

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES TO) PSC DOCKET NO. 07-CPCN-37
ONE PARCEL OF LAND LOCATED ON WARREN) ("HUMMINGBIRD")
FARM ROAD, EAST OF ELLENDALE, SUSSEX)
COUNTY, DELAWARE)
(FILED JULY 5, 2007)

ORDER NO. 7280

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

This 18th day of September, 2007, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. In PSC Order No. 7272 (Sept. 4, 2007) this Commission awarded Tidewater Utilities, Inc. ("Tidewater"), a Certificate of Public Convenience and Necessity ("CPCN") to provide its public utility water services to a parcel of property labeled the "Hummingbird" property located on Warren Farm Road in Sussex County. Tidewater's CPCN application, and the Commission's resulting Order, was premised on a petition for water services executed by Philip L. Wemlinger, described as a member of W/G Land Ventures LLC ("W/G Ventures"). Tidewater identified W/G Ventures as the landowner of record of the Hummingbird parcel.

2. However, earlier on August 2, 2007, W/G Ventures had filed a written request asking that the Commission withhold action on

granting Tidewater a CPCN for this property.¹ Unfortunately, through administrative oversight, this request was overlooked in the course of "processing" Tidewater's application for a CPCN for this parcel.

3. In addition, after the entry of the September 4th CPCN Order, Staff contacted W/G Ventures to determine its intentions as to having Tidewater provide public utility water services to its parcel. In correspondence to the Commission dated September 5, 2007, Mr. Wemlinger of W/G Ventures stated that it did not want to be included in Tidewater's service territory and asked that the "error" in granting the September 4th CPCN be corrected.²

4. At this juncture, the Commission will now vacate its prior Order No. 7272 awarding Tidewater a CPCN to provide water services to the W/G Ventures's Hummingbird parcel. The landowner had earlier initially asked for a deferral and has now explicitly stated that it does not desire to have its property to be included within Tidewater's service territory.³

¹The request also asked the Commission to defer acting on a similar application filed by Tidewater Environmental Services, Inc. (a sibling of Tidewater) that seeks a CPCN to provide public utility wastewater services to the Hummingbird parcel. See PSC Dckt. No. 07-WW-026.

²As noted earlier, Tidewater Environmental Services, Inc. also has currently pending an application to provide public utility wastewater services to the same parcel. W/G Ventures's September 5th response to Staff's inquiry does not explicitly state its intention as to that separate wastewater application.

³It is true that W/G Ventures had executed a petition requesting Tidewater to provide water utility services to its property. However in the past, the Commission has acceded to "opt-out" requests filed by landowners of record who had earlier executed petitions asking the relevant water utility to provide water services to their properties. Moreover, the recent amendments to 26 Del. C. § 203C(i), as amended by 76 Del. Laws ch. 55 § 1 (June 28, 2007) seemingly recognize, and allow for, the possibility that a landowner who previously requested water services from the utility might later decide to remove his property from the utility's proposed service territory. See § 203D(i) (allowing "opt-out" by landowners where CPCN

5. At the same time, the Commission will not now simply dismiss or deny the application. Tidewater is directed to file within fifteen days its views about the present status of this proceeding given the September 5, 2007 correspondence from W/G Ventures. If necessary, W/G Ventures will be afforded the opportunity to respond to Tidewater's submission. The Commission can then determine what further directives or proceedings are appropriate in this matter.

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

1. That, for the reasons set forth in the body of this Order, PSC Order No. 7272, entered on September 4, 2007, is hereby vacated and nullified. Such Order shall be of no force and effect.

2. That, within fifteen days of the date of this Order, Tidewater Utilities, Inc. shall file with the Commission, and serve on W/G Land Ventures LLC, a written statement of its views concerning the status of this application for authority to provide public utility water services to Sussex County Tax Map Parcel. No. 230-27.00-50.01 reported to be owned by W/G Land Ventures LLC. W/G Land Ventures LLC may file a response within ten days after receipt of the utility's submission. The Secretary shall send a copy of this Order to W/G Land Ventures LLC.

premised on the provisions of § 203C(e)(1)b. which require submission of petitions executed by all the landowners of record of all the parcels in the proposed service territory).

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