

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

IN THE MATTER OF THE APPLICATION OF )  
THE TOWN OF MILTON FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY TO )  
PROVIDE WATER SERVICES TO SIXTEEN )  
PARCELS OF LAND LOCATED WITHIN THE ) PSC DOCKET NO. 05-CPCN-13  
CORPORATE BOUNDARIES OF MILTON, AND TO ) (TOWN OF MILTON)  
THIRTEEN PARCELS OF LAND LOCATED )  
OUTSIDE OF MILTON'S CORPORATE )  
BOUNDARIES, SUSSEX COUNTY, DELAWARE )  
(FILED APRIL 25, 2005) )

**ORDER NO. 6772**

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

This 22<sup>nd</sup> day of November, 2005, the Commission finds, determines,  
and Orders the following:

**I. BACKGROUND**

1. The Town of Milton ("the Town" or "Milton") operates its own public water system<sup>1</sup> and, as such, the Town's water utility operations generally fall outside the regulatory jurisdiction of this Commission.<sup>2</sup> However, in some instances, a municipal utility must seek from this Commission a Certificate of Public Convenience and Necessity ("CPCN") as a condition of expanding or extending its operations or facilities.<sup>3</sup> Since June 2003, the obligation to obtain a CPCN before expanding operations (as imposed by § 203C(a)) has been lifted in the situation where a municipality annexes property under the provisions

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<sup>1</sup>See Chapter 326, Volume 71, Laws of Delaware §§ 12, 36.

<sup>2</sup>See 26 Del. C. § 202(a).

<sup>3</sup>See 26 Del. C. § 203C(a).

of chapter 1 of Title 22 and the municipal water utility will expand or extend its operations into such annexed territory. In such case, the municipality need only notify the Commission of the completion of such annexation.

2. On April 25, 2005, the Town of Milton filed an Application seeking to amend its existing CPCN area to include sixteen properties within the Town's corporate boundaries but not part of the current CPCN area, and to include an additional thirteen properties presently furnished with public water service by the Town of Milton, and located adjacent to, in close proximity of, the Town's corporate boundaries but not part of the Town's current CPCN boundaries ("Expanded Service Area").

3. As the basis for its application, the Town submitted a copy of a Resolution adopted by the Mayor and Council on March 7, 2005, authorizing the preparation of a CPCN application to expand the existing CPCN territory to include the twenty-nine parcels in the Expanded Service Area. In addition, the Town submitted documents reflecting that, in March 2005, it had sent, by certified mail, notices to the landowners of record of the parcels within the proposed Expanded Service Area explaining the landowners' opportunities to object, request a hearing, or "opt-out" and have their parcel excluded from the Expanded Service Area. No petitions to "opt-out,"<sup>4</sup> objections, nor requests for a hearing on the matter were received.

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<sup>4</sup>The owners of a property located within the Town sent a letter requesting to "'opt-out' of receiving water service from the Town of Milton at this time." The letter goes on to state that when their present well ceases to function they will then connect to the Town's water system. It would appear that this letter was sent based on a misunderstanding of the

4. At Staff's direction, the Town also published notices of its CPCN application in The News Journal newspaper on June 16, 2005. The published notice announced the filing of the Town's CPCN application and reiterated the opportunities to object, to request a hearing, or to "opt-out." The published notice did not generate any additional responses.

## II. SUMMARY OF THE EVIDENCE

6. The record in this matter consists of the Town's application, additional documentation requested by Staff, correspondence from several State agencies, and Staff's memorandum. The record thus includes:

- (i) a copy of a Resolution of the Town (entered March 7, 2005) directing the Town Manager to file an application for the Town to expand its existing CPCN area to include twenty-nine properties, both inside and outside of the Town's corporate boundaries (Appl., Exh. 6);
- (ii) a copy of a United States Postal Service form verifying that the Town sent, by certified mail, notices to all landowners of the proposed Expanded Service Area, and a copy of such notice which provided the information required by Water Utility CPCN Reg. § 10.109 (Appl., Exhs. 1, 3 and 4);
- (iii) a listing of the parcels (identified by Sussex County Tax Map parcel numbers) to be included in the service territory under this CPCN Appl. (Appl., Exh. 7);
- (iv) a certification by the Town Manager that the Town's expansion of service to the parcels in the Expanded Service Area will

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certified landowner notification letter, where the owners believed they would have to connect to the Town's system when the CPCN application is approved. Staff contacted the Town's consultant who offered clarification to the landowner. A second letter was then received from the landowner requesting "our property be included in the proposed service area."

be in accord 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) (Appl. at ¶ 8 (a)-(d));

- (v) correspondence from the Office of Drinking Water of the Division of Public Health (dated May 11, 2005), the Office of the State Fire Marshal (May 16, 2005), and the Department of Natural Resources and Environmental Control (printed e-mail dated May 11, 2005) reporting that there are no outstanding issues with any of the three agencies regarding the ability of the Town to provide safe, adequate, and reliable water service to its existing customers;
- (vi) copies of utility billings for those parcels of land located outside of Milton's corporate boundaries presently receiving water services from the Town (Trans. of CABE Associates, Inc. to A. Maucher, PSC Staff, received September 27, 2005); and
- (vii) Staff's memorandum, dated November 14, 2005, with its findings and recommendation that the Commission approve the application and grant the requested CPCN.

7. Finally, as recited earlier, the record does not contain any evidence that any person has requested to "opt-out" of the Expanded Service Area (see footnote 4), objected to the application, or requested a hearing.

### **III. OPINION AND DETERMINATION**

8. As noted in paragraph 1 of this Order, in this context, the Commission has jurisdiction to consider the Town's application for a CPCN to expand its municipal water system to serve the listed parcels.

9. Again, as noted earlier, the Town - as support for its CPCN request - has submitted a copy of a Resolution, adopted by the Town in March 2005, authorizing the preparation of a CPCN Application to

expand the existing CPCN territory of Milton, incorporating twenty-nine parcels of land located both inside and outside of the corporate boundaries of the Town. For purposes of those parcels which lie within the Town's municipal boundaries, such Resolution satisfies the requirements of 26 Del. C. § 203(C)(e)(1)c, which allows a CPCN to be premised on "a resolution from the governing body of a county or municipality requesting the applicant to provide service to the proposed territory to be served."<sup>5</sup>

10. However, for the parcels sought to be included in the Expanded Service Area that are located outside of the Town's corporate boundaries, it is unclear whether the Town's Resolution is sufficient to meet the criteria under § 203C(e)(1)c. Under the Town's charter, the Town has the authority to provide water services via the Town's system to places and properties outside the Town's corporate limits, as the Town may determine. On the one hand, given the existence of such authority, it would seem reasonable to say that the Resolution authorizing water services to out-of-Town parcels should also support the grant of a CPCN to encompass such out-of-Town parcels. At the same time, this Commission has not had to determine whether the provisions of § 203(C)(e)(1)c were intended to apply to an extra-

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<sup>5</sup>If read strictly, the language of this provision seems to speak to a situation where the county or municipal governing body has made a request to a third-party water provider to provide water services and the third-party provider has then filed a CPCN application. The Commission believes that if such a resolution provides sufficient ground for the issuance of a CPCN to a private utility or a third-party water authority, such form of resolution by a Town would also support the grant of a CPCN to a municipality to provide its water services to, at least, its own residents.

territorial expansion of utility services by municipal water utilities.

11. The Commission need not resolve the issue of whether the Resolution, standing alone, would support the grant of a CPCN to properties outside the municipal boundaries. Here, as Staff reports, the Town is providing water services to all of the listed out-of-Town parcels. The landowners of such parcels have been billed for, and apparently paying for, such water utility services by the Town. In such context, the Commission will deem such continued use of the Town's water service as, in effect, petitions by the landowners of such out-of-Town parcels to be included within the Town's water service territory. Moreover, as set forth below, the Town did send individual notices of its formal application to all these landowners. Those notices provided an "opt-out" opportunity. No landowner - including no landowner of the out-of-Town parcels - sought to withdraw from the Town's proposed service territory (see footnote 4). These facts give comfort to the Commission that the landowners desire to be served by the Town's water system. In conjunction with the Town's Resolution, this continued service, without objection or the exercise of the "opt-out" option, will be deemed to satisfy the requirements of 26 Del. C. § 203C(e)(1).

12. As to the notice requirements imposed by 26 Del. C. § 203C(e)(1) and the Commission Water Utility CPCN Regulations, the record reflects that the Town sent, by certified mail, notices of its application to all the landowners of the parcels within its proposed service territory. These notices, consistent with the Commission's

rules, notified the landowners of their opportunities to object, to request a hearing, or to petition to "opt-out." The record is devoid of any landowner filing an objection or request for a hearing. Similarly, the record is devoid of any petition by a landowner to remove the owner's parcel from the service territory (see footnote 4).

13. The Town has also submitted a certification that, in "expanding" its operations to this service territory, it will continue to meet statutory water pressure requirements for both these "new" as well as its existing customers, and that no regulatory finding or Order bars the Town from expanding its water utility services.

14. Finally, the present record does not provide any basis for the Commission to consider undertaking any investigation into the quality of service that the Town is providing to its existing water service customers. See 26 Del. C. § 203C(f).

15. In summary, the Town has submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1) & 203C(e)(3)). The Commission's Staff has reviewed such documents and found them to be accurate. The Commission also finds no reason to disqualify the Town's application under the provisions of either 26 Del. C. §§ 203C(f) or 203C(i). Because the Town has satisfied the statutory requirements, the Commission shall issue a CPCN permitting the Town to expand its operations to provide water utility services to the parcels identified in Exhibit "A".

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

1. That, pursuant to 26 Del. C. § 203C(e), the application for a Certificate of Public Convenience and Necessity filed by the Town of

Milton in PSC Docket No. 05-CPCN-13, is hereby approved. A Certificate of Public Convenience and Necessity is hereby granted to the Town of Milton to serve the area encompassing the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That the Town of Milton 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/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
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

TOWN OF MILTON

SUSSEX COUNTY TAX MAP PARCELS NUMBERS

Parcels of land located within the Town of Milton's corporate boundaries:

235-14.00-114.04	235-20.00-53.00
235-14.00-127.00	235-20.00-56.00
235-14.00-132.05	235-20.00-56.01
235-14.11-59.00	235-20.00-57.01
235-20.00-3.00	235-20.11-10.00
235-20.00-42.00	235-20.11-55.00
235-20.00-43.00	235-21.00-1.00
235-*20.00-48.00	235-21.00-25.00

Parcels of land located outside the Town of Milton's corporate boundaries:

235-14.00-128.00	235-20.00-50.00
235-14.00-132.04	235-20.00-51.00
235-20.00-44.00	235-20.11-56.00
235-20.00-45.00	235-20.11-57.00
235-20.00-46.01	235-20.11-59.00
235-20.00-47.00	235-20.11-60.00
235-20.00-49.00	