

**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)
228 PARCELS OF LAND LOCATED BETWEEN) PSC DOCKET NO. 04-CPCN-23
THE TOWNS OF ROXANNA AND FENWICK) (ROUTE 54, PHASE 5)
ISLAND, SUSSEX COUNTY, DELAWARE (FILED)
SEPTEMBER 17, 2004 AND AMENDED)
OCTOBER 27 AND DECEMBER 27, 2004))

ORDER NO. 6565

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

This 25th day of January, 2005, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Artesian Water Company, Inc. ("Artesian" or "Applicant"), is a water utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On September 17, 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 252 parcels of land located between the towns of Roxanna and Fenwick Island, Sussex County, Delaware ("Proposed Service Area"), as specifically described by the tax parcel number identifications in paragraph 6 of the Application.

2. During initial review of the Application, Staff became aware of a potential dispute between Artesian and the Town of Selbyville regarding water service territories in the vicinity of the Town of Selbyville. On September 28, 2004, Staff met with the parties to gain an understanding of the issues involved and to assist in a resolution if possible. After that meeting, Artesian agreed to remove specific parcels from this Application (as well as another pending application) as requested by the Town of Selbyville. Revised Exhibits "A" and "C" of the Application, now consisting of 239 parcels of land and dated October 27, 2004, were submitted to the Commission for consideration.

3. Staff's review of the October 27, 2004 Exhibits found that the Company had obtained signatures of the majority of landowners in this revised service territory, and Staff, therefore, directed Artesian to publish a notice in the Delaware State News and The News Journal newspapers. Affidavits of publication show that notice appeared in the November 6, 2004 editions of each newspaper. The notice advised residents of the Company's application, that the application may be reviewed at the Commission's office during normal business hours, that a hearing in this matter would not be held unless a meritorious request for a hearing was received, and that property owners may object to, or "opt-out," of the proposed CPCN. Staff did receive two inquires on the Application from property owners, but neither owner objected to the application or requested to "opt-out" of the proposed service territory. No other comments, nor requests for hearing, nor objections were received.

4. Because of the removal of properties from the Application, Staff asked that Artesian inform those landowners that their properties had been removed from the Application. Staff believed that this additional notice would alleviate any confusion on the part of a landowner regarding whether or not their property was included in the certificated area. On December 27, 2004, Artesian submitted copies of the letters sent to the affected property owners, and evidence that the letters had been sent via certified mail.

5. During further review of the October 27, 2004 revision to Exhibits "A" and "C", Staff found that several parcels included in this Application were already in certificated service territories granted to the Applicant. Revised Exhibits "A" and "C" were submitted on December 27, 2004, now containing a listing of 228 parcels of land. Even with the removal of the additional parcels of land, the Applicant was able to demonstrate that it had obtained the consent of a majority of property owners in the Proposed Service Area.

II. SUMMARY OF THE EVIDENCE

6. 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, as revised on December 27, 2004 (¶ 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 December 27, 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 amended on December 27, 2004 (¶ 7); and
- (v) the Applicant's statement that its expansion of service to 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)).

7. The record also contains:

- (i) affidavits of publication of the public notice of the Application on November 6, 2004 in the Delaware State News and The News Journal newspapers;
- (ii) Correspondence from the Office of Drinking Water of the Division of Public Health (dated October 25, 2004), from the Office of the State Fire Marshal (dated October 22, 2004), and from the Department of Natural Resources and Environmental Control (a printed e-mail dated October 22, 2004) reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) Staff's January 19, 2005 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;

- (iv) copies of the letters informing specific landowners that their properties had been removed from the Application; and
- (v) copies of the United States Postal Service's forms verifying that the letters described in item (iv) had been sent via certified mail.

8. 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

9. 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 the Applicant operates a water system for public use and, consequently, is a water utility.

10. First, the Applicant obtained the consent of the majority of owners of the property within the Proposed Service Area, as amended on December 27, 2004, 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.

11. 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.

12. 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 filed on September 17, 2004 and amended on October 27 and December 27, 2004, and designated PSC Docket No. 04-CPCN-23, 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

/s/ Joann T. Conaway
Commissioner

Commissioner

Commissioner

ATTEST:

/s/ Norma J. Sherwood
Acting Secretary

E X H I B I T "A"

APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

ARTESIAN WATER COMPANY, INC.
(ROUTE 54, PHASE 5)

SUSSEX COUNTY TAX MAP PARCELS NOS.

1-34-18.00-25.00	1-34-21.00-8.00	5-33-11.00-56.01
1-34-18.00-46.00	1-34-21.00-9.00	5-33-11.00-61.01
1-34-18.00-46.03	1-34-21.00-21.00	5-33-11.00-62.02
1-34-18.00-47.00	5-33-6.00-52.00	5-33-11.00-73.01
1-34-18.00-50.00	5-33-6.00-62.00	5-33-11.00-75.00
1-34-18.00-51.00	5-33-6.00-128.00	5-33-11.00-76.01
1-34-19.00-2.00	5-33-6.00-129.00	5-33-11.00-76.02
1-34-19.00-106.00	5-33-10.00-78.00	5-33-11.00-76.05
1-34-19.00-107.00	5-33-10.00-79.00	5-33-11.00-86.01
1-34-19.00-108.00	5-33-11.00-3.01	5-33-11.00-88.03
1-34-19.00-109.00	5-33-11.00-13.00	5-33-11.00-89.01
1-34-19.00-112.00	5-33-11.00-31.00	5-33-11.00-93.01
1-34-19.00-362.00	5-33-11.00-38.02	5-33-11.00-103.00
1-34-21.00-1.00	5-33-11.00-38.03	5-33-11.00-104.00
1-34-21.00-1.01	5-33-11.00-39.00	5-33-11.00-105.00
1-34-21.00-1.02	5-33-11.00-40.02	5-33-11.00-141.00
1-34-21.00-1.03	5-33-11.00-40.04	5-33-11.00-148.00
1-34-21.00-2.00	5-33-11.00-40.03	5-33-11.00-149.00
1-34-21.00-3.00	5-33-11.00-41.00	5-33-11.00-152.00
1-34-21.00-4.00	5-33-11.00-42.02	5-33-11.00-154.00
1-34-21.00-4.01	5-33-11.00-45.02	5-33-11.00-155.00
1-34-21.00-4.02	5-33-11.00-46.02	5-33-11.00-156.00
1-34-21.00-5.00	5-33-11.00-54.00	5-33-11.00-157.00

