BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF RULES CONCERNING THE IMPLEMENTATION OF 72 DEL. LAWS CH. 402 (2000) GRANTING THE COMMISSION THE JURISDICTION TO GRANT AND REVOKE THE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR PUBLIC UTILITY WATER UTILITIES (OPENED NOVEMBER 21, 2000; REOPENED MARCH 20, 2007)	)	PSC REGULATION DOCKET NO. 51

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: November 25, 2009

MARK LAWRENCE
HEARING EXAMINER

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Mark Lawrence, duly appointed Hearing Examiner in this Docket, pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* ch. 101, and by Commission Order No. 7451 dated October 7, 2008:

I. APPEARANCES

On behalf of the Public Service Commission ("PSC") Staff:

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BY: FRANCIS J. MURPHY, JR., ESQUIRE
BY: LAUREN A. PISAPIA, ESQUIRE

Kevin Neilson, PSC Regulatory Policy Administrator
Andrea Maucher, PSC Public Utilities Analyst

JOSEPH HANDLON, ESQUIRE, Deputy Attorney General, Delaware Department of Justice

On behalf of Artesian Water Company, Inc.:

JOHN J. SHREPPLER, II, ESQUIRE, Vice President, Asst. Secretary & General Counsel

Dian C. Taylor, Chief Executive Officer & President

David B. Spacht, Chief Financial Officer & Treasurer
Artesian Resources Corporation and its Subsidiaries
Alan Fleetwood, CPCN Coordinator
Connie McDowell, Rate Analyst
Stuart Lidner, Director of External Affairs

On behalf of Tidewater Utilities, Inc.:

Parkowski, Guerke & Swayze, P.A.
BY: JEREMY W. HOMER, ESQUIRE
Bruce Patrick, Vice President of Engineering
Kirsten Higgins, Director of Water Planning and Development
Joseph Cuccinello, CPCN Coordinator

On behalf of United Water Delaware Inc.:

Susan Skomorucha, General Manager

On behalf of the Division of the Public Advocate ("DPA"):

G. Arthur Padmore, Public Advocate
Michael D. Sheehy, Deputy Director, Public Advocate
KENT WALKER, ESQUIRE, Deputy Attorney General, Delaware Department of Justice

II. BACKGROUND

1. In 2000, the Delaware General Assembly enacted legislation making applications by water utilities for Certificates of Public Convenience and Necessity ("CPCNs") again subject to the jurisdiction of the Public Service Commission of Delaware (the "Commission").[1] See 26 *Del. C.* § 203. Section 203C(a) provides that "No person or entity . . . or existing water utility [shall] begin any extension or expansion of its business or operations without first having obtained from the Commission a certificate that the present or future convenience and necessity requires, or will be served by, the operation of such business or the proposed extension or expansion." Before 2000, investor-owned water utilities filed applications for CPCNs with the Department of Natural Resources and Environmental Control ("DNREC"). Transfer of jurisdiction from DNREC to the Public Service Commission became effective July 1, 2001.

2. In preparation for the transfer of jurisdiction, in 2000, the Commission initiated a Rulemaking proceeding in order to promulgate regulations governing CPCN applications filed by private water utilities.[2] Some of the proposed regulations proposed for promulgation were necessary to comply with the General Assembly's directive to the Commission, codified at 26 *Del. C.* § 203C(1), requiring the Commission to establish rules governing the revocation of a CPCN held by a water utility.

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[1]References to the pre-filed direct testimony and other exhibits introduced into this record will be cited as "Exhibit" or "Exh.__." The Transcript of the hearings in this case will be referred to as "Tr-___."

[2]26 *Del. C.* § 203(A) governs when a governmental, municipal, or municipal authority water utility seeks a CPCN from the Commission in order to expand its operations and facilities. The Delaware Legislature also rendered the entire CPCN certificate regime inapplicable in the case of municipal annexations under Chapter 1 of Title 22 where no CPCN has been issued. See 26 *Del. C.* § 203C(a). Lastly, under current Delaware law, the legislature waived the notice and "opt-out" requirements for some listed municipalities. See 26 *Del. C.* § 203C(i).

3. On January 30, 2001, the Commission considered the proposed regulations prepared by the Staff, the comments and discussions from a workshop conducted on November 30, 2000, and written comments received from interested parties. On the same date, the Commission issued Order No. 5646 to address matters raised by the new legislation. The Commission's Order also directed publication of notice and circulation of the proposed regulations to all water utilities currently operating under a CPCN in Delaware and all persons who made timely written requests for advance notice of the Commission's regulation-making proceedings.

4. On March 28, 2001, a Hearing Examiner conducted a duly-noticed public hearing in the Commission's Dover office to consider the comments and the proposed regulations. Representatives of Artesian Water Company, Inc. ("Artesian"), United Water Delaware Inc. ("United"), Tidewater Utilities, Inc. ("Tidewater"), The Division of Public Advocate ("DPA"), and the Public Service Commission's ("PSC") Staff attended the hearing.

5. At the public hearing, the participants jointly recommended certain modifications to the proposed regulations. With the Hearing Examiner's approval, the participants agreed to incorporate their recommendations into a revised form of proposed regulations, which they submitted to the Hearing Examiner for his review. The Hearing Examiner's Findings and Recommendations recommended that the Commission adopt the proposed Regulations.

6. On April 24, 2001, by PSC Order No. 5079, the Commission preliminarily adopted the proposed Report of the hearing examiner and the Regulations recommended by the hearing examiner and directed publication of the Regulations. On June 5, 2001, the Commission issued Order No. 5730 adopting the Regulations. Thereafter, on July 5, 2001, the Commission,

pursuant to PSC Order No. 5730, adopted the Regulations after holding a public hearing. The Regulations became effective on July 10, 2001.

III. SUMMARY AND DISCUSSION

7. Between 2002 and 2005, it came to the Commission's attention that certain water utilities were allegedly aggregating widely dispersed parcels into a single service area. In 2005, the Commission asked Staff to review the statutory and legal requirements for CPCNs and to consider revising the Commission's rules as to the issue of how water utilities acquire service areas.

A. Staff's 2007 Proposed Regulations

8. In 2007, the Staff completed its proposed Regulations. For example, Sections 7.1 through 7.5 of the Regulations provided definitions for the "Proposed Service Area" under each statutory option for acquiring a CPCN. In particular, for purposes of the majority vote of the landowners' option then in effect,[3] the proposed Regulations limited the new proposed service area to either a single parcel or a group of contiguous parcels to be served by the same water infrastructure. According to Staff, this limitation precluded a utility from crafting a widely disbursed service area which utilizes the requests for water service from one area to then include without requests parcels located in another area which had not requested service. Staff asserted that this service area limitation better comported with the legislative intent in 1990 to limit the majority of landowners' option then in effect.

9. The 2007 Regulations proposed by Staff (§§ 10.1-10.4) also addressed the content of the proposed CPCN application notifications to be sent to landowners, and how such notices should disclose the owner's

[3]See 26 *Del. C.* § 203(C)(e)(1)(b). Delaware law currently require all landowners in a "Proposed Service Area" to consent. However, proposed service area is not defined by Statute.

ability to exercise the "opt-out" option provided by 26 *Del. C.* § 203C(i) (2006 Supp.). The Commission was advised that, while landowners valued the "opt-out" option, landowners were often uninformed about its existence or confused as to how and where to exercise their "opt-out" option. Thus, the 2007 proposed Regulations made all obligatory landowners' notices subject to Commission oversight. They also reworked the language and mailing requirements regarding the "opt-out" option. These "beefed-up" notice requirements sought to ensure that the owners have actual notice that their property would be affected by the CPCN application.[4]

10. The 2007 Regulations proposed by Staff also required the applying utility to certify that the utility would provide water service to the proposed service area within three (3) years. (*See* § 3.11.) Also, if the utility failed to provide water service within three (3) years, the 2007 Regulations provided a mechanism for the Commission to determine whether the utility should be able to retain the CPCN in order to provide water service to the area. (*See* §§ 12.1-12.6.) Again, according to Staff, this process dovetailed with the heart of the CPCN process: to authorize a water utility to "extend or expand... its business or operations." (*See* 26 *Del. C.* § 203C(a) (2006 Supp.)) According to Staff, the certification's goal to ensure that service follows the CPCN is consistent with the text of § 203C, which conditions the grant of a CPCN for an area on either the developer signing a "service agreement," the landowners "requesting such service," or a governmental body "requesting the applicant to provide service." In each instance, the statutory criteria looks to water "service" in the

[4]The statutory provisions of 26 *Del. C.* § 203C(d)(1) & (e)(1) require the delivery of notices to landowners by certified mail ("or its equivalent"). However, consistent with the "due process" principles articulated in Jones v. Flowers, 547 U.S. 220 (2006), a follow-up mailing of the notices by regular U.S. first-class mail to the landowner's address where an earlier certified mail

territory, not simply the utility accumulating parcels for a large, exclusive "wide franchise area."

11. By PSC Order No. 7142, (Mar. 20, 2007), the Commission sought input from water utilities and others on the following issues:

(a) Whether the three (3) year period for providing water service in a new service territory is reasonable in light of water utilities' actual historical experiences;

(b) Whether there is a need to include in the new rules more specific provisions detailing who might be considered a landowner, how such land ownership might be established, and how a "majority of the landowners" option under § 203C(e)(1)(b) is to be calculated; and

(c) Whether additional requirements relating to the manner or form of landowner notices should be specifically included in the new rules.

12. The Commission's Order No. 7142, (Mar. 20, 2007), also designated a hearing examiner to organize, classify, and summarize all materials, evidence, and testimony filed in the docket, to conduct public hearing(s), and to make proposed findings and recommendations to the Commission concerning Staff's proposed regulations on the basis of the materials, evidence, and testimony submitted. The Hearing Examiner was also authorized, in their discretion, to solicit additional comments and to conduct, on due notice, such public hearing(s) as may be required to develop further materials and evidence concerning any later-submitted proposed regulations or amendments thereto.

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attempt has been returned as "undeliverable" is also required.

13. In a public notice published for these proceedings, the Commission invited all interested persons and the public to file written comments concerning the original proposed regulations on or before May 4, 2007. (*See* Notice Repealing 2001 Rules In favor of Rules Proposed By Commission Order No. 7142. 10 DE. REG. 1563-1580 (April 1, 2007)).

14. By PSC Order No. 7254, (Sept. 4, 2007), issued during the course of the proceedings before the hearing examiner reviewing those rules, the Commission considered new legislative amendments to § 203C which became effective June 28, 2007. These legislative amendments are set forth in detail in Section IV of this Report. However, most importantly, the Delaware legislature required that a water utility could obtain a CPCN only by presenting petitions for *each* parcel in a proposed service area, whereas previously only a majority of landowners was required under 26 *Del. C.* § 203C(e)(1)(b). In response to the legislative changes, the Commission withdrew the proposed rule changes previously proposed by Order No. 7142 (Mar. 20, 2007). Instead, the Commission then issued new Regulations proposed by Staff which incorporated the 2007 legislative changes, thus leaving the Commission's 2001 Rules in the current state of being repealed in favor of new regulations, which have not, to date, been enacted. (*See* Order No. 7254, Para. 3, 4 September 4, 2007.)

15. In a public notice published for these proceedings, the Commission invited all interested persons and the public to file written comments on the proposed regulations on or before November 1, 2007. See Notice Repealing 2001 Rules and Proposing Rules Proposed By Commission Order No. 7142. (*See* 10 DE. REG. 1563-1580 (April 1, 2007)).

16. At the time, the following utilities submitted written comments: Artesian, (Nov. 1, 2007), Tidewater, (Nov. 1, 2007), and United, (Nov. 9, 2007). No other written comments were filed.

17. On November 19, 2007, Senior Hearing Examiner Ruth Ann Price conducted a duly-noticed public evidentiary hearing in the Commission's Dover office to consider the comments and the proposed regulations. Representatives of Artesian, Tidewater, United, the DPA, and Staff attended the hearing. Municipality representatives also attended the meeting. After the November 19, 2007 hearing, Artesian and Tidewater each submitted post-hearing briefs delineating their legal authorities in support of and against certain proposed regulations. By Motion, Staff requested that hearings be continued for Staff to submit another revised draft of its proposed Regulations.

B. <u>Staff's 2008 Proposed Regulations</u>

18. On January 28, 2008, Staff proposed the Regulations which are attached hereto as **Exhibit "A".** Staff's proposed Regulations are also summarized in detail in Article V herein. On October 7, 2008, the Commission reassigned this Docket from Hearing Examiner Ruth Ann Price to this Hearing Examiner. (*See* PSC Order No. 7451, October 7, 2008.)

19. On October 15, 2008, at this Hearing Examiner's request, the parties conducted a Workshop at the Commission's offices in Dover to discuss the Regulations proposed by Staff on January 28, 2008. Artesian, Tidewater, United, and Staff were present. Except for Artesian and Tidewater, no other Delaware utility commented on Staff's proposed Regulations. (*See* Staff's Opening Brief, p.1.) United's position was that it was monitoring the progress of the Docket. Therefore, any reference in this Report to "the utilities" refers to Artesian and Tidewater only. At the Workshop, the parties reached an agreement regarding Staff's proposed Regulation 2.1 amending the definitions of the terms "existing development," "existing subdivision," and "unincorporated community". This agreement will be discussed in more detail later. A productive discussion took place at the Workshop regarding all remaining issues.

Staff submitted its Memorandum of Law as to the remaining unresolved issues on November 24, 2008. On December 19, 2008, the parties reached an Agreement as to additional issues.

20. Between January and March 2009, the parties and this Hearing Examiner had multiple conference calls concerning the unresolved issues. The parties agreed upon the date and specifics of the Final Evidentiary Hearings, *i.e.* March 6, 9 and 11, 2009, when and which pre-filed testimony would be filed, which "live" witness lay and expert witness testimony would be presented, and the filing of post-hearing briefs. At the final hearings, a total of 163 exhibits were introduced into evidence. The transcript for this docket is 1,235 pages. The parties agreed that all filings contained in the PSC's docket in this case would also form part of the evidentiary record. (March 4, 2009 hearing, T-468-472) After the Final Hearings occurred, Staff, Artesian and Tidewater filed Briefs in support of their respective positions. The DPA thereafter joined Staff's position in this Docket. All regulations agreed upon between the parties are detailed in Article VIII herein. All unresolved issues between the parties are detailed in Article IX herein. However, before discussing the agreed upon Regulations and unresolved issues, a discussion of current Delaware law is necessary.

IV. CURRENT DELAWARE LAW & STAFF'S PROPOSED FIVE YEAR OPT-OUT RULE

A. Delaware Law Governing Issuance of Water CPCNs

21. The Delaware General Assembly has legislated a statutory scheme, now codified at 26 *Del. C.* § 203C, which comprehensively and clearly mandates how future CPCNs are to be issued to water utilities.[5] This legislative scheme first became effective on July 1, 2001.

[5]26 *Del.C.* § 203(C)(b)provides that the CPCN application requirements do *not* apply to "existing" CPCNs or "for the extension or expansion of operations

22. 26 *Del. C.* § 203 transferred jurisdiction to the Public Service Commission ("the Commission") from DNREC, effective July 1, 2001. See 2000 Del. Laws, c. 402 (2000). This legislation also created 26 *Del. C.* § 203C. Section 203C dispensed with virtually all of the broad and unfettered discretion formerly enjoyed by the Secretary of DNREC to "issue or refuse to issue" a CPCN for "wide-area franchises" without the consent of property owners. From 1976 through 1991, Delaware law required only that, in order for DNREC to issue a CPCN, "the present or future public convenience and necessity require or will require the operation of such business or extension." (Senate Substitute No. 1 (for Senate Bill 730) with Senate Amend. 2 (128th Gen. Assembly, June 30, 1976 (Sen. Sub. 1, Sec. 6 - adding § 6031 to Title 7); 68 Del. Laws, c. 124 (1991)) In 1991, the Delaware legislature limited DNREC's authority imposing the now familiar requirements of 1) a signed service Agreement with a Developer; 2) a petition signed by a majority of landowners in the proposed territory to be served; and 3) a resolution from a local government. DNREC's Secretary could grant a CPCN for a larger area upon a finding after a public hearing "that sound and efficient water resource planning, allocation, management, and regulation would be implemented." See 7 *Del. C.* §§ 6076 & 6077 (1991-1994).

23. Effective June 28, 2007, however, according to 26 *Del. C.* § 203C(e)(1)(a-d), the Public Service Commission is required to issue ("shall issue") a CPCN after notice to the landowner, if a water utility submits *any* of the following:

> (a) 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;

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within a service territory for which a certificate has previously been granted."

(b) One or more petitions requesting water service from the applicant executed by the *landowners of record of each parcel or property* to be encompassed within the proposed territory to be served:[6]

(c) In the case of an *existing development, subdivision, or generally recognized unincorporated community*, one or more Petitions requesting water service from the applicant executed by the landowners of record of parcels and properties that constitute *a majority of the parcels or properties* in the existing, development, subdivision or unincorporated community; or

(d) A certified copy of a resolution or ordinance from the governing body of a *county or municipality* that requests, directs, or authorizes the applicant to provide water utility services to the proposed territory to be served, which must be located within the boundary of such county or municipality.

24. Since the Delaware legislature has expressly required the Commission to grant CPCNs to water utilities if certain statutory criteria is satisfied, the CPCN issuance statutes, i.e. 26 *Del. C.* § 203C(e)(1)a-d described above, must be strictly followed by the Commission. *E.g.,* Miller v. Spicer, 602 A.2d 65, 67 (Del. 1991), *citing to*, Delaware Citizens for Clean Air, Inc. v. Water and Air Resources Commission, 303 A.2d 666, 667 (Del. Super. 1973); *see also* In re Fountain, 913 A.2d 1180, 1181 (Del. Super. 2006). Regarding issuing

[6]Previously, Delaware required only a majority of landowners in a proposed service area to execute any CPCN application, without distinguishing between proposed territories and existing developments as the current statute described above does in sections (b) and (c), *respectively*. Also, 26 *Del. C.* § 203(C)(d) addresses CPCN issuance if water standards' non-compliance or insufficient supply is at issue.

CPCNs, the PSC Staff testified in this Docket that, if the statutory criteria for issuance is satisfied, "the Commission must grant the CPCN." (See Staff's Testimony, T-186-187.)

25. Delaware's current water CPCN issuance statutes have been described as a "consent regime." (*See* Exh. 84, Exh.2/Exh. A/p.4). This means that, by not opting out of a CPCN application filed by a water utility, a landowner consents to the CPCN being issued for their property. (*Id.*) The landowner has a statutory right to "opt out" of the CPCN prior to the CPCN being issued. The landowner may, after receipt of the statutorily-required notice from the utility, but prior to the issuance of a CPCN, "opt-out" of water service with that utility pursuant to 26 *Del. C.* § 203(C)(i). This is done by the landowner signing an opt-out form provided by the utility in its statutorily-required notice and mailing it to the Commission.

26. Delaware's water CPCN issuance statutes were enacted by the Delaware legislature in 2000; ten (10) years after the Delaware Supreme Court's 1990 decision in Delmarva Power & Light Company v. City of Seaford, 575 A.2d 1089 (Del. 1990), *cert. denied,* 498 U.S. 855 (1990). In Delmarva Power, the Delaware Supreme Court held that an electrical CPCN and franchise issued under Section 203A held by Delmarva Power was not an "exclusive property right." (Id. at 1096.) However, the court also held that "the exclusivity warranted by the [electrical CPCN] operates to protect Delmarva from competition from other regulated utilities, not municipal utilities such as Seaford Power." (emphasis supplied) (Id. at 1098) The court permitted the City of Seaford's municipal utility to provide electrical service to two (2) Delmarva customers located on land annexed by the City, thereby replacing Delmarva's service. (Id. at 1091.) However, pursuant to Delmarva's Inverse Condemnation claim, the court required the City of Seaford to pay Delmarva reasonable compensation for

"the taking" of the income and profits derived from Delmarva's customers, which constituted Delmarva's property rights. (Id at 1098.) The court pointed out that the PSC did not have jurisdiction over municipal utilities such as the one owned by the City of Seaford. (See 26 *Del. C.* § 202(a); Id at 1097.) *see also* The Reserves Development Corp. v. PSC, WL 139777 (Del. Super. 2003)(unpublished opinion), *affirmed* 830 A.2d 409 (Del. 2003)(holding that a Developer was prohibited from serving water to a development's residents because the Developer would be acting as a public utility and another utility had been issued the "exclusive" water CPCN by the PSC)

B. Delaware Law Governing Revocation of Water CPCNs

27. As to revoking a water CPCN, 26 *Del. C.* §203C(k) was enacted in 2000, when the state's water CPCN issuance statute was enacted. Both statutes became effective July 1, 2001. Delaware's Water CPCN Revocation Statute provides as follows:

> (k) **The Commission may undertake to suspend or revoke for good cause a certificate of public convenience and necessity held by a water utility. Good cause shall consist of:**
>
> (1) **A finding made by the Commission of material noncompliance by the holder of the certificate with any provisions of Titles 7, 16 or 26 dealing with obtaining water or providing water and water services to customers**, or any order or rule of the Commission relating to the same; **and**
>
> (2) **The presence of such additional factors as deemed necessary by the Commission**

as outlined in subsection (l) of this section.

(l) Prior to July 1, 2001, **the Commission shall establish rules** for the revocation of a certificate of public convenience and necessity held by a water utility. **Such regulations shall outline the factors, in addition to those outlined in subsection (k) of this section, which must be present for a finding of good cause for revocation of a certificate.** Such additional factors shall include, but not be limited to, the following:

(1) A finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service; and,

(2) To the extent practicable, the Commission should attempt to identify methods to mitigate any financial consequences to customers served by the utility subject to a revocation.

28. 26 *Del. C.* § 203C(k)-(1) permits the Commission to revoke a CPCN for "Good Cause." That Statute specifically provides that "Good Cause" shall consist of a finding of a utility's "material noncompliance" with a provision of Title 7 [addressing Conservation], Title 16 [addressing Health & Safety], or Title 26 [addressing Public Utilities] "dealing with obtaining water or providing water and water services to customers," or any order or rule . . . of the Commission relating to the same."

29. Once such an enumerated statutory violation occurs, according to 26 *Del. C.* § 203C(k)(2), "additional factors" are also considered in deciding whether a CPCN will be revoked by the Commission.[7] According to Section (k)(2), the Commission is required to evaluate additional factors enacted by the Commission, such as the new factors the PSC Staff has proposed in this docket. Lastly, in deciding whether to revoke a CPCN, the Commission is required to evaluate the factors contained in section (l)(1) of the statute, i.e. whether service to customers remains uninterrupted; and section (l)(2) - the methods of mitigating any financial consequences to customers.

30. Additional evidence of the intent of the Delaware legislature to require a Commission finding of a material non-compliance violation of *Del. C.* § 203C(k)(1) before revoking a CPCN is also contained in section (k)(2). This section provides that "the Commission shall establish rules for the revocation of a certificate of public convenience and necessity held by a water utility. Such regulations will outline the factors, in addition to those outlined in subsection (k) of this section, which must be present for a finding of good cause for revocation of a certificate." Clearly, a finding of material non-compliance of section (k)(1) is required before a CPCN can be revoked. Section (k)(1) is not the end of the analysis of whether a CPCN may be revoked, but it is the initial, required finding for any CPCN to be revoked. Lastly, in deciding whether to revoke a CPCN, the Commission is required to evaluate the factors contained in section (l)(1) of the statute, i.e. whether service to customers remains uninterrupted; and section (l)(2) - the methods of mitigating any financial consequences to customers.

[7]Staff's proposed "additional factors" are listed in Staff's proposed Rule 13.2 which has been agreed upon by the parties. These factors include, for example, fraud, dishonesty, criminal conduct, insolvency, violating water statutes, failure to comply with a court order, and other factors the Commission deems relevant. These factors are discussed in Paragraphs 108 and 109, *infra*.

C. Staff-proposed Five-Year Opt-Out Rule which would allow a landowner to opt-out of a water CPCN if service was not provided within five years not adopted by Hearing Examiner because it is not permitted by Delaware Law governing the Revocation of Water CPCNs

31. Staff's proposed five year Opt-Out Regulation is not permitted 26 *Del. C.* 203C(k)-(1) because, upon an opt-out request from a landowner approved by the Commission, the proposed Regulation alone would permit the "revocation" of an entire CPCN(or usually the portion thereof relating to the landowner who is opting out) if a utility had not serviced an area within five (5) years of the date the CPCN was issued. However, not serving a property within five (5) years is not a "material non-compliance" violation of section (k)(1) as specifically required by *Del. C.* §203(C)(k) i.e. it is not a violation of Delaware Code Title 7 [addressing Conservation], Title 16 [addressing Health & Safety], nor a violation of Title 26 [addressing Public Utilities] "dealing with obtaining water or providing water and water services to customers," or any order or rule . . . of the Commission relating to the same."

32. Staff's proposed Opt-Out Rule provides as follows:

12.0 <u>Conditional Grant of a CPCN for a Proposed Service Area</u>

12.1 This Section 12.0 shall only apply to properties subject to a CPCN which was granted by the Commission after the date this Section 12.0 became effective.

12.2 For any CPCN granted pursuant to 26 Del. C. § 203C(e)(1)(2) or § 203C(e)(1)(3) after the effective date of this Section, the landowner of record of a property included in a water utility's certificated service area shall be afforded an opportunity to "opt-out" and

have their property removed from the water utility's service area if the water utility has failed to provide water service to the property within five years of the date on which the CPCN was granted. To that extent, a CPCN granted to a water utility shall be conditional.

12.3 When five years have passed since the Commission granted a CPCN to a water utility, the utility shall, within sixty days thereafter, file a report with the Commission plainly identifying the properties within the CPCN service territory that are actually receiving water service from the utility and those properties that are not receiving water service from the utility.

12.4 If five years have passed since a water utility was granted a CPCN, and the water utility is not actually providing water service to any property within the service territory granted by the CPCN, the water utility shall send notice to the landowners of record of each such property that the landowners may have the opportunity to "opt-out" and have their property removed from the utility's service territory, due to the water utility's failure to provide water service. This notice shall be sent within thirty days after the five year period has expired. The notice shall be sent by United States Postal Service certified mail, return receipt requested, with delivery restricted to the addressee. If the United States Postal Service returns any materials reflecting that, in the case of a particular landowner of record, the certified mail delivery failed because the delivery was "refused,"

"unclaimed," "undeliverable," "unknown," or otherwise not completed, then the water utility shall promptly re-send the form of the required notice by first class United States Postal Service mail to the best available address of that landowner of record. Copies of documents related to the notices sent to the landowners shall be filed with the Commission. The Commission, by Order, may authorize a method of providing notice to landowners of record that is equivalent to the methods set forth above. The form of notice sent to landowners of record by the water utility must include the following statements:

YOU SHOULD READ THIS NOTICE CAREFULLY. Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]* Your Property is included in [INSERT WATER UTILITY'S NAME] service territory. Five years have passed since the Delaware Public Service Commission granted [INSERT WATER UTILITY'S NAME] a Certificate of Public Convenience and Necessity to provide water service to your property. If [INSERT WATER UTILITY'S NAME] is not providing water service to your property, you may file a request to opt-out, which means your property may be removed from [INSERT WATER UTILITY'S NAME] service territory.

1) You may choose to remain in the utility's service territory. If so, you do not have to take any action.

2) You may wish to have your property removed from [INSERT WATER UTILITY NAME] service territory, which

means "opt-out" of the service territory. If you wish to "opt-out" you must complete the enclosed form and return it to the Public Service Commission at the address listed below within ninety (90) days from the date you receive this notice:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Please note that a request to "opt-out" will not automatically remove your property from a water utility's service territory. If the water utility objects to your request to "opt-out," the Commission may consider other factors outlined in its regulations in making a final determination whether your property should be removed from the service territory.

3) If you do not send the completed opt-out request form to the Public Service Commission, your property will remain in the utility's service territory. If you have any questions, comments, or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

12.4.1 If the water utility's CPCN was granted pursuant to 26 Del. C. § 203C(e)(1)(2), the properties of landowners of record, who want their properties to remain within the utility's proposed service territory, shall remain within the water utility's service territory. If the water utility's CPCN

was granted pursuant to 26 Del. C. § 203C(e)(1)(3), and a majority of the landowners of record of the existing development, existing subdivision, or existing unincorporated community want their properties to remain within the water utility's service territory, then all of the properties within the existing development, existing subdivision, or existing unincorporated community shall remain within the utility's service territory.

12.5 If the water utility that was granted the CPCN wishes to oppose a request by a landowner of record to opt-out of the utility's service territory, the utility must file a proceeding with the Commission within 150 days of the date on which the landowner filed the opt-out notice with the Commission.

12.6 In a proceeding filed by a water utility under Section 12.5, to obtain a determination whether landowners of record who request to opt-out of the utility's service territory should be permitted to opt-out, the Commission shall consider relevant factors, including, but not limited to, the following: a) whether the water utility has a reasonable plan to begin to provide water utility service to properties whose landowners of record wish to opt-out, and the water utility's anticipated timetable for providing such service, b) whether the properties support, or are essential to, the water utility providing water utility service to another Proposed Service Area, (c) whether any delay in providing service was beyond the reasonable control of the utility; (d) the extent to which the

utility has invested resources pursuant to the CPCN; and (e) the extent to which the public convenience and necessity would be served by denying the landowner's request to opt-out.

12.7 In any proceeding instituted under Section 12.5, the water utility shall have the burden of proof, including the burden of proving the factors set forth in Section 12.6 a) through e).

12.8 In any proceeding instituted under Section 12.5, the Commission shall have the authority to determine the manner and form of notice to be provided to landowners of record whose properties may be affected by the proceeding.

33. The Delaware legislature did not enact the five year Opt-Out rule in the Revocation statute. According to the Revocation statute, a CPCN cannot be revoked without first finding that one of the enumerated statutory grounds for revocation contained in 26 *Del. C.* § 203C(k)(1) has been established. "Courts cannot supply omissions in legislation, nor afford relief because they are supposed to exist . . . . [W}hen a provision is left out of a statute, either by design or mistake of the legislature, the courts have no power to supply it. To do so would be to legislate and not to construe." State ex rel. Everding v. Simon, 20 Or. 365, 373-74, 26 P. 170 (1891) (*quoting* Hobbs v. McLean, 117 U.S. 567, 579(1886)); *see* PSC v. Wilmington Suburban Water Corp., 467 A.2d 446, 450-51 (DE. 1983).

34. When construing a statute, an agency or court must adhere to traditional canons of statutory interpretation. The United States

Supreme Court has held that "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *E.g.*, Connecticut Nat'l Bank v. Germain, 112 S.Ct. 1146, 1149 (1992). This bedrock canon of statutory interpretation supports the utilities' construction of the Revocation Statute, not Staff's construction. Simply put, the Revocation Statute clearly delineates the statutory criteria for revoking a CPCN or any portion thereof. The Delaware legislature is presumed to have said what it intended to say in the Revocation Statute. *See also* Amer. Auto. Manuf. Ass'n v. PSC, 1998 WL 283472 (Del. Super. 1998)(unpublished opinion)("[s]tatutory interpretation necessarily must begin with a straightforward reading of the statute to comprehend its intended operation")

35. Since the Delaware legislature has expressly required the Commission to grant and revoke CPCNs to water utilities if certain statutory criteria is satisfied, the water CPCN Issuance and Revocation statutes, and the criteria contained therein, must be strictly followed by the Commission. *E.g.,* Atlantic Mutual Ins. Co. v. C.I.R, 523 U.S. 382 (1998); Miller v. Spicer, 602 A.2d 65, 67 (Del. 1991), *citing to*, Delaware Citizens for Clean Air, Inc. v. Water and Air Resources Commission, 303 A.2d 666, 667 (Del. Super. 1973); In re Fountain, 913 A.2d 1180, 1181 (Del. Super. 2006). *See also* Com. v. American Ice. Co., 178 A.2d 768 (PA. 1962) (contemporaneous adoption of statutes reflects legislative intent that the statutes be interpreted together). Regarding the issuance of a CPCN, the PSC Staff admitted during the hearings that, if the statutory criteria for CPCN issuance is satisfied, "the Commission must grant the CPCN." (See Staff's Testimony, T-186-87.) Therefore, it reasons that the statutory criteria contained in Delaware's Water CPCN Revocation Statute must also be strictly followed.

36. Staff's proposed Opt-Out Rule is entitled "Conditional Grant of a CPCN for a Proposed Service Area." By use of the term "conditional," which is not contained in any statute, Staff's position is apparently that the proposed five year Opt-Out rule is not revocation, but rather some type of "lapse" caused by the failure to provide water service. *Black's Law Dictionary* (8th Ed. 2004, p.1346) defines "revocation" as "[a]n annulment, cancellation, or reversal of an act or power." If the Commission revokes a CPCN due to a "lapse" or for any other reason, it would still constitute revocation and it would be governed solely by Delaware's Revocation statute. The Hearing Examiner submits that there is no distinction between "revocation" and "lapse." This is because, in either case, the CPCN (or a portion thereof) would be taken from the utility holding the CPCN - in favor of the landowner who had consented (or whose predecessor-in-title had consented) to the issuance of the CPCN to the utility holding the CPCN.

37. Moreover, Staff's position is that the Commission may enact the five year Opt-Out rule as a reasonable "condition" upon CPCNs issued by the Commission. Although Staff's legal arguments will be discussed in detail in the following section of this Report, this argument likewise ignores the Water CPCN Revocation Statute passed by the Delaware legislature. The Delaware Public Service Commission was created by the legislature and its subject matter is limited to those matters granted to it by the legislature. *E.g.*, Public Service Commission v. Diamond State Tel. Co., 468 A.2d 1285, 1300 (Del. 1983); Eastern Shore Natural Gas v. PSC, 635 A.2d 1273, 1277 (Del. Super. 1993), *aff'd* 637 A.2d 10 (Del. 1994).

38. The Hearing Examiner's Recommendation is also consistent with 26 *Del. C.* § 203A(3) raised by Staff, which provides as follows: "The Commission, after hearing, on the complaint of any public utility

claiming to be adversely affected by any proposed extension, may make such order and prescribe such terms and conditions with respect to the proposed extension as may be required by the public convenience and necessity." Assuming without deciding that § 203A applies to water utilities, § 203A(3) does not apply to the proposed five (5) year Opt-Out rule because no public utility is "claiming to be adversely affected by any proposed extension"-which is the grant of the CPCN-not its revocation. An opt-out complaint is landowner driven. According to the proposed five (5) year opt-out rule, if service is not provided five (5) years *after* the CPCN is granted, a landowner may opt-out of the CPCN the landowner (or their predecessor-in-title) previously agreed to. § 203A(3) simply does not apply. Clearly, this provision was intended to apply only where two water utilities have a dispute as to a pending CPCN application. Caminetti v. U.S., 242 U.S. 470 (1917) ("if a statute's language is plain and clear, the duty of interpretation does not arise…."); Board of Governors v. Federal Reserve System v. Dimension Financial Corp., 474 U.S. 361 (1986) (same).

39. In conclusion, the utilities argue and the Hearing Examiner agrees that, Delaware's water CPCN Revocation Statute unambiguously prohibits the adoption of Staff's proposed five year Opt-Out rule. Caminetti v. U.S., 242 U.S. 470 (1917) ("if a statute's language is plain and clear, the duty of interpretation does not arise…."); Board of Governors v. Fed. Reserve System v. Dimension Fin. Corp., 474 U.S. 361 (1986) (same); Hartford Accident & Indem. Co. v. W.S. Dickey C. Mfg. Co., 24 A.2d 315, 320 (DE. 1942) (same); Rubick v. Security Invest. Corp., 766 A.2d 15,18 (Del. 2000) (same) (*citing* Ingram v. Thorpe, 747 A.2d 545, 547 (Del. 2000)).

40. **Standard of Review**. If a statute grants power to an administrative agency and is ambiguous with respect to a specific issue, courts will sometimes defer to the agency's reasonable interpretation of a statute. Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984). However, Delaware now has one of the least deferential standards if a court reviews an agency's interpretation of a statute, which is the issue concerning the proposed Opt-Out Rule. Basically, a Delaware agency must correctly interpret a Statute or its interpretation will be reversed. *E.g.*, Hirneisen v. Champlain Cable Corp., 892 A.2d 1056 (Del. 2006) (where "plain language" of workers compensation statute contained no exception for spouses of retired workers, the agency and lower court erred in implying one"; Public Water Supply v. DiPasquale, 735 A.2d 378, 382-83 (Del. 1999)(a reviewing court must apply de novo standard, although the court may accord "due weight" but not defer to an agency interpretation of a statute . . . A reviewing court may not defer to such an interpretation as correct merely because it is rational or not clearly erroneous.); New Castle County Dep't of Land Use v. University of Delaware, 842 A.2d 1201 (Del. 2004) (in overturning agency's tax exemption statute, Superior Court held that "the construction of statutes is a purely legal determination . . . reviewed de novo").

41. **Hearing Examiner's Recommendation Regarding Opt-Out Rule.** The Hearing Examiner's Recommendation that Staff's proposed Opt-Out rule not be adopted is based upon a question of law i.e that Delaware's Water CPCN Revocation Statute 26 *Del. C.* C(k)-(1) unambiguously prohibits its adoption. However, if the Commission holds that there is "a lawful statutory basis" to adopt the opt-out Rule as required by 29 Del. C. §10141(e), for the reasons described in Sections VI and VII describing the testimony at the evidentiary hearings, the Hearing Examiner's Recommendation is also that Staff has not demonstrated that the proposed

Opt-Out rule is just and reasonable and supported by substantial evidence in the record.[8] *See* 29 *Del. C.* §10141(e); *see* Reybold Group et al v. PSC, 2007 WL 2199677 (Del. Super. March 20, 2007), *aff'd* 956 A.2d 643 (Del. 2008); Delmarva Power & Light v. Tolou, 729 A.2d 868,874 (Del. Super. Ct. 1998).

42. **Hearing Examiner's Recommendations Regarding Other Staff-Proposed Regulations**. Regarding a number of other Staff-proposed Regulations as described in Sections VIII and IX herein, including its proposed Regulations regarding water CPCN notices to landowners and municipalities, and Plan of Service required of utilities, it is the Hearing Officer's recommendation that Staff has indeed demonstrated that there is "a lawful statutory basis" for those Regulations and that those Regulations are just and reasonable and supported by substantial evidence in the record.

D. Staff's Legal Argument In Support of Adopting Five-Year Opt-Out Rule

43. Staff principally relies upon the general powers of 26 *Del. C.* 201(a) which provides, in pertinent part:

> The Commission shall have exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purpose of carrying out the

[8]Staff's three (3)primary public policy arguments regarding the alleged reasonableness of Staff's proposed five year Opt-Out rule included: (1) the utilities were allegedly "banking properties" for the future by obtaining CPCNs for properties which the utilities did not intend to "timely" provide service to; (2) that allowing an exclusive water CPCN allegedly does not facilitate regional water planning, duplicates infrastructure and increases rates; and (3) it is unfair to a landowner who consented to (or whose predecessor–in-interest consented to) a CPCN to not be able to later choose to obtain less expensive service from another private utility without the consent of the private utility holding the CPCN. (*See* Staff's Opening Brief at pp. 14, 47-8.) As to (3)above, the Delaware Supreme Court stated regarding electrical service, "We hold as matter of policy, customer choice does not play a decisive role in determining the relative rights of providers of electrical service." Delmarva Power & Light v. Seaford, 575 A.2d at 1102. Staff's policy arguments are detailed in Sections VI and VII herein which discuss the testimony at the evidentiary hearings.

provisions of this title.

44. According to Staff, Section 201 grants the Commission broad authority to regulate public utilities and their "property rights, . . . [and] service territories." According to Staff, Section 202 of Title 26 contains the limitations that the General Assembly chose to impose upon the Commission's jurisdiction, and there are no provisions prohibiting the Commission from imposing "reasonable conditions" upon a CPCN, such as the five year opt-out rule. (Staff's Post-Hearing Opening Brief (hereinafter Opening Brief," pp. 36-37)

45. According to Staff, Section 201 grants the Commission broad authority to regulate public utilities and their "property rights, . . . [and] service territories." While Section 202 imposes certain limits on the Commission's powers, nothing in Sections 201 or 202 precludes the Commission from imposing reasonable conditions upon a CPCN. (Staff's Opening Brief, pp. 36-37)

46. According to Staff, Section 209(a)(1) authorizes the Commission to "fix just and reasonable . . . regulations to be imposed ... and followed thereafter by any public utility." Also, Section 209(a)(2) allows the Commission to "require every public utility to furnish safe and adequate and proper service . . . ." Read in conjunction with Sections 201 and 202, Section 209 authorizes the Commission to impose regulations which require a public utility to furnish adequate and proper water service. Section 12.0 is a reasonable incidental application of the pertinent statutes, as it allows a landowner to request to "opt-out" of a water utility's service territory, if the utility has failed to provide "adequate and proper [water] service" within five years of receiving the CPCN to provide water to the new service territory. (Staff's Brief dated 11/24/08, p.5)

47. Also critical to the Staff's statutory analysis of the Commission's authority is Section 203A, which contains the general provisions in Title 26 related to CPCNs. Section 203A(a)(3) provides, in pertinent part, that:

> The Commission, after hearing, on the complaint of any public utility claiming to be adversely affected by any proposed extension, may make such order and prescribe such terms and conditions with respect to the proposed extension as may be required by the public convenience and necessity.
>
> (Staff's Opening Brief, pp. 37-38)

48. According to Staff, by its express terms, Section 203A empowers the Commission to prescribe conditions for a CPCN to extend the service territory of a public water utility. Staff maintains that one cannot read Section 203A(a)(3) and conclude that the Commission lacks the authority to impose conditions upon a CPCN. (*Id.*)

49. According to Staff, the utilities' argument is unpersuasive that the Commission may only impose conditions upon a water utility's CPCN if a competitor files a complaint with the Commission alleging that it would be adversely affected by the issuance of a CPCN. In other words, the Commission lacks the power to impose a reasonable condition on a water utility's CPCN, unless Section 203A(a)(3) is triggered by the filing of a complaint by a competitor. (Staff's Opening Brief, pp. 37-38)

50. According to Staff, Staff submits that the argument is unpersuasive for several reasons. First, Section 203A(a)(3) should be read in conjunction with the related Sections in Title 26, including Sections 201, 202, and 209, which should reasonably be interpreted as allowing the Commission to impose conditions upon CPCNs generally. Second, such a limited reading would mean that a water utility's competitors have an equal or greater say in determining whether to impose

conditions upon a CPCN as the Commission, because the Commission would be without power to act unless another utility lodged a complaint. Third, such an interpretation would be unreasonable and inequitable, because it would mean that certain public utilities may receive CPCNs without conditions in circumstances where others may not, based entirely upon a competitor's decision to contest a CPCN.(Staff's Opening Brief, pp. 37-38)

51. According to Staff, a more reasonable interpretation of the relevant Sections of Title 26 would be that: (a) the Commission has general authority, on its own initiative, to impose appropriate conditions upon a CPCN by regulation; and (b) under Section 203A(a)(3), if a competitor of a public utility will be adversely affected by the issuance of a CPCN, it can file a complaint and ask the Commission to impose appropriate conditions upon the CPCN. Thus, Section 203A(a)(3) was intended to address standing, and ensure that public utilities have standing to ask the Commission to use its general authority over CPCNs to impose reasonable conditions upon a CPCN being issued to a competitor. (Staff's Opening Brief, pp. 37-38)

52. According to Staff, Statutes must be considered and construed together and harmonized if reasonably possible. State ex rel. Price v. 0.0673 Acres of Land, 224 A.2d 598 (Del. 1966). Staff's position is that its construction of the relevant sections of Title 26 is reasonable and harmonizes the pertinent statutory provisions. (Staff's Brief dated 11/24/08, p.7)

For the reasons stated in Sections IV(A),(B)& (C) of this Report, the Hearing Examiner does not agree with Staff's interpretation that 26 Del. C. 201, 202, 209(a)(1) and 203(A)(3) grant the Commission the

authority to enact the proposed five-year Opt-Out rule. Now, this Report will turn to Staff's argument that the proposed five year Opt-Out rule does not conflict with Delaware's Water CPCN Revocation Statute, 26 Del. C. 203C(k)-(1).

A Summary of Staff's argument follows:

> "THE IMPOSITION OF A REASONABLE CONDITION UPON A WATER UTILITY'S CPCN WHICH ALLOWS A LANDOWNER TO REQUEST TO OPT-OUT OF THE SERVICE TERRITORY IF FIVE YEARS HAVE ELAPSED AND WATER SERVICE IS STILL NOT BEING PROVIDED, DOES NOT CONFLICT WITH THE PROVISIONS OF SECTION 203C, INCLUDING PARAGRAPHS (k) AND (l) RELATED TO THE REVOCATION OF A CPCN."

53. According to Staff, Sections 201, 202, 203A, and 209 of Title 26, which permit the Commission to impose reasonable conditions upon CPCNs issued to water utilities, do not conflict with the revocation provisions of Section 203C. Sections 203C(k) and (l) allow the Commission to suspend or revoke a CPCN issued to a water utility. According to Staff, by their terms, paragraphs (k) and (l) of Section 203C only apply to CPCNs for service territories where the utility has instituted water service, and the service is seriously deficient because, for example, the water fails to meet public health standards. (Staff's Opening Brief, pp. 33-39)

54. According to Staff, Regulation 12.0 deals solely with cases where the water utility is not providing any water service whatsoever. Therefore, the new regulation does not conflict with paragraphs (k) and (l), and would simply allow a landowner to request to opt-out of a water utility's service territory if: (a) five (5) years have elapsed without the provision of water service; and (b) the opt-out is proper based upon a review of all relevant factors under Section 12.6. (Staff's Opening Brief, p. 39)

55. Staff argues that the provisions of Section 203(k) and (l) are not mandatory. For example, paragraph (k) says that the "Commission may undertake to suspend or revoke for good cause a certificate of public convenience and necessity held by a water utility." Viewed in the context of Title 26, Paragraphs (k) and (l) give the Commission the express authority to protect the customers of a utility, if, for example, the utility is providing them with unsafe drinking water. (Staff's Opening Brief, p. 39)

56. According to Staff, Artesian's and Tidewater's argument that Section 203A(a)(3) is inconsistent with Section 203C is unpersuasive. However, Staff maintains that in order to accept the argument, the Hearing Examiner would have to conclude that Section 203C impliedly repealed Section 203A(a)(3), a conclusion that Delaware courts are loathe to reach. Christiana Hospital v. Fattori, 714 A.2d 754, 757 (Del. 1998) (in statutory interpretation, doctrine of implied repeal is not favored); C. v. C., 320 A.2d 717, 721-22 (Del. 1974) (repeal of statute by implication is not favored and occurs only when two statutes are so inconsistent that reconciliation is impossible). (Staff's Opening Brief, p. 38)

57. According to Staff, Artesian and Tidewater argue that Section 203C requires the Commission to issue a CPCN to a water utility if the provisions of the statute are met. However, the argument ignores the fact that the Commission will issue a CPCN under those circumstances, except that under Regulation 12.0 the landowner will have a limited right to request an opt-out. Section 203C does not prohibit the Commission from placing a reasonable regulatory condition on a CPCN. (Staff's Opening Brief, p. 38)

58. According to Staff, the application of Regulation 12.0 would not necessarily result in the loss of the entire service territory encompassed by a CPCN. For example, if there are multiple landowners and multiple parcels in a service territory, only one landowner may seek to opt-out, meaning that, even if the opt-out was approved, the service territory would remain largely intact. Even in the case of a service territory made up of the property of a single landowner, Regulation 12.0 does not involve the revocation of a CPCN, but instead simply affords the opportunity for the landowner to opt-out. The opt-out provision is not exercised at the Commission's initiative. Only the landowner has the right to request the opt-out. Thus, the CPCN is not revoked by the Commission, although the utility admittedly may lose the right to serve the landowner's property. The Staff submitted that there is a substantial distinction between an affirmative act of the Commission to revoke a CPCN where service is being provided, and a request by a landowner to opt-out of a service territory because the utility is not providing any service. Under the latter circumstance, the CPCN will simply lapse if the condition is not met. And the Staff notes that the provision of water service is a matter uniquely within the control of the water utility. (Staff's Opening Brief, pp. 39-40)

59. According to Staff, the Commission's power to impose reasonable conditions upon a CPCN is unequivocally supported by the Delaware Supreme Court's decision in Formosa Plastics Corp. v. Wilson, 504 A.2d 1083 (Del. 1986). There, the appellant Formosa Plastics challenged the power of DNREC to revoke its environmental permits, which would result in the immediate closure of an "essential plant" at considerable cost, and significant injury to its business, business reputation, business relationships, and employee relationships. (Staff's Brief dated 11/24/08, pp. 9-10)

60. According to Staff, Formosa Plastics challenged the authority of the Secretary of DNREC to revoke its permits on the ground that the statutes governing DNREC's authority did not contain an express provision authorizing DNREC to revoke its permits. Even though there were no provisions in the governing statutes authorizing the Secretary to revoke Formosa Plastics' permits, the Supreme Court concluded that the Secretary had such authority:

> The authority to grant a license includes the power of revocation whether it is expressly or impliedly reserved by statute. (*See* 504 A.2d at 1088.) (*Id.* at 10)

61. According to Staff, if the Secretary of a state agency has the power to revoke the environmental permits for "an essential plant" and thereby cause the permit holder to immediately close the plant and incur considerable costs and significant injury to its business, even though the governing statutes do not expressly confer such authority, then the Commission certainly has the authority to impose the far less onerous condition proposed under Regulation 12.0. Stated differently, if a set of statutes which expressly permit a state agency to impose conditions on a permit necessarily imply the power to revoke the permit, then statutes which grant a state agency the power to award and revoke a permit, and to impose conditions on the permit because of a complaint by a competitor, must necessarily imply the general power to impose conditions upon the permit.[9] (*Id.*)

62. According to Staff, its position is also supported by a 1971 case involving a CPCN for bus routes. Greater Wilmington Transportation

[9]The Hearing Examiner's Recommendation that the proposed opt-out rule not be adopted is consistent with the Formosa Plastics decision. In Formosa Plastics, there was no applicable revocation statute so the Delaware Supreme Court implied the right of revocation. See 504 A.2d at 1088. Regarding water CPCNs, there is a revocation statute enacted by the Delaware legislature.

Authority v. Kline, 285 A.2d 819 (Del. Super. 1971) *cited in* Delmarva Power & Light Company v. City of Seaford, 575 A.2d 1089 (Del. 1990), *cert. denied,* 498 U.S. 855 (1990). In Delmarva Power, the Delaware Supreme Court held that an electrical CPCN and franchise issued under Section 203A held by Delmarva Power was not an "exclusive property right." (Id. at 1096.) However, the court also held that "the exclusivity warranted by the [electrical CPCN] operates to protect Delmarva from competition from other regulated utilities, not municipal utilities such as Seaford Power." (Id. at 1098) Staff argues that since the Kline case was cited in Delmarva Power, Kline holds that CPCN is a license which is not exclusive, and can be revoked by the Grantor "at will" i.e. without cause. (*See* Kline at 823.) Staff argues that Kline allows the Commission to revoke water CPCNs. (Staff Opening Brief, pp. 40-41)

This completes this Section which describes Staff's legal arguments as to why the five-year Opt-Out Rule should be adopted. For the reasons stated in Sections IV(A),(B) and (C) of this Report, the Hearing Examiner recommends that Staff's proposed five-year Opt-Out rule not be adopted because it is not permitted by Delaware's Water CPCN Revocation Statute, 26 Del. C. 203C(k)-(1). Now, this Report will summarize Staff's proposed 2008 Regulations.

V. SUMMARY OF STAFF'S 2008 PROPOSED REGULATIONS

63. The Revised Regulations dated January 28, 2008 proposed by Staff are attached hereto as **Exhibit "A."** The utilities' Regulations proposed by Artesian and Tidewater are attached hereto as **Exhibit "B."** The following is a *Summary* of the Staff's proposed Regulations. Some of these proposed Regulations have been "agreed upon" by the parties and others are "disputed." The Agreed Upon Regulations are discussed further

herein in Section VIII. The disputed Regulations are discussed further herein in Section IX.

(A) ***Section 2.1***. The proposed Regulations provide as follows: (i) “The existence and boundaries of such *a[n existing] development or subdivision* may be established by a plat or subdivision map, documents reflecting common deed or conveyance restrictions, homeowner association documents or other means; and (ii) The existence and boundaries of such an *unincorporated community* may be established by a plat, map, census, data, post office designation, testimony of the residents, or other means. (Agreed Upon)

(B) ***Section 3.2.*** regarding "Proposed Service Areas." This proposed Regulation seeks to limit a single CPCN application to five (5) “proposed service areas.” (Disputed)

(C) ***Section 3.13.*** requires that a CPCN application include a description of how and when the applicant plans to provide water utility services to the Proposed Service Area or an explanation as to why such an estimated timetable cannot be provided. Additionally, if the Proposed Service Area is intended to be part of a regional water system, Staff has included a requirement that the applicant identify the region which includes the Proposed Service Area and provide information setting forth the applicant's plans for the regional water system. This requirement would not apply to a

Proposed Service Area for a municipal water utility or a governmental water utility which lies within the political boundaries of the municipality or government. (Disputed)

(D) ***Section 6.3.*** This Regulation proposes that a Municipality must be notified 30 days prior to CPCN Application if Proposed Service Area is in a Municipality's "Future Annexation Area" or "Future Growth Area." (Disputed)

(E) ***Sections 7.4.*** This Regulation would require CPCN applications to encompass only a single parcel of land, or two (2) or more contiguous parcels that will be provided water utility services by the same stand-alone system or by the same water main extension. (Disputed)

(F) ***Section 8.1*** contains a notice which water utilities must send to landowners to solicit the landowner to sign a petition for water service. *Section 8.2* requires the water utilities to include a statement on the petition for water service which the landowner must sign, which advises the landowner that the property may have to remain in the water utility's service territory on a permanent basis. *Section 8.5* requires water utilities to file with the Commission any written materials the utilities propose to use to solicit landowners to sign a petition requesting water service. (Disputed)

(G) ***Section 9.2***. requires that notice be sent to each landowner in the Proposed Service Area not more than thirty-five (35) days and not less than thirty (30) days, prior to the filing of a CPCN application with the Commission. (Disputed)

(H) ***Sections 10.2 and 10.3.*** The notices to landowners required by Sections 10.2 and 10.3 have been substantially rewritten in an effort to make them shorter and easier to comprehend. (Disputed)

(I) ***Section 10.6.*** requires that, in addition to the notice required by Sections 9.1 and 10.1, the utility must also publish the notice in the required newspapers within ten (10) days of filing its CPCN application with the Commission. (Disputed)

(J) ***Section 11.1.*** requires landowners to file objections to a CPCN application within seventy five (75) days after receiving the written notice from the utility required by Sections 9.1 and 10.1. (Disputed)

(K) ***Section 11.2.*** The period of time in which *non-landowners* may object to a CPCN application is forty (40) days from the date of publication in the newspapers pursuant to Section 10.6, which closely tracks the period for *landowners* to object after receiving the notices required by Sections 9.1 and 10.1. (Disputed)

(L) ***Section 11.6.*** The period of time in which a utility

must retain all records related to a CPCN application has been extended from five (5) years to seven (7) years. (Agreed Upon)

(M) ***Sections 12.1 through 12.6.*** (The entire Section 12 is disputed. This is the proposed five year Opt-Out Rule. The actual proposed Regulation is located on pages 34-38 of the Proposed Regulations attached as Exhibit "A" hereto and is entitled the "Conditional Grant of a CPCN for a Proposed Service Area.") This Section has been almost completely rewritten from the Staff's 2007 draft of these Regulations which contained a provision which established a three year (3) period after which a CPCN could lapse. The three (3) year lapse provision has been eliminated. In its place, Staff has substituted a landowner "opt-out" process whereby landowners, who are not receiving service from a water utility five (5) years after the CPCN was granted, may file a request with the Commission to "opt-out" of the utility's service territory. This makes the granting of the CPCN "conditional." See *Section 12.2*.

The landowner must file the request with the Commission within ninety (90) days of the date which the landowner receives written notice from the utility that they may request to "opt-out." See *Section 12.4 & Notice form attached thereto*. The utility has the right to file a proceeding with the Commission within 150 days to oppose the

landowner's request to "opt-out." See *Section 12.5* For example, the utility may have invested substantial resources to serve the properties within the CPCN territory and has reasonable plans to provide water service in the foreseeable future.

(N) ***Section 12.3*** requires that five (5) years after a CPCN has been granted to a water utility, the utility must file a report with the Commission specifying those properties within a CPCN territory which are or are not receiving water service from the utility. This report must be filed with the Commission within sixty (60) days after the CPCN reaches its fifth year anniversary. In addition, the water utility must notify customers who are not receiving water service that the customers may file a request with the Commission to "opt-out" of water service with that utility.

(O) ***Section 12.6*** expands upon the factors that the Commission must consider in making the determination whether landowners may "opt-out" of the utility's service territory.

(P) ***Section 13.2.*** This section addresses the factors the Commission may consider when making a determination to revoke a CPCN for "good cause." This Section tracks the factors contained in 26 *Del. C.* § 201C(k)(1). 26 *Del. C.* § 201C(k)(2), permits the Commission to consider additional factors "deemed necessary by the Commission." Thus, additional factors are also listed by Staff.

The Staff's proposed factors are listed in proposed Rule 13, including but not limited to: fraud, dishonesty, criminal conduct insolvency of utility, violations of water statutes, failure to comply with a court order, and other factors the Commission deems relevant. (See Staff's Proposed Rule 13.) (Agreed Upon)

VI. TESTIMONY AT NOVEMBER 19, 2007 EVIDENTIARY HEARING

64. As to the Staff's reasons for developing the proposed Regulations, Andrea Maucher, Public Utilities Analyst III, testified on behalf of the Staff at this hearing. (T-106-07.) At the time, Ms. Maucher was responsible for reviewing CPCN applications and making recommendations to the Commission. (T-107.) During the five (5) years prior to that hearing, Ms. Maucher has reviewed all CPCN applications submitted to the Commission. (Id.) The CPCN applications involve 1 to 300 parcels. (T-144.) Ms. Maucher testified that Staff developed the proposed Regulations because:

(a) According to Staff, a CPCN is a "request to offer service within a reasonable time" which is instead being used by some utilities as a "request for service territory." (T-114-15, 152, 179-80.)

(b) There have been CPCN applications for parcels which are not located near the Applicant Utility's existing facilities. (T-115, 120, 161.) Thus, the area requested in the CPCN *may* not be serviced for a reasonable period of time. (T-136.) If an area is not serviced, then a customer is bound to a utility not servicing the area which *could* cause

extra equipment installation expense to the property owner and/or the utility with or without the CPCN when the property owner seeks service. (T-181.) Staff stated that "it appeared to not be cost-effective." (T-181.) Thus, Staff proposed a 3-year review of CPCNs (*not* an automatic lapse) which evolved into a proposed, five year, "Opt-Out" review, after this hearing occurred. (T-194.)

(c) Ms. Maucher also testified that some Property Owners have called the Commission asking for an explanation of CPCN solicitation and request for CPCN notices sent by the utilities because the customers did not understand the language in the Notices. Tidewater admitted actively soliciting Property Owners but Tidewater says that this was done to promote its regional service plan. (T-214.) Ms. Maucher testified that some property owners stated that the CPCN notices were unclear as to the current and future effect of a CPCN on a property owner's rights, i.e. where the company would serve, the cost, etc. (T-116, 169.) One property owner in the Jonathan's Landing subdivision in Magnolia orally complained to Ms. Maucher that one utility was serving an area right next to another utility's service area. (T-168-69.) Apparently, a utility had to lay main through another person's back yard to service the landowner. (T-158.) Ms. Maucher did not recall any landowner who complained that

they were not receiving water service within a reasonable amount of time. (T-178.) No "formal complaints" by property owners had been filed with the Commission as of the date of this hearing. (T-168-69, 178.)

(d) Ms. Maucher testified that if "there is a petition for service, signed by the landowner of record, then the Commission must grant the CPCN." (T-186-87.) Ms. Maucher testified that this was due to "the way the statute is written." (T-186-87, 1191.)

(e) Lastly, a CPCN allegedly remains in the chain of title or "goes with the property" and therefore binds future owners of real property. (T-177.) Thus, the decision of a property owner binds the future owner of that property as well. (Id.) There was a dispute as to whether a CPCN is actually in the "chain-of-title" when a purchaser buys real property. (T-177.) No party introduced testimony from a Delaware real estate attorney or expert as to this issue.

65. Artesian and Tidewater strongly objected to a CPCN possibly lapsing after three years and or even five-years. (T-251, 163, 183, 194.) Artesian and Tidewater are the two (2) water utilities expanding the most in Delaware. (T-115.) [Artesian serves approximately 243,000 Delaware residents while Tidewater serves 31,600 residents. *See* Staff Opening Brief, pp 3-4 & Artesian's website May 7, 2009] United Water, a water utility serving 36,700 customers in Northern Delaware "did not hold a strong opinion" as to the proposed three-year rule. (T-108, 183; Ex.

2.; *see* PSC Docket 09-60) Of United's 16 "developer" projects, only one (1) project was not served within five (5) years. (T-191.) Also, representatives of several municipalities attended the hearing. (T-88-89.) Only the Town Manager of Selbyville offered testimony; he suggested increasing the lapse time period or eliminating it. (T-321.)

66. Artesian's and Tidewater's (hereinafter again referred to as "the utilities") legal argument was primarily based upon the statutory framework. However, at this evidentiary hearing, the utilities also presented testimony as to "planning" reasons supporting the utilities' position. Testimony included the following:

(a) The utilities engage in "regional planning" whereby the utilities plan on acquiring CPCNs beginning with larger parcels with an eye toward more efficiently servicing even larger tracts of land. (T-214, 243, 257, 276, 1121.) The utilities maintain that they constantly monitor this process. (T-258.) Smaller "target areas" are also acquired which may or may not become part of a regional system, depending upon development, water mains, etc. (T-243, 270, 276.) In the early stages, a utility may construct a temporary water plant or even buy water from another utility. (T-1121, 1151). The utilities maintain that, although it may appear somewhat scattered, the utilities are in the "earlier planning stages" in those areas. (T-213.) Although the utilities do not have a regional plan for each area in Delaware, if the utility has a CPCN in an area, the utilities maintain that that

area is part of a regional plan. (T-223.) Mr. Spacht testified that Staff does not have all of the information the utilities gather as to planning out their CPCN acquisitions such as site acquisition, paying for infrastructure, etc. (T-289-91.) The utilities' goal is to more efficiently and economically provide water service by achieving "economies of scale." (T-207)

(b) Utility capital budgets are projected over a five year period. (T-274, 222.) There was no testimony that the utilities' budget cycle is related to the proposed five year Opt Out Rule. The utilities' position is that a 3 or 5 year opt-out rule causes uncertainty with their long term planning because the utilities' lose current CPCN territory which can be used for future customers. (T-163.) Utility Strategic Planning can span fifty (50) years. (T-27.) CPCN's affect the share value of public water utility companies like Artesian. (T-275.) A CPCN review process after three (3) or five (5) years could affect share value because investors consider permanently certificated areas to be more secure and more growth-oriented. (Id., T-308.) This is an issue in some of Artesian's corporate Prospectuses. (T-275.)

(c) Despite their regional planning, Mr. Patrick from Tidewater and David Spacht, Artesian's CFO, testified that the utilities' objection to the 3-

or 5-year review process is due to many factors outside of the utilities' control, such as: *the economy*, which is currently poor (T-206); *the real estate market* which is currently "down" (T-202,206-07,222), i.e in a poor economy, developers do not want to spend substantial amounts on water infrastructure knowing that sales will not be forthcoming (T-206, 222), *County approvals* (including a Preliminary Plan approval) which are typically a 12 to 15 month process but can vary (T-202-03,1150), *delay in the issuance of sewer permits* (T-278), *State approvals* such as historical designations, *DNREC, i.e. sediment and erosion control (*T-204*),* wastewater approvals (T-204), *State Planning Opposition* (T-203), *fire protection issues* (T-180, 273, 279-80), *protected wildlife including bald eagles* (T-205), an *unknown grave site/archaeological reasons* (T-205), *where a water main is located* (T-270), and *DelDOT Traffic Studies*. (T-204.) Development projects can be delayed by the local and state approval process, as well as market conditions. (T-202-07)

(d) Mr. Spacht also testified that when Artesian was working with the State to attract computer chip manufacturers in the White Hall Farm area, Artesian obtained CPCNs and drilled wells in that area at its expense. Although the wells have not been used yet, Artesian "would not have done those

> wells, nor participated in the planning exercise if [Artesian} thought that the property could be taken away from us." (T-285; *see also* T-687-90 & Para. 89 herein)

67. Tidewater's representative, Bruce Patrick, Vice President of Engineering, testified as to the percentage of 68 CPCN-certificated areas requested by the Commission in which Tidewater provided water service: (a) Within three (3) years - 59% of the certificated areas were served by Tidewater (T-112); (b) Within four (4) and five (5) years - 78% of the areas were served (Id.); and (c) Within five years - 87% of the areas were served (Id.) These percentages of CPCN-certificated served areas applied to the five (5) year period preceding the November, 2007 evidentiary hearing - when the economy was substantially better than it is today. (T-112, 164, 165, 202, 206-07, 222.) Also, Mr. Patrick believed that, at the time, other Tidewater areas more than (5) five years before had a higher service percentage. (T-245-46.) These areas did not include all Tidewater certificated areas; the areas were selected by the Staff (T-144.) Thus, Tidewater's position is essentially that the utilities are doing everything practicable to timely provide water service in CPCN-certificated areas.

68. On March 27, 2009, Artesian released its statistics on water service provided within five (5) years of CPCN issuance. Artesian's estimated that it served "less than 50%" within 5 years. (*See* Exhibit 161.) Tidewater served 87% within 5 years, at least before the national economic downturn. (T-112)

69. According to the utilities, "Regional Planning" is less expensive for utilities than stand-alone systems. (T-236.) According to Mr. Patrick of Tidewater, the Developer builds the stand-alone system

with supply and the storage tank for on-site distribution with 1/8 inch pipe and a 5/8 inch meter. (T-251, 283.) The Developer pays a $1,500 fee per residential lot. (T-252, 282.) However, Staff is concerned that, without proper CPCN approvals, extra infrastructure costs could be passed on to the taxpayers. (T-179.) PSC Regulation Docket No. 15 has adequately handled these issues. (Id.)

70. Through Ms. Maucher, Staff introduced into evidence the Commission's color-coded "CPCN Maps" from various areas within Delaware's three (3) Counties which showed service areas where CPCNs had been issued. (T-115-16, 118.) These maps are based upon the Commission's "GIS Map" software. (T-116.) According to Staff, the Maps reflected either certificated areas or areas where CPCN applications had been made but, in Staff's opinion, the utilities could not serve these service areas "within a reasonable time" or it was "not economical." (Id.; Exhs. 7 through and including 20, T-117, 122 – economically (T-123.) The utilities strongly disagreed with Staff's assumptions about what the Maps proved, if anything. For example, if the map showed a stand-alone parcel, the utilities' position was Staff did not introduce any evidence that the stand-alone parcel would not be served soon or might be using a well for water service. (T-166-67.)

71. According to Staff, this process is not "cost-effective," although Staff did not perform any analysis as to the cost of water infrastructure such as analyzing the cost of laying pipe vs. the benefits of economies of scale. T-136, 161, 180-81.) For example, if a utility within a larger utility installs a well to serve an interior isolated pocket, Staff believes that would be less economical than a larger utility using existing mains. (T-124.) No other evidence was introduced by Staff as to cost-effectiveness.

72. According to Staff, the CPCN Maps reflect that there is "service territory" that is surrounded or nearly surrounded by the service territory of another utility, or in limited cases, isolated pockets where there is no nearby existing service. (T-128.) Some of these areas include: an area east of Middletown (T-122); an area between Townsend and the New Castle County/Kent County line (T-126), an area northwest of Smyrna (T-127), south of Smyrna (T-128), south of Dover near Frederica and north of it (T-128-30), west Kent County (T-131), south of Harrington (T-135), east Millsboro (T-138), an area east of Georgetown near the Lewes/Georgetown highway (T-140-41), west of Lewes near Oyster Rocks Road (T-145-46), west of Selbyville (T-148), north of Selbyville (T-149), a very large parcel southeast of Laurel (T-153), eastern Sussex County (T-155), and parcels north and west of Smyrna (T-156).

73. Staff was more concerned about isolated, smaller parcels than large certificated parcels because the large parcels might become housing developments but the small parcels within larger parcels have less likelihood of obtaining service if requested. (T-154.)

74. The Hearing Officer also took testimony that Delaware has an ample amount of water from groundwater. (T-287.) Some neighboring states need to obtain water from freshwater streams more than Delaware. (Id.)

75. Lastly, there was also testimony that Tidewater and Artesian have, after CPCN application, publication and Commission approval, "swapped" CPCN-certificated areas where it was mutually beneficial to do so. (T-281.) Swapping occurs when a utility "abandons" its CPCN for a service area, and another utility is awarded a new CPCN and services the area, which may involve only one parcel. (T-171.) "Swapping" between Artesian and Tidewater has occurred only about five (5) times, generally

swapping one parcel for another parcel. (T-1199.) Less than fifteen (15) swaps have occurred between other water utilities. (T-1165-66) Ms. Maucher of Staff testified that "swapping" is not a "regular occurrence." The utilities argued that these situations where a utility with the CPCN cannot service a customer are usually amicably resolved between the utilities. (T-254, 256.)

76. The Hearing Examiner requested Artesian's and Tidewater's GIS service maps reflecting where water service was occurring. (T-225, 301.) These maps were received by the Hearing Examiner prior to the March, 2009 evidentiary hearing which is described next.

VII. TESTIMONY AT MARCH 6, 9 and 11, 2009 EVIDENTIARY HEARINGS

77. Kevin Neilson, the Regulatory Policy Administrator in charge of the water CPCN section, explained Staff's rationale for the five year Opt-Out Rule. Staff's position was that that the Opt-Out Rule would encourage regional planning. (Staff's Opening Brief, p. 47, T-919-920.) Staff's Andrea Maucher also testified that adopting the rule would encourage regional planning between the utilities. (*See* 2007 hrg.- T-181; 2009 hrg.–p.1172, 1185) Mr. Neilson testified that Staff was also attempting to address concerns of property owners who had signed petitions to be in a CPCN service territory and now the property owners wanted to have the CPCN revoked. (T-843, 866-867.)

78. Mr. Neilson testified that the Staff had received calls concerning only two (2) properties complaining that they were not getting service in a timely manner despite being in a CPCN service territory. Mr.

