

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

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN WASTEWATER MANAGEMENT, INC.,)
FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE)
WASTEWATER SERVICES TO SEVEN PARCELS)
OF LAND DISTRIBUTED EAST OF)
ELLENDALE, SUSSEX COUNTY, DELAWARE)
(FILED MARCH 26, 2007 AND AMENDED)
JUNE 13, 2007)

PSC DOCKET NO. 07-WW-015
("ISAACS WW")

ORDER NO. 7297

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

This 2nd day of October, 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). Under such statutory regime, and specifically 26 Del. C. § 203D(d)(2), a wastewater utility may obtain a CPCN for a new service territory if it submits petitions requesting the utility's wastewater services

executed by the landowners of each parcel or parcels of land to be encompassed within such new service area.¹

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. Artesian Wastewater Management, Inc. ("AWMI") is a public utility offering wastewater services, and is subject to the regulatory oversight of this Commission. On March 26, 2007, AWMI filed an application with the Commission requesting a CPCN to provide its wastewater services to eight parcels of land distributed east of Ellendale, Sussex County, Delaware ("Proposed Service Area"). On June 13, 2007, AWMI amended its application, removing one parcel of land from the Proposed Service Area.

4. As required by 26 Del. C. § 203D(d)(2) and the Commission Regulations, AWMI included in its application: (a) petitions requesting wastewater services signed by all of the owners of the

¹See 26 Del. C. § 203D(d)(2), as amended by 76 Del. Laws ch. 162 § 1 (July 18, 2007). In the case of this application (filed in June 2006), the Commission will apply the provisions of § 203D(d)(2) as they exist as of the date of this Order. In doing so, the Commission notes that the application fulfills not only the present criteria for a CPCN under that provision, but would also meet the criteria under that provision which prevailed until June 28, 2007. In 76 Del. Laws ch. 162, the General Assembly did not offer any explicit guidance related to how the changes that such enactment made in such criteria (which mirror earlier amendments made in 76 Del. Laws ch. 57 § 3) should be applied to pending CPCN applications. In fact, earlier, in 76 Del. Laws ch. 57, the General Assembly directed that the changes made by that enactment would be "effective as of June 7, 2004 and shall apply to any submission to the Public Service Commission after June 7, 2004."

parcels of land comprising the Proposed Service Area; and (b) evidence, in the form of signed United States Postal Service certified mail receipts, showing that the landowners were sent notice of AWMI's Application.² A Sussex County Tax Map showing the location of the Proposed Service Area was also included with the application.

5. Pursuant to Commission Regulations, Commission Staff requested written comment from the Delaware Department of Natural Resources and Environmental Control ("DNREC") as to whether there are any outstanding issues with that agency that would indicate that AWMI has been unwilling or unable to provide safe, adequate, and reliable wastewater services to its existing customers.³ In its reply, DNREC reported that it had no objection to the Commission granting the requested CPCN to provide wastewater treatment and disposal services to the Proposed Service Area.

²Prior to June 28, 2007, § 203D(d)(2) required the utility to provide notice to affected landowners of its application for a wastewater CPCN. That statutory requirement of notice was not carried forward in the June and July, 2007 amendments to § 203D(d)(2).

³Under 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 whose 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 while the parcels are located in its North Coastal Planning Area related to its possible future sewer services it currently has no objection to a CPCN being granted to AWMI. Comments from the OSP indicate that the parcels are located in an Investment Level 4 Area according to the "Strategies for State Policies and Spending" where new development activities are not supported by the State. The OSP further indicates that, according to their records, six of the parcels in the Proposed Service Area are in an Agricultural Preservation Easement.

6. The Commission considered this and other AWMI applications during public meetings on August 21, 2007 and September 18, 2007.⁴ After due consideration, the Commission, consistent with the statutory requirements, shall now grant a CPCN to AWMI to provide wastewater public utility services within the Proposed Service Area.

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

1. That, pursuant to the provisions of 26 Del. C. § 203D(d)(2), a Certificate of Public Convenience and Necessity is granted to Artesian Wastewater Management, Inc. to provide wastewater public utility services to the area more specifically identified by the Sussex County Tax Map Parcels Numbers 235-6.00-10.03, 235-6.00-10.05, 235-6.00-26.00, 235-7.00-27.00, 235-7.00-164.00, 235-13.00-6.00, and 235-21.00-35.00.

2. That Artesian Wastewater Management, 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.

⁴As explained more fully in PSC Order No. 7293 at n. 4 (Oct. 2, 2007), the Commission rejects Staff's recommendation that this application be "held" until the Commission might consider new provisions in its wastewater CPCN rules that would tie grants of service territories to some indication that actual service will be provided to the proposed area within a reasonable time frame.

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/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary