

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND) PSC DOCKET NO. 04-CPCN-02
NECESSITY TO PROVIDE WATER SERVICES TO) (LAMBERTA ESTATE)
LAMBERTA ESTATE LOCATED IN DUCK CREEK)
HUNDRED, KENT COUNTY, DELAWARE)
(FILED FEBRUARY 10, 2004))

ORDER NO. 6415

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE PUBLIC WATER UTILITY SERVICES**

This 18th day of May, 2004, the Commission finds, determines, and Orders the following:

I. BACKGROUND

1. Tidewater Utilities, Inc. ("Applicant"), is a water utility providing water services for public use that are subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On February 10, 2004, the Applicant filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to a single property ("Proposed Service Area") located in Kent County, Delaware, as specifically described by the tax parcel number identification in paragraph 6 of the Application.

2. The Application includes a petition signed by the parcel owners within the Proposed Service Area, and evidence that the required Commission notice of the Application was sent via certified

mail to the owners. The notice explained the owners' opportunity to object, request a hearing, and "opt-out," that is, to exclude the owners' property from the Applicant's Proposed Service Area. The Commission has not received any objection, request for a hearing, or "opt-out" election in response to this notice.¹

3. The Applicant, on March 17 and March 18, published notices of the Application in The News Journal and the Delaware State News newspapers, respectively, which stated that any meritorious request for a hearing or an objection to the Application must be filed with the Commission no later than thirty days from the date of publication. No person filed any objection or request for a hearing in response to the public notice.

II. SUMMARY OF THE EVIDENCE

4. The record consists of the Application, which Applicant requested be reviewed under the informal fact-finding procedures set forth in 29 Del. C. § 10123 (¶ 3). In addition, the Application includes:

- (i) a petition signed by the majority of landowners within the Proposed Service Area (¶ 1(d));
- (ii) copies of the United States Postal Service's forms verifying that the Applicant sent, via certified mail, a Commission approved notice to all landowners of the affected parcel of the Applicant's filing for a CPCN, as prescribed by Water Utility CPCN Reg. 10.109 (¶ 5);

¹The Commission received "opt-out" letters from the owners, but they later rescinded this election explaining that they thought the notice they received was for their own land and not the Estate's.

- (iii) the County tax parcel identification number of the property in the Proposed Service Area (§ 6);
- (iv) a listing of the landowners of record of the parcel included in the Proposed Service Area and tax map locating the property (§ 7);
- (v) the Applicant's statement that its expansion of service to the parcel in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a) & (b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (§ 8 (a)-(c));

5. The record also contains:

- (i) affidavits of publication of the public notice of the application in the The News Journal and Delaware State News newspapers on March 17 and 18, 2004, respectively;
- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested any written comments on the Application should be submitted to the Commission by March 30, 2004;
- (iii) Letters from the Office of Drinking Water of the Division of Public Health and the Office of the State Fire Marshall dated March 23, 2004 and March 16, 2004, respectively, reporting that their offices have no outstanding issues with the Applicant that might preclude granting the requested CPCN; and
- (iv) Staff's May 10, 2004 memorandum of its investigation, which sets forth a recommendation that the Commission approve the application and grant the requested CPCN. Staff's memorandum

also indicates that the Department of Natural Resources and Environmental Control ("DNREC") previously informed Staff that it would provide written comments on any proposed CPCN applications only if it has an objection to an application. Staff notes that the Commission did not receive from DNREC any written comments on this application. Staff further reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

6. The Commission has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities, and Applicant is a water utility as defined by the law authorizing issuances of CPCNs.

7. The Application indicates that: (a) Applicant obtained the consent of the owners of the property within the Proposed Service Area, and, accordingly, complies with 26 Del. C. § 203C(e)(1)(b); (b) Applicant sent by certified mail an approved notice of its Application to the owners of the parcel within the Proposed Service Area; (c) the Applicant's statement that it will continue to meet the water pressure requirements for its existing customers; and (d) the Applicant's statement that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

8. In addition, the record reflects that notice of the Application occurred by certified mail to the owners in the Proposed Service Area and to the public by publishing notice in two newspapers

of general circulation. The Commission did not receive any objection or request for a hearing on this Application.

9. Finally, Staff investigated the Application and the Applicant and recommended approval of the Application.

10. In sum, the Applicant submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1), 203C(e)(1) b., & 203C(e)(3) (2002 Supp.), which the Commission's Staff reviewed and found to be accurate. The Commission finds no reason for further investigation, or barrier to the issuance of a CPCN under 26 Del. C. §§ 203C(f) or 203C(i) (2002 Supp.). Accordingly, the Commission shall hereby issue a CPCN permitting the Applicant to expand its operations to provide water utility services to the parcel identified in Exhibit "A" hereto.

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

1. That, pursuant to 26 Del. C. § 203C(e) (2002 Supp.), the application for a Certificate of Public Convenience and Necessity, as filed in Docket Number 04-CPCN-02, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Tidewater Utilities, Inc., to serve the area identified by the tax parcel number set forth in Exhibit "A" to this Order.

2. That Tidewater Utilities, 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 water 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/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

PARCEL WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

DUCK CREEK HUNDRED
KENT COUNTY, DELAWARE

Tax Parcel

1-00-028.00-01-28.00