Neilson identified two (2) properties specifically: 1) the Bowman property in Ocean View-waiting on service from Tidewater; and 2) the Bush Farm in Dover which, after the hearing, began being served by the City of Dover which recently obtained the CPCN from Tidewater. (T-868-872; *see* PSC Docket 09-CPCN-11 "Bush Farm") Mr. Neilson could not recall Staff ever recommending that a CPCN be revoked because a water utility refused to provide service within its CPCN territory. (T-871.) Bruce Patrick of Tidewater had also testified that he did not know of any customer who had complained to Tidewater that they were not receiving timely service, other than Mr. Bowman. (T-258)Not receiving timely service is different from, for example landowner Ms. Marilyn L. Ellers who testified that she and her husband wanted to opt-out of their Artesian CPCN consented to by the prior owner of the Ellers' property. (Exh. 78, p. 3-4). The Ellers purchased the properties at a tax sale. (*Id.*)Artesian offered Ms. Ellers that Artesian would relinquish its CPCN provided Artesian retained a right of first refusal of service. (T-831). This would allow the Ellers to use a well which the Ellers wanted to do. (Exh. 78, p. 3). There is a PSC Docket pending involving the Ellers who have filed a Complaint against Artesian. (*See* PSC Docket 359-09 Ellers adv. Artesian *et al*.)

79. Mr. Neilson testified that the "Plan of Service" requirement in proposed Regulation 3.13 would allow the Commission to collect information it can share with the PSC Staff and other regulatory agencies, such as DNREC, the Water Supply Coordinating Council, and the Fire Marshall. (T-889.) The Commission would not have the authority to deny a CPCN if the Plan of Service submitted was inadequate as Staff's Counsel so stipulated. (T-889-893.) Mr. Neilson admitted that the proposed five year Opt-Out rule would do nothing to help a customer like

Mr. Bowman, who has a working well but would like to sell his home and thinks it would be more valuable if he had public water from Tidewater, except that he does not want to pay the approximately $30,000 contribution-in-aid of construction required by Regulation Docket 15. (T-905-908.) When asked to give an example of wasteful duplication of infrastructure resulting from isolated areas served by an individual system, Mr. Neilson referred to Meridian Crossing, where the "wide-area franchises" of Artesian and United touch in Northern New Castle County. (T-918-919, *see also* Testimony of David Spacht regarding Meridian Crossing at T-959-962). Mr. Nielson testified that both Artesian and United have "tanks, pumps and facilities" in the same areas. (T-919.) Mr. Neilson conceded that redundancy of supply to Christiana Care Hospital by both United and Artesian was not wasteful duplication of infrastructure, but was in fact, a good thing. (T-919.) When asked to explain how the proposed five year Opt-Out rule could decrease water rates for customers, Mr. Neilson's testified that the proposed rule was an "incentive to a utility to think about reasonable planning. [It] will have them thinking before they start just going out and requesting service, or requesting customers to sign up for their service all over the state."(T-919-920.) Mr. Neilson was not able to quantify the savings that Staff anticipates will be caused by this Rulemaking because Staff never performed such any such analysis. (T-920-921.)

80. Andrea Maucher again testified for Staff at the 2009 hearing. In response to a question regarding CPCN parcels obtained for single lots or small parcels by Artesian and Tidewater, Ms. Maucher testified that Artesian had explained to Staff that "they planned on putting a main down the road, and they were going to pick it up as they went along was the

response to that one." When asked whether she found that explanation satisfactory, Ms. Maucher responded:

> "Well, it goes back to the way the statute has been interpreted. If they have a petition and have provided notice to the landowner, the Commission has granted the CPCN.
>
> So, it has been interpreted that there's no – you can't say no just because it doesn't appear to make any sense [to Staff]. That goes to the heart of some of Staff's memos. These applications should be request for areas to serve and plan of service so we could have that information." (T-1190-1191.)

81. Ms. Maucher testified that, under the five year Opt-Out rule, if a landowner seeks to opt-out and the water utility wants to retain the CPCN, there would be a formal docket opened, with costs associated with the Docket, plus legal fees incurred by the utility and possibly the landowner. (T-1202-1203.)

82. Ms. Maucher testified that she was aware that some property owners sign up with Artesian but do not want service immediately because they are happy with their private wells. When asked how to square that admission with her "statement just moments ago that a CPCN application is a request for service," Ms. Maucher responded:

> "These proposed rules are to give landowners protections. If they want to be in a CPCN area, that's fine. That's their choice. It's for those people that, for whatever reason, aren't getting service that they thought was coming to them in five years, or however long, and aren't getting it and want it to get out because there may be a better option." (T-1207.)

83. When asked to give examples of a property owner included in a CPCN territory who wanted water service and could not get it in a timely manner, Ms Maucher testified that she could recall only two (2) Delaware property owners who had notified the PSC, but not filed a Complaint: 1)

Mr. Bowman in Tidewater's territory who continues to use his well; and 2) a property owner near Jonathan's Landing in Tidewater's Magnolia territory whose property was adjacent to an Artesian water main. Ms. Maucher repeated her 2007 testimony that she thought the situation near Jonathan's Landing had been worked out because she had not heard further from that property owner. (T-1207-1209; Artesian Brief, p. 42) Additionally, there was evidence that there are sixty (60) homes south of Camden which Tidewater, the CPCN holder, is not currently serving and which the non-profit Camden-Wyoming Sewer & Water Authority ("CWSWA") is willing to serve and has the infrastructure to serve. Instead, these 60 homes have no choice but to rely on their wells. (See pre-filed testimony of S. Gharebaghi, P.E., CWSWA's Independent Consulting Engineer, pp. 5-7, Exhibit 79). Tidewater's position is that it would release the CPCN for $1,159.62 per EDU. (*Id.* at 10-14; Exh. C-E). Thus, while Staff introduced some evidence as to how the proposed Opt-Out Rule would protect Delaware landowners, it is the Hearing Examiner's Recommendation that Staff did not establish that the proposed Opt-Out Rule is just and reasonable and supported by substantial evidence in the record.

84. Artesian's CFO David Spacht again testified at the 2009 hearing persuasively arguing that a substantial risk factor would be created in the capital markets by the proposed five year Opt-Out rule. In the 2009 hearing, Mr. Spacht testified regarding the following credentials and experience that he possesses regarding Artesian's access to the capital markets:

(a) Mr. Spacht has worked with Artesian since 1980, working as a fixed asset accountant, controller, assistant treasurer, and Chief Financial Officer since 1992. He holds a B.S. in Finance and Accounting from Goldey-Beacom College. (T-711-12). Mr. Spacht has been involved on behalf of Artesian in the issuance

of one (1) initial public offering (IPO) and four (4) secondary offerings. He was CFO in 1996 when Artesian was listed on NASDAQ which was Artesian's "first big foray into the national markets." (T-644-645.)

(b) Mr. Spacht's credentials include his service on the faculty of Rate School, which is a seminar offered by the National Association of Regulatory Commissions (NARC). Commissioners and utility and regulatory employees from around the country attend rate school to learn about the calculation of water rates. Mr. Spacht has served on the faculty for approximately ten (10) years. Mr. Spacht's presentations at Rate School include "The Real World View on Return on Equity, in other words, we have an expert that gives their presentations, and I give presentations based upon - - you know – how the markets look at individual companies." (T-714-715.) Mr. Spacht has not given any presentations related to the stock market or risk. (T-715.)

(c) In 1996, Mr. Spacht was the principal drafter of Artesian's S-1 filing with the Securities and Exchange Commission (SEC), which describes the financial health of the company. (T-646.) Mr. Spacht drafted the sections of the document on risk factors, business, strategic direction, and financials. (*Id.*) Lawyers and auditors also participated in drafting the S-1 filing. (*Id.*)

(d) Mr. Spacht played the same role in subsequent S-2 and S-3 issuances of securities as he did with respect to the 1996 IPO. (T-647.)

(e) Mr. Spacht is the primary author and a signatory on all Artesian documents filed with the SEC, including 10-K, 10-Q, F8-K documents and all reporting documents that the company must file. Mr. Spacht is responsible for Artesian's compliance with additional reporting required by the Sarbanes/Oxley Act. As a signatory to these SEC filings, Mr. Spacht is personally liable for the accurate content of those documents. (T- 648-649.)

(f) Mr. Spacht testified about his direct involvement with investors, investment bankers, stock analyst and stock brokers in connection with Artesian's stock offerings. He stated "at the end of the day, I stand before a crowd of analysts and brokers, and I tell them why you should buy our stock versus somebody else['s stock]." (T-649-650.)

(g) Mr. Spacht testified that the risk factors listed on page 11 of Artesian's 10-K filing would have to be changed to include the new risk created by the five year opt- rule. (T-662.)

85. Mr. Spacht disagreed with the testimony of Staff's expert witness regarding the market's understanding of Artesian's service territory. Mr. Spacht testified "[o]ur service territory is legally defined by our CPCN's,

[and] includes all the service territory we currently are allowed to serve, whether it's served today or not." (T-662.) Mr. Spacht explained the importance of Artesian's certificated service territory for future growth as follows:

> "I am personally responsible when we are issuing shares to talk to brokers and analysts in front of them, give a presentation about our company and about what our growth prospects are. That's what I do. It's called the Strategic Direction of the Company, and they want us to go around to the brokers so that they can sell our shares.
>
> In that regard, where I actually physically appear in front of analysts and brokers, I discuss the growth aspects of the company, including franchise territory that is not currently served because it shows to them the future prospects for the company and what growth prospects they can sell to new investors to buy our shares of stock to say there is growth for this company, your shares will increase in value, therefore, buy this stock.
>
> It is a marketing . . . piece. It is the strength of our company when we go out to sell our shares. That's personal. Those are the questions we got from our analysts and the brokers whenever we are out selling our shares of stock.
>
> So, it is a significant factor when we're talking to our analyst, our brokers, and selling our shares in the marketplace." (T-664-665.)

86. Mr. Spacht testified that he had discussed the proposed Opt-Out Rule with experts in the investment community, analysts and investment bankers and told them his opinion about what the proposed rule would do for Artesian's growth prospects and the risk factor. After those conversations, Mr. Spacht has not changed his opinion. (T-665-666.) Mr. Spacht testified about his experience in making presentations to the New York Society of Security Analysts and the Philadelphia Security Association regarding the issue of Artesian's trading volume and the lack of liquidity in Artesian's stock. (T-676.) Mr. Spacht testified that the

lack of liquidity took a “great toll” on Artesian’s stock price when an institutional investor was unable to sell the stock quickly. (T-679.) Mr. Spacht testified that the predominant amount of Artesian’s shares are in the retail market, generally held by individuals rather than institutional shareholders. (T-681.) Mr. Spacht testified that these retail investors generally hold onto the stock, looking toward the consistent Dividend growth and consistent growth in the value of the shares. (*Id.*.) Based on his discussion with shareholders and discussions at “road shows” promoting the stock, Mr. Spacht testified that investors consider Artesian’s certificated franchise area for future service to be an important factor in terms of the value that they place on Artesian’s stock. (T-682-683.) When asked why service territory is important to the shareholders, Mr. Spacht responded as follows:

> “The predominant story out there in terms of the growth in a water company’s share, again, these are from presentations made by myself, as well, it’s the growth in the service territory. It’s the ability to expand its service territory.” (T-683.)
>
> “I mean, we’ve talked about growing in Delaware. We’ve talked about growing in Maryland.” (T-683-84.)

87. Mr. Spacht testified that, if service territory is lost even where there are no existing Customers and/or rate base, there is a risk of loss of substantial funds invested by a utility and decreases future chances of such investment being made again. (T-687-91.) Mr. Spacht gave as an example Artesian’s expansion south of the C&D Canal, where Artesian invested millions of dollars in securing well supplies in anticipation of a State of Delaware initiative to attract a computer chip manufacturing facility. Those wells were paid for by shareholders as they are not in rate base, but rather classified as property held for future use. (*Id.*) Mr. Spacht stated that the five year Opt-Out rule would be a deterrent to

Artesian making that type of investment to assure supply. (T-689.) Mr. Spacht testified that the investment in southern New Castle County was "well over a couple of million dollars that went into drilling wells, securing the land, because we had to purchase land, as well, because in New Castle County, you have to buy like a three-acre parcel in order to secure the well site because of the Wellhead Protection Act." (*Id.)* Mr. Spacht testified that there are also a number of other locations throughout the state where Artesian has taken the initiative to find supply ahead of development. (T-690.)

