

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

IN THE MATTER OF THE APPLICATION OF)	
TIDEWATER ENVIRONMENTAL SERVICES,)	
INC., FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO PROVIDE)	PSC DOCKET NO. 07-WW-019
WASTEWATER SERVICES TO ONE PARCEL OF)	("LP ISAACS FAMILY
LAND LOCATED AT THE INTERSECTION OF)	PARTNERSHIP")
ABBOTTS POND AND LINDALE ROADS, WEST)	
OF MILFORD, SUSSEX COUNTY, DELAWARE)	
(FILED MAY 23, 2007))	

ORDER NO. 7356

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

This 5th day of February, 2008, 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. Tidewater Environmental Services, Inc. ("TESI") is a public utility offering wastewater services, and is subject to the regulatory oversight of this Commission. On May 23, 2007, TESI filed an application with the Commission requesting a CPCN to provide its wastewater services to one parcel of land located at the intersection of Abbotts Pond and Lindale Roads, west of Milford, Sussex County, Delaware ("Proposed Service Area").

4. As required by 26 Del. C. § 203D(d)(2) and the Commission Regulations, TESI included in its application: (a) a petition requesting wastewater services signed by the owner of the parcel of land comprising the Proposed Service Area; and (b) evidence, in 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 May 2007), 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."

form of a signed United States Postal Service certified mail receipt, showing that the landowner was sent notice of TESI's Application.² A Sussex County Tax Map showing the location of the Proposed Service Area was also included with the application. The property had been the subject of a Preliminary Land Use Services ("PLUS") review conducted by the Delaware Office of State Planning ("OSP") with eighty-seven residential units proposed for the parcel (PLUS No. 2006-08-04).

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 TESI 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

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 Western Sussex Planning Area related to its possible future sewer services, it currently has no objection to a CPCN being granted. 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.

requested CPCN to provide wastewater treatment and disposal services to the Proposed Service Area.

6. Consequently, consistent with the statutory requirements, the Commission shall now grant a CPCN to TESI 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 Tidewater Environmental Services, Inc. to provide wastewater public utility services to the area more specifically identified by the Sussex County Tax Map Parcel No. 130-5.00-21.00.

2. That Tidewater Environmental Services, 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.

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

PSC Docket No. 07-WW-019, Order No. 7356 Cont'd.

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary