therefore does not need to be considered in this Application. 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.

3. In addition to the required landowner notification, Staff directed Artesian 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 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 any comments on the Application or Applicant,

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." See 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).

requests for hearing, objections, or requests to "opt-out" of the Proposed Service Area.

II. SUMMARY OF THE EVIDENCE

4. The record in this matter consists of the Application and the Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in 29 Del. C. § 10123 (¶ 3). In addition, the Application includes:

- (i) petitions signed by all of the landowners of the Proposed Service Area;
- (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 prescribed by Water Utility CPCN Reg. 10.109;
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area;
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area and the associated tax maps; and
- (v) the Applicant's statement that its expansion of service to the parcels in the Proposed Service Area 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);

5. The record also contains:

- (i) affidavits of publication of the public notices of the Application in the Delaware State News and in The News Journal newspapers on June 15, 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 6, 2007), and from the Department of Natural Resources and Environmental Control (printed e-mail dated June 13, 2007) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN; and

- (iii) Staff's August 16, 2007 memorandum of its investigation recommending the Commission approve the Application and grant the requested CPCN. Staff reports that, based upon its review, Artesian has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

6. 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.

7. First, the Applicant obtained the consent of the landowners of the properties within the Proposed Service Area 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 owners of parcels of land within the Proposed Service Area. 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.

8. 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 services 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.

9. 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-29 on May 25, 2007 is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Artesian Water Company, Inc., to serve the areas identified by Kent County Tax Maps Parcels Numbers: 134-15.00-7.00, 134-18.00-45.00, 134-23.20-48.10, 433-6.00-18.00, 433-6.00-20.00, 433-6.00-26.00, 533-1.00-14.00, 533-11.00-45.00, and 533-11.00-82.01.

2. That Artesian Water Company, 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/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary