

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

IN THE MATTER OF THE APPLICATION OF )  
THE TOWN OF FELTON FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY TO )  
PROVIDE WATER SERVICES PURSUANT TO 26 ) PSC DOCKET NO. 15-1029  
DEL. C. § 203C ) ("Paskey Property")  
(SUBMITTED JUNE 6, 2015; FILED AUGUST )  
25, 2015)

**ORDER NO. 8796**

**AND NOW**, this 22nd day of September, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on June 6, 2015, Town of Felton ("Felton" or the "Town") submitted an application (the "Submitted Application") to the Commission pursuant to 26 Del. C. §203C(e)(1)b. seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations to provide water services to four parcels of land in Kent County, Delaware, referred to as the Paskey Property (the "Proposed Service Area"); and

**WHEREAS**, the Commission Staff ("Staff") reviewed the Submitted Application to ensure compliance with the statutory provisions of 26 Del. C. §203C and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 Del. C. §2002; and

**WHEREAS**, Staff found the Submitted Application was incomplete for the following reasons:

- It did not contain affidavits of publication for two newspapers as required by 26 *Del. Admin. C.* §2002-10.7;<sup>1</sup>
- The form of notice Felton provided to the landowners of record had not yet been approved by the Commission as required by 26 *Del. Admin. C.* §2002-10.1;<sup>2</sup> and
- Felton had included in the Submitted Application three parcels of land that had already been included in a CPCN application previously approved by DNREC in Docket No. 91-CPCN-16 (March 12, 1993); and

**WHEREAS**, on July 1, 2015, Felton supplemented and revised its Submitted Application and requested that its CPCN be based on the provisions of 26 *Del. C.* §203C(e)(1)b.4 (i.e., based on a certified resolution authorizing the Town to provide water services to the Proposed Service Area).<sup>3</sup> Felton also requested a waiver of the newspaper notification requirement (as allowed by

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<sup>1</sup> Under 26 *Del. Admin. C.* §2002-10.7, within ten days of the filing of the application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application.

<sup>2</sup> 26 *Del. Admin. C.* §2002-10.1 provides, in pertinent part, that the notice to be sent to landowners of record in a request premised on 26 *Del. C.* §203C(e)(1)b.4. shall be in a form approved by the Commission.

<sup>3</sup> 26 *Del. C.* §203C(e)(1)b.4 provides, in pertinent part, the Commission shall issue a CPCN if the applicant submits (together with the application), evidence that all landowners of the proposed territory have been notified by certified mail, or its equivalent, of the filing of the application, and such evidence consists of copies of all materials returned to the sender and a certified copy of a resolution or ordinance from the governing body of a county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the proposed territory to be served, which must be located within the boundary of such county or municipality.

26 *Del. Admin. C.* §2002-1.5).<sup>4</sup> In support thereof and as "good cause," Felton asserted that based on Article III, Title V, of its Ordinances "pertaining to the mandatory connection to the Town's water system and the Town limits of Felton," Felton does not allow any property located within its town limits to opt out of water service. Hence, Felton believes that based on this provision of its Ordinances, the Commission could waive, pursuant to 26 *Del. Admin. C.* §2002-1.5, the newspaper notification requirement; and

**WHEREAS**, 26 *Del. Admin. C.* §2002-1.5 allows the Commission to excuse any failure to comply with its regulations that is not material to the Commission's decision; and

**WHEREAS**, Felton also requested Commission approval, pursuant to 26 *Del. Admin. C.* §2002-10.1, of the form of notice that it had already sent to the landowners of record; and

**WHEREAS**, on August 5, 2015, Felton also removed three parcels of land from the Proposed Service Area because such parcels are already within the Town's certificated service territory. The Proposed Service Area now contains only one parcel of land; and

**WHEREAS**, on August 25, 2015, at Staff's request and as additional support for its waiver request of the newspaper notification requirement, Felton filed proof that it had mailed

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<sup>4</sup> 26 *Del. Admin. C.* §2002-1.5 provides that the Commission may "by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision."

to the landowner of record a notice of the annexation of the landowner's parcel, which Felton asserts is included within the Proposed Service Territory. The annexation notice is dated 2008 and states that such notice was published in the State News.<sup>5</sup> In addition, the annexation notice has a resolution attached which stated that the landowner of record requested that his property be annexed into the Town's limits; and

**WHEREAS**, based on the revisions and the additional documentation provided, Staff concluded that the Submitted Application was administratively complete at that time and therefore deemed to be filed on August 25, 2015 (the "Filed Application"); and

**WHEREAS**, Staff has reviewed the Filed Application and finds that it is in compliance with the provisions of 26 *Del. C.* §203C(e)(1)b.4. and the Commission's Regulations apart from (i) the omission of the newspaper notification as required by 26 *Del. Admin. C.* §2002-10.7, and (ii) the failure of Felton to obtain the Commission's prior approval of its form of notice before it sent such notice to the landowner of record, which form Felton now requests be approved by the Commission; and

**WHEREAS**, in its memorandum to the Commission, Staff recommends that the Filed Application be approved, that Felton's waiver request of the newspaper notification be approved, that the form of notice which Felton sent to the landowner of record

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<sup>5</sup> This may be a reference to the Delaware State News.

be approved,<sup>6</sup> and that such form of notice be approved for use by all municipalities for future water service CPCNs; and

**WHEREAS**, Staff recommends granting Felton a waiver of the newspaper notification requirement or excusing Felton's failure to comply with such regulatory requirement because (i) Felton sent notice of its application to the landowner of record in the Proposed Service Territory via the annexation notice; (ii) provisions of Felton's town ordinances require properties located within its limits to obtain water service from the Town; and (iii) such newspaper notification requirement is not a statutory requirement, nor is it material to the Commission's decision, because properties within the Town are required to use the Town's water service and residents of the Town have the option of directly contacting the Town with any issues they may have concerning water service;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE  
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1 Pursuant to 26 *Del. C.* §203C(e)(1)b.4., the Commission hereby grants to Felton a CPCN to provide water serve to the Proposed Service Area more specifically identified by the Kent County Tax Map Parcel Number 8-07-128.20-01-12.00.

2. The Commission also grants Felton's request for a waiver of the newspaper notification as required by 26 *Del. Admin. C.* §2002-10.1 and determines that such failure to follow

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<sup>6</sup> The Commission may also excuse Felton's failure to obtain prior approval of the form of notice before sending such notice under 26 *Del. Admin. C.* §2002-1.5 since this requirement is set by the Commission's Regulations and not by statute.

this regulatory requirement is not material to its decision to grant or deny the Filed Application. Provisions within Felton's Ordinances require that all properties within the Town's limits must receive water service from the Town. In addition, the landowner of record not only requested that his property be annexed into the Town's limits, but he also received written notice of the annexation before it occurred. We find this written notice of annexation, which stated that it had been published in a public newspaper, to be an adequate substitute for the newspaper notification requirement set forth in 26 *Del. Admin. C.* §2002-10.1.

3. We also approve the form of notice which Felton sent to the landowner of record and waive Felton's failure to comply with 26 *Del. Admin. C.* §2002-10.1. Felton's form of notice is adequate for a municipality which proposes to annex property into its service territory. Moreover, if local laws require that all landowners with properties within the service territory of a municipality must obtain water service from such municipality, then an opt-out notice would be unnecessary so long as the landowner receives prior notice of the annexation.

4. We further approve the form of notice used in this Docket as a form of notice that may be used by any municipality which may file a future water service CPCN application. This form of notice is attached as Exhibit "A."

5. Felton 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 water utility services provided to the service territory granted by this CPCN.

6. 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:**

\_\_\_\_\_  
Chair

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Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

ATTEST:

\_\_\_\_\_  
Secretary

EXHIBIT "A"

FORM OF NOTICE WHICH MUNICIPALITIES MAY USE  
TO SEND TO LANDOWNERS OF RECORD FOR APPLICATIONS FOR CERTIFICATES  
OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER SERVICES

YOU SHOULD READ THIS NOTICE CAREFULLY.

Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*.

Pursuant to 26 *Del. C.* §203C(e)(1)(b.4, [INSERT WATER UTILITY'S NAME] is applying for a CPCN based on a certified copy of a resolution or ordinance that requests, directs, or authorizes the applicant to provide water utility services to the proposed territory to be served.

Within thirty-five (35) days, [INSERT WATER UTILITY'S NAME] plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as *[insert description of the proposed service territory]*.

[INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. [INSERT WATER UTILITY'S NAME] ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service]*.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).