

**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. 08-WW-014
WASTEWATER SERVICES PURSUANT TO 26)	("GRAVEL HILL/INDIAN MISSION
DEL. C. § 203D (FILED DECEMBER 9,)	ROAD AREA")
2008 AND AMENDED MAY 13 AND MAY 22,)	
2009))	

ORDER NO. 7585

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

This 2nd day of June, 2009, 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 ("CPCNs") 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 to be encompassed within such new service area.

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 December 9, 2008, TESI filed an application with the Commission requesting a CPCN to provide its wastewater services to 104 parcels of land distributed south of Milton to north of Millsboro, 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) petitions requesting wastewater service signed by the owners of the 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 all of the landowners were sent notice of TESI's Application.¹ Sussex County Tax Maps showing the location of the Proposed Service Area were also included with the Application.

5. Pursuant to Commission Regulations, Commission Staff requested written comment from the Delaware Department of Natural

¹Prior 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); however, Commission Regulations continue to require notice to affected landowners.

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.² 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.

6. On May 13, 2009, TESI amended its Application by removing four parcels of land, more specifically identified by Sussex County Tax Map Parcels Nos. 135-16.00-15.02, 135-16.00-69.00, 234-16.00-10.01, and 234-16.00-10.02. On May 22, 2009, TESI amended its Application again by removing from the Proposed Service Area nine parcels of land, more specifically identified by Sussex County Tax Map Parcels Nos. 234-14.00-23.01, 234-15.00-40.00, 234-21.00-158.00, 234-11.00-79.04, 135-11.00-59.06, 135-17.00-4.06, 234-15.00-300.01, 234-10.00-130.13, and 234-10.00-130.14. There are now ninety-one parcels of land in the Proposed Service Area.

²Under 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, OSP indicated that the Proposed Service area is located in an Investment Level 4 Area, according to the "Strategies for State Policies and Spending," where new development activities and suburban development are not supported. The County questioned TESI's ability to service scattered parcels. They also stated that if there is no immediate plan or schedule to provide service, they question why a CPCN should be granted at this time.

7. The Commission Staff has reviewed the Application and found no errors or omissions. Staff reports to the Commission in its May 26, 2009 memorandum that TESI's Application meets all requirements for the granting of a CPCN under 26 Del. C. § 203D and the Commission's Regulations and recommends approval of the Application.

8. For these reasons, the Commission finds that TESI has met the requirements for the granting of a CPCN and, therefore, the Commission shall approve the Application as filed in PSC Docket No. 08-WW-014 on December 9, 2008 and amended on May 13 and 22, 2009.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

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 Parcels Numbers shown in "Exhibit A" of this Order.

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

/s/ Jaymes B. Lester
Commissioner

/s/ Dallas Winslow
Commissioner

Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

TIDEWATER ENVIRONMENTAL SERVICES, INC.

PSC DOCKET NO. 08-WW-014

SUSSEX COUNTY TAX MAP PARCELS NUMBERS

234-28.00-016.10	234-04.00-022.03	234-10.00-199.00
234-09.00-012.07	234-10.00-003.00	234-16.00-001.01
234-11.00-099.01	234-09.00-044.00	234-09.00-014.01
235-30.00-014.00	234-22.00-018.00	234-15.00-030.03
234-09.00-012.01	234-15.00-354.00	133-03.00-003.08
234-28.00-149.00	234-28.00-104.00	234-28.00-136.02
234-06.00-004.00	234-28.00-110.00	234-28.00-244.00
234-06.00-004.03	234-28.00-050.00	234-10.00-130.08
234-06.00-003.00	234-28.00-055.00	135-11.00-070.00
234-06.00-004.02	234-16.00-024.00	234-15.00-007.08
234-06.00-004.04	234-16.00-025.00	234-08.00-045.01
234-17.00-013.00	234-16.00-025.02	234-21.00-037.01
235-30.00-055.00	234-28.00-108.01	234-04.00-010.01
234-10.00-015.00	234-21.00-191.00	234-04.00-010.02
234-16.00-012.00	234-15.00-013.04	234-22.00-013.06
235-31.00-010.08	135-11.00-073.00	234-10.00-075.04
235-31.00-010.01	234-21.00-214.00	234-15.00-007.06
235-31.00-010.02	234-10.00-011.04	234-15.00-007.04
235-31.00-010.07	234-09.00-001.06	234-11.00-078.03
234-21.00-047.00	234-17.00-011.09	235-30.00-058.04
234-15.00-004.02	234-21.00-168.00	234-29.00-029.00
234-04.00-010.19	234-28.00-191.00	234-08.00-020.05

334-09.00-004.00
234-15.00-084.00
234-10.00-135.00
234-10.00-163.00
235-31.00-011.06
234-5.00-053.01
334-10.00-060.22
234-29.00-038.00
234-29.00-038.01
234-05.00-054.01
234-20.00-002.01
234-11.00-079.02
334-10.00-060.17
234-21.00-180.00
334-10.00-058.00
234-21.00-020.00
234-27.00-088.00
234-22.00-003.16
234-21.00-069.07
234-05.00-001.01
234-10.00-012.05
234-28.00-069.00
234-29.00-026.00