

**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 ) PSC DOCKET NO. 05-CPCN-19  
TO A TOTAL OF 99 PARCELS OF LAND ) ("INDIAN RIVER, PHASE 3")  
LOCATED BETWEEN THE TOWNS OF GEORGE- )  
TOWN AND REHOBOTH BEACH, SOUTH OF THE )  
TOWN OF MILTON, AND NORTH OF THE TOWN )  
OF MILLSBORO, SUSSEX COUNTY, DELAWARE )  
(FILED JUNE 7, 2005 AND AMENDED )  
AUGUST 31, 2005) )

**ORDER NO. 6791**

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

This 6<sup>th</sup> day of December, 2005, the Commission finds, determines,  
and Orders the following:

1. On September 6, 2005, the Commission entered PSC Order No. 6720 in this matter, granting to Artesian Water Company, Inc. ("Artesian" or "Company") a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to a service territory encompassing a number of parcels distributed between the Towns of Georgetown and Rehoboth Beach in Sussex County, Delaware. However, the Commission included the following six parcels, identified by their Sussex County tax map parcels numbers, within that service territory on a "conditional" basis: 23400900002900, 23401100007904, 33401000006019, 23401100010002, 23401000012900, and 23401100009500. The Commission chartered this particular course for these six parcels because although the landowners of the parcels had executed petitions for water service from Artesian, the landowner notifications required

by statute and rule had been returned as apparently undelivered.<sup>1</sup> Given the unique context of this matter, which precipitated significant debate before the Commission, the Commission included the six parcels of land in Artesian's certificated water service territory conditioned upon the Company filing, within forty-five days from September 6, 2005, either: (a) a certification that it has contacted the current landowners of such parcel and that those current landowners have confirmed that they continue to desire their property to be served by Artesian; or (b) proof that Artesian re-sent, by certified mail, the obligatory notice to such landowners and that such notice was delivered.<sup>2</sup>

2. On October 21, 2005, Artesian filed the United States Postal Service forms reflecting that it re-sent the required notices by certified mail to the current landowners of the above six parcels. The Company has also submitted forms indicating that one of the overall six landowners signed receipts for the second notices. No response and, in particular, no "opt-out" petition, has since been received from this landowner. However, in the case of the landowners of five of the parcels, the documentation submitted reflects that the addressees did not seek to claim the correspondence with the notices.

3. Consequently, in the case of the parcel identified by Sussex County tax map parcel number 23401100009500, the current landowner has apparently now received the notice and has taken no action inconsistent with their earlier petition requesting water

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<sup>1</sup>See footnote 3 in PSC Order No. 6720.

<sup>2</sup>See PSC Order No. 6720 at paragraph 12.

services from Artesian. In these instances, Artesian has complied with the requirements of Order No. 6720. Therefore, there is no reason not to include the parcel in their service territory and lift the "conditional" status from this parcel.

4. In the case of the remaining five parcels, identified by Sussex County tax map parcels numbers 23400900002900, 23401100007904, 33401000006019, 23401100010002, and 23401000012900, the notices were re-sent, but the landowners of record never claimed them. Thus, the "conditions" in Order No. 6720 have not been fully met as the notices were not "delivered." However, the Commission cannot ignore that these same landowners originally executed petitions asking for public water services from Artesian for their properties. The Commission recognizes that while the relevant statutory provisions may speak of evidence that all landowners "have been notified,"<sup>3</sup> neither the Postal Service, the utility, nor the Commission can compel a landowner to accept (i.e., "sign for") delivery of a certified mail notice. In this case, the landowners had earlier requested water services to their properties and the utility twice attempted delivery of the notice outlining an opportunity to change their minds and "opt-out." In these unique circumstances, the five parcels should be encompassed within the service territory granted earlier in Order No. 6720. Had there been no signed petitions and no proof that the Company attempted to notify the landowners of their rights, the Commission might have reconsidered its position.

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<sup>3</sup>26 Del. C. § 203C (e)(1).

5. For these reasons, the Commission confirms that the six parcels of land identified in this Order are part of the Company's certificated water service territory granted by Order No. 6720.

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

1. The Commission confirms that the parcels identified by Sussex County tax parcels numbers 23400900002900, 23401100007904, 33401000006019, 23401100010002, 23401000012900, and 23401100009500. are hereby part of the water service territory granted to Artesian Water Company, Inc., by PSC Order 6720 (Sept. 6, 2005).

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 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/ Joann T. Conaway  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

PSC Docket No. 05-CPCN-19, Order No. 6791 Cont'd.

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary