

**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-39
NECESSITY TO PROVIDE WATER SERVICES TO) ("LANGFORD/KEENWICK")
ONE PARCEL OF LAND LOCATED IN THE)
KEENWICK SOUND DEVELOPMENT, SUSSEX)
COUNTY, DELAWARE (FILED JULY 10, 2007)

ORDER NO. 7266

**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 July 10, 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 a parcel of land located in the Keenwick Sound development, Sussex County, Delaware, and more specifically identified by the Sussex County Tax Map Parcel No. 533-19.00-681.00. The basis for the Application is Artesian's possession of a petition requesting water services signed by the owners of the property 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

2. Staff reviewed the Application in accordance with the rules adopted in PSC Regulation Docket No. 51, Order No. 5730, effective July 10, 2001. Included in the Application is a petition signed by the property owners requesting water services from Artesian, and a signed document waiving their right to notification of Artesian's intent to file a CPCN Application for their property. The property owners have indicated in their petition requesting services that their drinking water well began drawing sand and that they are in need of service immediately.² Pursuant to 26 Del. C. § 203C(d)(1), the Commission shall issue a CPCN to an Applicant provided evidence is submitted that "all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application". As in past circumstances, and due to the pressing needs of the landowners, Staff has accepted both the signed petition for water services and the signed waiver to meet this statutory requirement.

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 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).

²In light of the landowners' urgent need, in a letter dated July 3, 2007, Staff granted Artesian permission to temporarily connect this property to its water system prior to the granting of the CPCN.

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. While it is the general practice of the Commission to require that all CPCN applications for water services be publicly noticed in two newspapers of general circulation, Staff has determined that such notice would not be necessary in this circumstance. The homeowners in the community surrounding this property and utilizing the water system will likely feel no impact as a result of connecting this single residence, and it is doubtful that there would be an objection from any neighboring landowner in the community.

II. SUMMARY OF THE EVIDENCE

5. 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) a petition signed by owners of the property requesting water services from Artesian and also expressing their need for immediate service;
- (ii) a waiver signed by the parcel owners of the notification requirements of *26 Del. C. § 203C (d)(1)*;
- (iii) the County tax map parcel identification numbers of the property with the associated tax maps; and

(iv) 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);

6. The record also contains:

(i) correspondence from the Office of Drinking Water of the Division of Public Health (dated July 16, 2007), from the Office of the State Fire Marshal (dated July 17, 2007), and from the Department of Natural Resources and Environmental Control (printed e-mail dated July 12, 2007) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;

(iii) Staff's August 16, 2007 memorandum of its investigation recommending the Commission approve the Application and grant the requested CPCN. In its memorandum, Staff indicates that it has accepted both the signed petition for water services and the signed waiver to meet the statutory requirements of 26 Del. C. §203C (d)(1) , and that it has waived the Commission's practice of requesting water companies publish notice of their CPCN applications. Staff further reports that, based upon its review, the Applicant 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 has submitted a signed petition from the property owners requesting the Applicant provide water services to

the parcel of land in compliance with 26 Del. C. § 203C(e)(1)(b). Second, Commission Staff has accepted a waiver of the notification requirement signed by the property owner, and the signed petition requesting water services, in lieu of the certified mail receipt required by 26 Del. C. § 203C (d)(1). Third, the record reflects: (a) the Applicant's statement that the Applicant will continue to meet the water pressure requirements for its existing customers; and (b) 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. Fourth, the Commission's Staff has investigated the Applicant and has discovered that the Applicant is not 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 any basis for the Commission to believe that any further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding

9. In summary, the Commission 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). Since the Applicant has satisfied the statute's requirements, the Commission shall issue a CPCN permitting the Applicant to expand its operations to provide water utility services to the single parcel identified in paragraph 1 of this Order.

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-39 on July 10, 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 area identified by Sussex County Tax Map Parcel No. 533-19.00-681.00

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

PSC Docket No. 07-CPCN-39, Order No. 7266 Cont'd.

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary