

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND) PSC DOCKET NO. 07-CPCN-40
NECESSITY TO PROVIDE WATER SERVICES) ("LITTLE CREEK HUNDRED")
PURSUANT TO 26 Del. C. § 203C)
(FILED JULY 24, 2007 AND AMENDED)
SEPTEMBER 6, 2007)

ORDER NO. 7288

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

This 2nd day of October, 2007, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Tidewater Utilities, Inc. ("Tidewater" or "Applicant"), is a water utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission. On July 24, 2007, 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 fourteen parcels of land distributed around Delmar, Sussex County, Delaware ("Proposed Service Area"). The basis for the Application is Tidewater's possession of petitions requesting water services signed by all of the owners of the parcels of land comprising the Proposed Service Area as set forth in 26 Del. C. § 203C(e)(1)b.

2. As permitted under 26 Del. C. § 203C(i), the owners of three parcels of land have filed with the Commission written requests to "opt-out" of Tidewater's Proposed Service Area.

3. The Commission Staff has reviewed the Application, and all noted deficiencies, further detailed in Staff's September 25, 2007 memorandum, were corrected by the Applicant in a September 6, 2007 amendment to the Application. As a result of this amendment the Proposed Service Area now consists of a total of seven parcels of land.

4. The Commission Staff has also solicited comments from the Office of Drinking Water of the Department of Public Health, the Office of the State Fire Marshal, and the Division of Water Resources of the Department of Natural Resources and Environmental Control. All three agencies responded indicating that they have no issues relating to Tidewater's ability to provide safe, adequate, and reliable water services to its existing customers.

5. Finally, in addition to the required landowner notification, Staff directed Tidewater to publish notice of the Application in two newspapers of general circulation. Aside from the "opt-out" requests discussed previously, the Commission has not received any additional comments on the Applicant or the Application.

II. SUMMARY OF THE EVIDENCE

6. The record in this matter consists of the Application, as amended, 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). The amended Application includes:

- (i) petitions signed by all owners of the parcels of land comprising the Proposed Service Area, as amended, requesting water services;
- (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 in the Proposed Service Area, as amended;
- (iii) the County tax map parcel identification numbers of the properties comprising the Proposed Service Area, as amended;
- (iv) a listing of the landowners of record and the associated tax maps; and
- (v) the Applicant's statement that its expansion of service to the Proposed Service Area, as amended, 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);

7. The record also contains:

- (i) affidavits of publication of the public notices of the Application in the Delaware State News newspaper on August 11, 2007, and in The News Journal newspaper on August 15, 2007;
- (ii) correspondence from the Office of Drinking Water of the Division of Public Health, from the Office of the State Fire Marshal, and from the Department of Natural Resources and Environmental Control reporting that there are no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iii) Staff's September 25, 2007 memorandum of its investigation and recommending the Commission approve the amended Application and grant the requested CPCN. Staff reports that, based upon its review, Tidewater has complied with all the statutory and regulatory requirements necessary for granting the CPCN.

- (iv) written requests from the owners of Sussex County Tax Map Parcels Numbers 532-14.00-1.02, 532-14.00-2.00, and 532-14.00-34.00.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

8. The Commission has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities, and the Applicant operates a water system for public use and, consequently, is a water utility.

9. First, the Applicant obtained the consent of all of the landowners in the Proposed Service Area, as amended, 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 landowners in the Proposed Service Area, as amended. Third, the record reflects the Applicant's statement that the Applicant will continue to meet the water pressure requirements for its existing customers, and 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. 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 service to its existing customers. The present record does not provide a basis for the Commission to believe 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), 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).

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

1. That, pursuant to 26 Del. C. § 203C(e), the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket No. 07-CPCN-40 on July 24, 2007 and amended on September 6, 2007, is hereby approved to the extent it is consistent with this Order, and a CPCN is granted to Tidewater Utilities, Inc., to serve the area more specifically identified by the Sussex County Tax Map Parcels Numbers 532-13.00-54.00, 532-21.00-21.01, 532-14.00-9.01, 532-21.00-22.00, 532-14.00-49.01, 532-13.00-63.05, 532-13.00-80.02.

2. That Sussex County Tax Map Parcels Numbers 532-14.00-1.02, 532-14.00-2.00, and 532-14.00-34.00 are specifically excluded from the approved CPCN area based upon the written requests of the landowners.

3. That Tidewater Utilities, 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.

4. 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

Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary