

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

IN THE MATTER OF THE APPLICATION OF)
THE HAMLET AT DIRICKSON POND, LLC,)
FOR A CERTIFICATE OF PUBLIC CONVEN-)
IENCE AND NECESSITY TO PROVIDE WASTE-) PSC DOCKET NO. 05-WW-032
WATER SERVICES TO THE HAMLET AT) ("DIRICKSON POND")
DIRICKSON POND SUBDIVISION, LOCATED)
IN SUSSEX COUNTY, DELAWARE)
(FILED SEPTEMBER 22, 2005))

ORDER NO. 6782

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO BEGIN OPERATIONS AS A WASTEWATER PUBLIC UTILITY**

This 22nd day of November, 2005, the Commission determines and Orders the following:

1. By the provisions of 74 Del. Laws ch. 317 (July 6, 2004), the General Assembly and Governor included wastewater systems within the public utilities subject to the regulatory oversight of this Commission. 74 Del. Laws ch. 317 (2004) (amending "public utility" definition in 26 Del. C. § 102(2)).

2. The law includes a specific regime for the granting of Certificates of Public Convenience and Necessity ("CPCN") to begin the business of a wastewater public utility or to extend the system and operations of an existing wastewater public utility. 74 Del. Laws ch. 317 § 6, adding 26 Del. C. § 203D. Under the statute, specifically 26 Del. C. § 203D(d)(1), the Commission shall grant a CPCN to an applicant if it has submitted "a signed service agreement with the developer of a proposed subdivision or development, which subdivision or development has been duly approved by the respective county

government." In the case of a new wastewater utility, 26 Del. C. § 203D(d)(4) requires the utility to also file with the Commission evidence that it possesses the financial, operational, and managerial capacity to serve the public convenience and necessity and to comply with all state and federal regulations.

3. On February 22, 2005, by PSC Order No. 6573, the Commission adopted final *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services* ("Regulations") which govern the process that non-governmental wastewater utilities serving, or planning to serve, fifty or more customers (in the aggregate) apply for and are granted a CPCN.

4. On September 22, 2005, The Hamlet at Dirickson Pond, LLC ("The Hamlet" or "Applicant"), filed an Application for a CPCN to provide wastewater services to the subdivision of The Hamlet at Dirickson Pond, located on County Road 384, Sussex County, Delaware, and more specifically described by the Sussex County tax parcel number 533-11.00-88.00. The Hamlet is a Limited Liability Company ("LLC"), formed December 9, 2003, and has not previously been granted a CPCN to operate as a wastewater public utility.

5. In its Application, The Hamlet included the following documentation:

- a) Certificate of Formation, dated December 9, 2003;
- b) A State of Delaware Business License, dated November 30, 2004, issued to The Hamlet at Dirickson Pond LLC as a Non-Resident Contractor/Developer;

- c) A copy of the property deed dated January 28, 2004 showing the Hamlet at Dirickson Pond LLC as owner of tax parcel no. 533-11.00-88.00;
- d) A copy of DNREC Permit No. 198270, dated December 16, 2003, to construct an on-site wastewater disposal system issued to Michael & Debra Jahnigen, and the copy of a request to transfer this permit to The Hamlet at Dirickson Pond LLC;
- e) A copy of the service agreement between The Hamlet at Dirickson Pond LLC and White Marsh Environmental Services, Inc. ("White Marsh"), for White Marsh to operate and maintain the wastewater facility at the Hamlet at Dirickson Pond subdivision in accordance with all applicable laws and regulations;
- f) Notice of Beneficial Acceptance from Sussex County, effective August 30, 2005; and,
- g) A map of the proposed area to be served;

6. The Commission's Staff has reviewed The Hamlet's Application, and other documents requested by Staff, first to determine whether the Applicant possesses the financial, operational, and managerial capabilities to serve the public convenience and necessity and to comply with all State and federal regulations, and then to confirm that it has complied with all the statutory requirements under 26 Del. C. § 203D. In a memo dated October 5, 2005, Commission Staff¹ concludes "the financial resources available to the utility are adequate to provide safe reliable service." The memo also noted that the wastewater system will be operated and maintained by White Marsh Environmental Services, Inc., thus allowing The Hamlet

¹See Staff Memorandum dated October 5, 2005 by Regulatory Policy Administrator Robert Ambrose.

to meet the operational and managerial criteria for a new wastewater system operator.

7. In a second memo dated November 14, 2005, Staff notes the Applicant is also the owner and developer of the property, and that the subdivision was approved by Sussex County in January 2004. The memo further indicates that Staff notified the Division of Water Resources of the Delaware Department of Natural Resources and Environmental Control ("DNREC"), the Delaware Office of State Planning ("OSP"), as well as the Sussex County Engineering Department ("the County") of the Application. DNREC stated it had no objection to the Commission granting the requested CPCN, and the County stipulated that the development is located in an area the County is planning to serve, and that the development is subject to an executed agreement whereby the on-site wastewater system will be abandoned within five years. No comments on the Application or Applicant were offered by the OSP.

8. Because of the need to begin offering wastewater services upon approval of the CPCN application,² and in compliance with 26 Del. C. § 301, The Hamlet filed a proposed tariff with proposed rates on November 17, 2005.

9. Based upon documentation included in the CPCN application, information solicited by Staff, and Staff's analysis, the Commission concludes that The Hamlet has the financial capacity to begin and operate a wastewater system to serve The Hamlet at Dirickson Pond

²When the Hamlet at Dirickson Pond subdivision received Sussex County approval in January 2004, the Commission had no jurisdiction over the provision of wastewater services, and the Applicant was unaware of the legislative changes until shortly before it was to begin offering wastewater services to constructed homes in the subdivision. Once the Applicant became aware of the Commission's role, this CPCN Application was filed.

subdivision, and that The Hamlet's service in the subdivision will serve the public convenience and necessity. In addition, The Hamlet, through its contract with White Marsh, has the ability to comply with all federal and state laws and regulations related to the management and operation of a wastewater system as a public utility. See 26 Del. C. § 203D(d)(4).

10. Consequently, consistent with the statutory requirements, the Commission now grants a CPCN to The Hamlet to begin operations as a wastewater public utility. As a public utility, The Hamlet shall be subject to all the relevant provisions of 26 Del. C. ch. 1, as well as the original supervision and regulations of this Commission. This Certificate shall authorize The Hamlet to provide wastewater public utility services to The Hamlet on Dirickson Pond subdivision.

11. In addition, the Commission finds that The Hamlet has provided sufficient documentation for the Commission to award it a CPCN. The Hamlet is the owner and developer of the subdivision, and the subdivision was approved by Sussex County in January 2004. Moreover, as noted above, the public convenience and necessity will be served by The Hamlet providing wastewater services to The Hamlet at Dirickson Pond subdivision.

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

1. That, pursuant to the provisions of 26 Del. C. § 203D, a Certificate of Public Convenience and Necessity is granted to The Hamlet at Dirickson Pond, LLC, to begin operations as a wastewater public utility subject to the provisions of 26 Del. C. ch. 1 and the original supervision and regulation of this Commission. This

Certificate authorizes The Hamlet at Dirickson Pond, LLC, to provide wastewater public utility services and to operate the wastewater public utility facilities as described in its request filed September 22, 2005. This Certificate shall encompass a service territory encompassing the parcel identified by Sussex County Tax Map Parcel No. 533-11.00-88.00.

2. Given the unique circumstances of the Applicant (see footnote 2 of this Order), the Commission hereby approves, on a temporary basis, The Hamlet at Dirickson Pond, LLC's proposed tariff filed on November 17, 2005, with the exception of the proposed rates. Therefore, the terms and conditions as set forth in that proposed tariff are hereby approved for use until further Order of the Commission. The Hamlet at Dirickson Pond, LLC, will provide any and all wastewater services to its customers without charge until rates are approved by this Commission in a separate proceeding to be initiated hereafter.

3. That The Hamlet at Dirickson Pond, LLC, shall comply with all the obligations and duties of a public utility, as set forth in 26 Del. C. ch. 1, and any relevant rules, regulations, or Orders of this Commission. The Hamlet at Dirickson Pond, LLC, shall forthwith provide to the Commission, and thereafter keep current, the name and address of its resident agent.

4. That The Hamlet at Dirickson Pond, LLC, 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 wastewater utility

services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

5. 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