5-33-11.00-158.00	5-33-11.00-187.00	5-33-11.00-216.00
5-33-11.00-159.00	5-33-11.00-188.00	5-33-11.00-217.00
5-33-11.00-160.00	5-33-11.00-189.00	5-33-11.00-218.00
5-33-11.00-161.00	5-33-11.00-190.00	5-33-11.00-219.00
5-33-11.00-162.00	5-33-11.00-191.00	5-33-11.00-220.00
5-33-11.00-163.00	5-33-11.00-192.00	5-33-11.00-221.00
5-33-11.00-164.00	5-33-11.00-193.00	5-33-11.00-222.00
5-33-11.00-165.00	5-33-11.00-194.00	5-33-11.00-223.00
5-33-11.00-166.00	5-33-11.00-195.00	5-33-11.00-224.00
5-33-11.00-167.00	5-33-11.00-196.00	5-33-11.00-225.00
5-33-11.00-168.00	5-33-11.00-197.00	5-33-11.00-226.00
5-33-11.00-169.00	5-33-11.00-198.00	5-33-11.00-227.00
5-33-11.00-170.00	5-33-11.00-199.00	5-33-11.00-228.00
5-33-11.00-171.00	5-33-11.00-200.00	5-33-11.00-229.00
5-33-11.00-172.00	5-33-11.00-201.00	5-33-11.00-230.00
5-33-11.00-173.00	5-33-11.00-202.00	5-33-11.00-231.00
5-33-11.00-174.00	5-33-11.00-203.00	5-33-11.00-232.00
5-33-11.00-175.00	5-33-11.00-204.00	5-33-11.00-233.00
5-33-11.00-176.00	5-33-11.00-205.00	5-33-11.00-234.00
5-33-11.00-177.00	5-33-11.00-206.00	5-33-11.00-235.00
5-33-11.00-178.00	5-33-11.00-207.00	5-33-11.00-236.00
5-33-11.00-179.00	5-33-11.00-208.00	5-33-11.00-237.00
5-33-11.00-180.00	5-33-11.00-209.00	5-33-11.00-238.00
5-33-11.00-181.00	5-33-11.00-210.00	5-33-11.00-239.00
5-33-11.00-182.00	5-33-11.00-211.00	5-33-11.00-240.00
5-33-11.00-183.00	5-33-11.00-212.00	5-33-11.00-241.00
5-33-11.00-184.00	5-33-11.00-213.00	5-33-11.00-242.00
5-33-11.00-185.00	5-33-11.00-214.00	5-33-11.00-243.00
5-33-11.00-186.00	5-33-11.00-215.00	5-33-11.00-244.00

5-33-11.00-245.00	5-33-11.00-318.00	5-33-18.00-21.05
5-33-11.00-246.00	5-33-11.00-329.00	5-33-18.00-23.00
5-33-11.00-247.00	5-33-11.00-332.00	5-33-18.00-32.00
5-33-11.00-248.00	5-33-11.00-334.00	5-33-18.00-51.02
5-33-11.00-249.00	5-33-11.00-335.00	5-33-18.00-60.00
5-33-11.00-250.00	5-33-11.00-337.00	5-33-18.00-66.00
5-33-11.00-251.00	5-33-12.00-1.00	5-33-18.00-67.00
5-33-11.00-252.00	5-33-12.00-12.00	5-33-18.00-69.01
5-33-11.00-268.00	5-33-12.00-12.02	5-33-18.00-80.00
5-33-11.00-269.00	5-33-12.00-12.03	5-33-18.00-82.00
5-33-11.00-274.00	5-33-12.00-12.05	5-33-18.00-94.00
5-33-11.00-275.00	5-33-12.00-12.06	5-33-19.00-15.00
5-33-11.00-278.00	5-33-12.00-12.07	5-33-19.00-17.03
5-33-11.00-286.00	5-33-12.00-12.08	5-33-19.00-45.00
5-33-11.00-287.00	5-33-12.00-12.09	
5-33-11.00-289.00	5-33-12.00-12.11	
5-33-11.00-293.00	5-33-12.00-12.12	
5-33-11.00-295.00	5-33-12.00-16.00	
5-33-11.00-296.00	5-33-12.00-21.03	
5-33-11.00-299.00	5-33-12.00-22.00	
5-33-11.00-300.00	5-33-12.00-76.01	
5-33-11.00-301.00	5-33-12.00-101.00	
5-33-11.00-302.00	5-33-12.00-278.00	
5-33-11.00-303.00	5-33-17.00-183.01	
5-33-11.00-307.00	5-33-17.00-187.00	
5-33-11.00-310.00	5-33-18.00-9.00	
5-33-11.00-312.00	5-33-18.00-13.00	
5-33-11.00-315.00	5-33-18.00-13.01	
5-33-11.00-317.00	5-33-18.00-21.02	