

**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	)	PSC DOCKET NO. 09-WW-004
CONVENIENCE AND NECESSITY TO PROVIDE	)	("CARTER FARM AND COUNTRY
WASTEWATER SERVICES PURSUANT TO 26	)	CLUB ESTATES")
DEL. C. § 203D (FILED JUNE 23, 2009)	)	

**ORDER NO. 7688**

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

This 19<sup>th</sup> day of November, 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 ("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 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. Artesian Wastewater Management, Inc. ("Artesian") is a public utility offering wastewater services, and is subject to the regulatory oversight of this Commission. On June 23, 2009, Artesian filed an application with the Commission requesting a CPCN to provide its wastewater services to 126 parcels of land in the Carter Farm and Country Club Estates subdivision, located northwest of Middletown, New Castle County, Delaware ("Proposed Service Area") (See Exhibit A).

4. As required by 26 Del. C. § 203D(d)(2) and the Commission Regulations, Artesian 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 Artesian's Application.<sup>1</sup> New Castle County Tax Maps 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

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<sup>1</sup> Prior to June 28, 2007, Section 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 Section 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. 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. However, as noted by Staff, Section 38.02.007(D) of the New Castle County Code generally prohibits the operation of a wastewater system by anyone other than New Castle County. Staff brought this issue to the attention of Artesian, and Artesian responded that it had permission from the County pursuant to the terms of a Settlement Agreement, dated November 20, 2007 (the "Settlement Agreement"), between the County and Carter Farm, LLC. Staff notified Artesian that Artesian would need to provide evidence that it has permission from the County, since Artesian was not a party to the Settlement Agreement. Thereafter, on September 22, 2009, the County sent Staff a letter notifying Staff that it consented to the granting of the CPCN to Artesian, but subject to the terms and conditions of the Settlement Agreement and also to certain conditions set forth in the letter (the "September Letter"). A copy of the September Letter and the Settlement Agreement (an exhibit to the September Letter) is attached hereto as Exhibit B.<sup>2</sup> Artesian notified Staff by e-mail that it agreed to the issuance of the requested CPCN as conditioned by the County.

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<sup>2</sup> Exhibit B actually includes a copy of the Settlement Agreement redacted by counsel to Carter Farms, LLC. An un-redacted copy of the Settlement

7. Staff reported to the Commission in its November 9, 2009 memorandum that Artesian's Application meets all of the other requirements for the granting of a CPCN under 26 *Del. C.* § 203D and the Commission's Regulations and recommends approval of the Application.<sup>3</sup>

8. For these reasons, the Commission finds that Artesian has met the requirements for the granting of a CPCN and, therefore, the Commission shall approve the Application as filed in PSC Docket No. 09-WW-004 on June 23, 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 Artesian Wastewater Management, Inc. to provide wastewater public utility services to the area more specifically identified by the New Castle County Tax Map Parcel Numbers shown in "Exhibit A" of this Order; provided, however, that, in addition to other applicable law, such CPCN is subject to the terms and conditions of the Settlement Agreement, dated November 20, 2007, between New Castle

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Agreement has been filed with the Commission and will be maintained in the Commission files.

<sup>3</sup> Under 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 New Castle County Engineering Department ("the County") the opportunity to offer their views. In this case, OSP indicated that the parcels in the Proposed Service area is located in an Investment Level 3 Area, according to the "Strategies for State Policies and Spending," where growth is anticipated and the State investments therefore support growth in these areas.

County and Carter Farms, LLC (the "Settlement Agreement"), as well as the September 22, 2009 letter filed by New Castle County in this docket (the "September Letter") (a copy of the Settlement Agreement and the September Letter are attached hereto as "Exhibit B").

2. That any party may seek the revocation of this certificate of public convenience and necessity should there be any failure to comply with the terms and conditions of the Settlement Agreement or the September Letter.

3. 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.

4. 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

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/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary

E X H I B I T "A"

APPROVED SERVICE AREA  
PARCELS WITHIN CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY  
ARTESIAN WASTEWATER MANAGEMENT, INC.  
PSC DOCKET NO. 09-WW-004

NEW CASTLE COUNTY TAX MAP PARCEL NUMBERS

11-061.00-001	13-011.10-024	13-011.30-003
11-057.00-010	13-011.10-025	13-011.30-004
11-057.00-012	13-011.10-026	13-011.30-005
11-061.00-005	13-011.10-027	13-011.30-006
11-061.00-006	13-011.20-190	13-011.30-007
11-061.00-007	13-011.20-191	13-011.30-008
11-061.00-008	13-011.20-192	13-011.30-009
13-011.00-001	13-011.20-193	13-011.30-010
13-011.10-008	13-011.20-194	13-011.30-011
13-011.10-009	13-011.20-195	13-011.30-012
13-011.10-010	13-011.20-196	13-011.30-013
13-011.10-011	13-011.20-197	13-011.30-014
13-011.10-012	13-011.20-198	13-011.30-015
13-011.10-013	13-011.20-199	13-011.30-016
13-011.10-014	13-011.20-200	13-011.30-017
13-011.10-015	13-011.20-201	13-011.30-018
13-011.10-016	13-011.20-202	13-011.30-019
13-011.10-017	13-011.20-203	13-011.30-020
13-011.10-018	13-011.40-102	13-011.30-021
13-011.10-019	13-011.40-103	13-011.30-022
13-011.10-020	13-011.40-104	13-011.30-023
13-011.10-021	13-011.40-105	13-011.30-024
13-011.10-022	13-011.30-001	13-011.30-025
13-011.10-023	13-011.30-002	13-011.30-026

13-011.30-027	13-011.30-041	13-011.10-039
13-011.30-028	13-011.30-042	13-011.10-040
13-011.30-029	13-011.30-043	13-011.10-041
13-011.30-030	13-011.30-044	13-011.10-042
13-011.30-031	13-011.30-045	13-011.10-043
13-011.30-032	13-011.30-046	13-011.10-044
13-011.30-033	13-011.30-047	13-011.10-045
13-011.30-034	13-011.30-048	13-011.10-046
13-011.30-035	13-011.30-049	13-011.10-047
13-011.30-036	13-011.10-028	13-011.10-048
13-011.30-037	13-011.10-029	13-011.10-049
13-011.30-038	13-011.10-030	13-011.10-050
13-011.30-039	13-011.10-031	13-011.10-051
13-011.30-040	13-011.10-032	13-011.10-052
	13-011.10-033	13-011.10-053
	13-011.10-034	13-011.40-106
	13-011.10-035	13-011.40-107
	13-011.10-036	13-011.40-100
	13-011.10-037	13-011.40-101
	13-011.10-038	13-011.00-162