

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN WATER COMPANY, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES TO)
TWO PARCELS OF LAND LOCATED NORTHWEST)
OF THE TOWN OF MAGNOLIA, THE PORTION)
OF ONE PARCEL OF LAND THAT LIES ON THE)
EAST SIDE OF LOCUST GROVE ROAD NEAR)
THE TOWN OF MAGNOLIA, THIRTY PARCELS)
OF LAND LOCATED ON THE WEST SIDE OF)
BAY ROAD SURROUNDING THE TOWN OF)
FREDERICA, AND TWO PARCELS OF LAND)
LOCATED ON THE EAST SIDE OF BAY ROAD)
NEAR THE TOWN OF FREDERICA, KENT)
COUNTY, DELAWARE (FILED AUGUST 6,)
2004))

PSC DOCKET NO. 04-CPCN-17
(CENTRAL KENT GROWTH AREA)

ORDER NO. 6491

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

This 19th day of October, 2004, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Artesian Water Company, 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 August 6, 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 two parcels of land located northwest of the Town of Magnolia, the portion of one parcel of land that lies on the east side of Locust Grove Road near

the Town of Magnolia, thirty parcels of land located on the west side of Bay Road surrounding the Town of Frederica, and two parcels of land located on the east side of Bay Road near the Town of Frederica, Kent County, Delaware ("Proposed Service Area"), as specifically described by the tax parcel number identifications in paragraph 6 of the Application.

2. The Application includes petitions signed by a majority of the parcel owners within the Proposed Service Area, and evidence that the required Commission notice of the Application was sent via certified mail to each owner within the Proposed Service Area. The notice explained each owner's opportunity to object, request a hearing, and "opt-out," that is, to exclude the owner's property from Applicant's Proposed Service Area.

3. Staff directed the Applicant to publish notice of the Application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the publication. The notice was published on September 2, 2004, in the Delaware State News and The News Journal newspapers.

4. The Commission received three "opt-out" notices from property owners that were forwarded to the Applicant. Based upon the "opt-out" requests, on September 22, 2004, the Applicant elected to revise the Proposed Service Area by removing these properties from the listing of tax parcel identification numbers included in paragraphs 6 and 7 of the Application.

5. There were no requests for a hearing on the Application, nor did the Commission receive any objection to the Application.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, including Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in *29 Del. C. § 10123 (¶ 3)*. In addition, the Application includes:

- (i) petitions signed by a 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 parcels of the Applicant's filing for a CPCN as prescribed by Water Utility CPCN Reg. 10.109 (¶ 5);
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area, as revised on September 22, 2004 (¶ 6);
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area and the tax maps locating the parcels, as revised on September 22, 2004 (¶ 7);
- (v) the Applicant's statement that its expansion of service in the parcels 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)-(d))*;

6. The record also contains:

- (i) affidavits of publication of the public notice of the Application on September 2, 2004, in the Delaware

State News and The News Journal
newspapers;

- (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 that any written comments on the application be submitted to the Commission by September 13, 2004;
- (iii) Correspondence from the Office of Drinking Water of the Division of Public Health (dated September 3, 2004), from the Office of the State Fire Marshal (dated September 21, 2004), and from the Department of Natural Resources and Environmental Control (a printed e-mail dated September 7, 2004) reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (v) Staff's October 12, 2004 memorandum of its investigation and its recommendation that the Commission approve the Application and grant the requested CPCN. Staff reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

7. Finally, the record does not contain any evidence that any person objects to the Application or requests a hearing.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

8. The Commission concludes it has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities if the water utility satisfies the legal and factual requirements. The Commission finds that Applicant operates a water system for public use and, consequently, is a water utility.

9. First, the Applicant obtained the consent of the majority of owners of the property within the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(b). Second, the Applicant sent by certified mail an approved notice of its Application to all owners of parcels within the Proposed Service Area. Third, the record reflects: (a) no objection to this Application; (b) no request for a hearing on this Application; (c) the Applicant's statement that the Applicant 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.

10. Finally, the Commission's Staff has investigated the Applicant and has not discovered that the Applicant is currently subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water services to its existing customers. The present record does not provide any basis for the Commission to believe that any further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding.

11. In summary, the Applicant has 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 has reviewed and found to be accurate. The Commission also finds no reason that the Applicant is not entitled to a CPCN under the provisions of either 26 Del. C. §§ 203C(f) or 203C(i) (2001 Supp.). Since the Applicant

has satisfied the statute's requirements, the Commission shall issue a CPCN permitting the Applicant to expand its operations to provide water utility services to the parcels 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 PSC Docket No. 04-CPCN-17, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Artesian Water Company, Inc., to serve the area identified by the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That Artesian Water Company, 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 service 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

PSC Docket No. 04-CPCN-17, Order No. 6491 Cont'd.

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
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

ARTESIAN WATER COMPANY, INC.
(CENTRAL KENT GROWTH AREA)

KENT COUNTY TAX MAP PARCELS NOS.

MD 00-141.00-01-24.00	SM 00-132.00-01-01.00
MD 00-150.00-01-08.00	SM 00-140.00-01-29.00
MD 00-150.00-01-15.00	SM 00-140.00-01-34.00
MD-00-151.00-01-08.00	SM 00-140.00-01-37.00
MD 00-151.00-01-07.00	SM 00-140.00-01-44.00
MD 00-153.00-01-55.00	SM 00-140.00-01-46.00
MD 00-161.00-01-37.00	SM 00-140.00-01-75.00
MD 00-161.00-01-42.00	SM 00-141.00-01-24.00
MD 00-162.00-01-31.00	The portion of parcel NM 00-095.00-01-27.00 that lies on the east side of Locust Grove Road near the Town of Magnolia
MD 00-162.00-01-31.01	
MD 00-163.00-01-01.00	
NM 00-104.00-01-69.00	
NM 00-112.01-01-52.00	
SM 00-122.00-02-25.00	
SM 00-130.00-02-04.00	
SM 00-130.00-02-05.00	
SM 00-130.00-02-06.00	
SM 00-130.00-02-16.00	
SM 00-130.00-02-35.00	
SM 00-130.00-02-36.00	
SM 00-131.00-01-02.00	
SM 00-131.00-01-13.00	
SM 00-131.00-01-14.00	