88. Mr. Spacht also testified as to the interpretation of what the rating agencies mean by the term "service territory and franchise areas." Mr. Spacht testified that as a corporate officer he provided to rating agencies, such as Standard and Poor's "maps of all our legal service territory, which does not include any maps of infrastructure." (T-703.) Accordingly, Mr. Spacht's interpretation of what is meant by "service territory or franchise," in the documents from the rating agencies is "all service territory that the company currently has that is theirs legally [and] theirs in perpetuity, according to the rules and statutes in the states that we occupy those territories - - - or own those territories." (T.-703) Mr. Spacht stated further that Artesian has never had a CPCN revoked for good cause. (T-704.)

89. Mr. Spacht disputed Mr. Parcell's assumption that, if the five year Opt-Out rule was adopted, Artesian would understand that it can instead focus on obtaining service territory where it anticipates serving within five years. (T-704.) Mr. Spacht testified that if the Opt-Out rule becomes law and Tidewater is not serving a property within its CPCN service territory within five years, Artesian, depending on the

circumstances, might encourage the property owner to opt-out of Tidewater's service territory. (T-705-706.) If the Opt-Out rule becomes law, Mr. Spacht will draft a new risk factor to disclose same. (T-708.) Contradicting Mr. Parcell, Mr. Spacht testified why the (then proposed) three year lapse rule was not listed as a risk factor in Artesian's 10-K for 2007 as follows:

> "Because it wasn't a rule in effect at the time. It was listed in our business disclosures because we knew it was out there, as we do any regulatory action that could have an effect on our business. But until it becomes an actual rule or regulation or law, there is nothing to disclose. We don't even know if it's going to happen or not." (T-706.)

90. Mr. Spacht refuted Mr. Parcell's "zero sum game" economic assumption, stating:

> "Even his own example on the stand suggested that – you know – we could lose some. Tidewater could win some. But it's a loss to the company. It may be zero sum to the State. I mean, the customer is going to get served.
>
> But in terms of us, there is a reason why we strategically piece together the territories in the manner that we do. Any loss could be a substantial loss. It's hard to say sitting here.
>
> Obviously, we've had situations where we've traded properties, or just let one go because it was more economically served by somebody. But to have it forcibly taken away in this case, if they could do that, would not be something that would be a zero sum game to us." (T-707-708.)

91. Staff's Expert Witness David Parcell, an economist, responded to David Spacht's testimony that the proposed Opt-Out Rule: 1) created a risk of loss of substantial funds invested by a utility; 2) decreases future chances of such investment being made; and 3) in all likelihood, would decrease the value of Artesian's stock. Mr. Parcell also testified as to the cost of capital implications of the proposed

Regulation. (T-525, 543.)

(a) Mr. Parcell has worked for Technical Associates, Incorporated his current employer since 1969. He testified as an expert witness primarily about cost of capital in rate cases approximately 425 times. (T-527.)

(b) Mr. Parcell has never worked for a publicly-traded company. (T-534.) While he has advised Commissions as to the cost of capital, Mr. Parcell has never advised investors whether they should invest in a stock. (T-534.)

(c) Mr. Parcell has reviewed thousands of prospectuses for issuance of securities, although he has never written one. Mr. Parcell has never worked as an investment banker, has never written a 10-K for a publicly traded company and never written anything for filing with the SEC. Tr. 535. While Mr. Parcell has estimated the cost of capital for over 50 water companies, he has never managed a water company or any other regulated utility. (T-535-536.)

(d) Mr. Parcell is a Manager of the Society of Utility and Regulatory Financial Analysts but he did not vet his pre-filed testimony with any member of that organization. (T-536-537.)

(e) Mr. Parcell in lines 25 thru 31 of his pre-filed testimony opined that "service territory risk is generally considered within the context of a territory in which rate base is already employed." (T-538.) When asked for the factual basis for his position, Mr. Parcell described in depth how "utility regulation works" and how rate base is determined, but did not directly answer the question. (T-538-540.)

(f) Mr. Parcell conceded, however, that investors do care about service territory for future use. (T-540-541.) Mr. Parcell's position was that what investors care most about is a return on their investment and growth whether from serviced territories or not. (T-541-42.)

(g) Mr. Parcell's testimony about service territory risk is his opinion as an economist and an expert witness on the cost of capital. (T-543.) When asked where else he had testified about what the service territory risk is, Mr. Parcell responded "I've never seen anyone claim a service territory. To my knowledge, that's the first one that has ever become an issue." (*Id.*)When asked whether the concept of "service territory risk" is something new to him, Mr. Parcell responded "it's something new to the company. I think the concept of risk has been around for a hundred years. But the risk pertains to the total company and the total plant. Because risk relates to plant." (*Id.)*

(h) When asked whether he had vetted his opinion about service territory risk with any investors in water companies, Mr. Parcell

stated he did not see it mentioned in Artesian's own cost of capital testimony in Artesian's 2008 rate case and he concluded:

> "The entire radar screen is capital recovery. And that's, if you want to vet something, that's where I vet it. But that's such basic knowledge that you don't have to vet that. Any cost of capital witness knows that." (T-543-544.)

92. Mr. Parcell did not vet his opinion about service territory risk with any stock analysts. (T-546.) Mr. Parcell did not vet his opinion with any investment bankers. (T-546-547.) He did not vet his opinion with any water company management. (*Id*.) When asked if it was fair to characterize his opinion about service territory risk as "an economic assumption based on (his) long experience as an economist familiar with regulated utilities" Mr. Parcell responded:

> "That's half of it. I mean, you've got to realize that the whole purpose of regulation is you balance the interest of the ratepayers and shareholders. And shareholders want some growth and ratepayers want proper rates. And if you have a system which has no checks and balances, you have a situation where you could have rates that are too high because of that situation. So checks and balances are the whole basis of regulation. That's why we have rate cases. That's why you call them regulated companies." (T-547.)

93. When asked whether the proposed Opt-Out Rule would be a new risk factor, Mr. Parcell responded "to the extent that the company believed it really was a risk factor, and they wanted to tell the investors they could, yes." (T-556-557.) Mr. Parcell conceded that if he market discounts Artesian stock because of this risk factor - - even one time as opined in his pre-filed testimony - - that it is a permanent discount. (T-558-559.)

94. Mr. Parcell also conceded that Artesian disclosed the re-opening of Regulation Docket 51 on March 20, 2007 in its 10-K filing for 2007, but he discounted that disclosure because it was not listed in the

risk factor section, even though the proposed rule had not been adopted. (T-577-578.) Mr. Parcell conceded that Artesian's 10-K states: "Our business and our franchise service area is substantially free from direct competition with other utilities, municipalities, and other entities." When then asked to concede that the five year Opt-Out rule could increase competition for service territory, Mr. Parcell responded:

> "It could, but what's more likely to happen is that the utilities will be more careful in who they will sign up for a CPCN, if they think that they can't get served in five years. So, in a sense, it may slow down competition in some regard there because it will make them be more selective and more careful and folks want economics." (T-580.)
>
> Mr. Parcell then admitted that he has no factual basis for that opinion other than his assumption: "That's the way a company should operate. "When asked if he did any "reality check with management of water companies" to vet his opinion, Mr. Parcell responded "No, I have assumed that they are efficient and economical and I did not challenge that." (T-579-581.)

95. Mr. Parcell was directed to the following statement in Artesian's 10-K: "A significant portion of our exclusive service territory remains undeveloped. And if and when development occurs and there's population growth in these areas, we will increase our customer base by providing water service to the newly developed areas and new customers." Mr. Parcell conceded that Artesian considers its certificated service territory where it is not yet providing service as important to the future of the company, but reiterated his opinion that "the five year Opt-Out rule does not significantly increase its risk." (T-581-582.)

96. On the question of service territory risk, Mr. Parcell testified as follows: "Because I'm looking at it from the standpoint of a macro-approach as is reflective of the rating agency, security analysts where they tell us what is important, and Mr. Spacht is focused on a

single issue today, which is important to him today, and ignoring the other aspects of risks. And it's the macro approach to risk you should be focusing on, which we always do in rate cases, but for some reason, the companies are not doing in this case." (T-584.)

a) Mr. Parcell was directed to the Standard & Poor's Corporate Ratings Criteria and in particular the following statement about competition: "As the last true utility monopoly, water utilities face very little competition, and there is currently no challenge to the continuation of franchise areas." (T-586)

   When asked whether he agreed with that statement, Mr. Parcell responded "Yes. Because the franchised areas they are referring to are the franchised areas where they are currently serving customers." When asked to point to any language in the document that supports his interpretation of the term "franchised areas", Mr. Parcell could not do so, but simply insisted "it's the only way it could be. It's logic." (T-587)

b) Mr. Parcell was unable to refer to any authority that supports his definition of "franchise areas." (T-587-588) When asked whether he had talked to Standard & Poor's about his definition, Mr. Parcell replied "No. I don't have to." (T-588)

c) When directed to a Standard & Poor rating document that used the term "legally defined service territory generally free of significant competition" Mr. Parcell and counsel for Artesian had the following colloquy:

   Q. Now, in the second sentence there, legally defined service territory. What does that mean to you?

   A. It means to me the area where these companies are presently serving customers, the service territories. They have customers, and they are captive customers.

   Q. Well, how are they legally defined in Delaware?

   A. I don't know that I can answer that how they are legally defined. I mean, it's a service area where they have the certificate to serve and are serving customers. That seems legal to me, but I'm not a lawyer.

   Q. Have you ever seen a CPCN in Delaware?

   A. Seen one?

   Q. Yes.

   A. You mean look at the parcel of land?

Q. The Certificate of Public Convenience and Necessity itself, the document issued by the Public Service Commission, have you ever seen one?

A. I believe there is one in my book here. Yes. I think that was submitted as part of the documents in the early part of this month.

Mr. Schreppler: I think we will put one into evidence at some point.

By Mr. Schreppler:

Q. Is there anything in the certificate issued by this Commission that says that the CPCN is predicated on the existence of actual utility plant serving customers?

A. Repeat that, please.

Mr. Schreppler: Can you read that back? (Reporter was requested to read back.)

The Witness: I don't know, as I sit here. But, again, the risk, though, pertains to the ability to recover your cost, and that's the focus on my testimony. Whether that language is there, I don't know.

By Mr. Schreppler:

Q. Well, would you concede, sir, that in Delaware the service territory is legally defined by the CPCN?

A. I'll accept that.

Q. And if there's nothing in the CPCN that requires that the service territory be actually served within a specific period of time, then your definition of franchise is different than Delaware's?

A. No. Look again at Page 11 of Tab 3. It talks about a legally defined service territory generally free of significant competition.

What S&P is saying there, clearly they are saying there, is that once you come in, you come in, you put in your infrastructure, you put lines in the ground, you have customers, someone cannot come and take those customers from you and leave you with what's called stranded investment. That's what they're saying there.

Q. Well, can you point to that in the document? I don't see those words.

A. They don't have to. It's such a basic concept of regulation and Standard & Poor's and Moody's; they don't

have to say it. (T-591-593)

97. Mr. Parcell was not asked by Staff to quantify the effect that the five year Opt-Out rule would have on rates. (T-600) When asked to explain how the Five-Year Opt-Out rule protects ratepayers, Mr. Parcell confused landowners with ratepayers, stating "it gives them a chance to opt-out if after five years, if they signed up for the CPCN, if they had not had service, it gives them at least an opportunity to see if somebody else is interested. That's how it benefits ratepayers." (T-605-606)

98. Mr. Parcell defended his assumption that under the five year Opt-Out rule, "Artesian would understand that it can instead focus its efforts on landowners whose property it can anticipate serving in five years." Although he did not discuss this assumption with anybody that has management experience in a water company, he did perform a "reality check" because it is "a logical tactic you would expect management to take." (T-603) Yet, Mr. Parcell admitted that Mr. Spacht on behalf of Artesian and Mr. Patrick on behalf of Tidewater would know better than Mr. Parcell how their respective companies will react if the proposed rule goes into effect. (T-604.)

99. When asked one final time to point to any authority supporting his definition of "franchise area", Mr. Parcell pointed to Standard & Poor's financial metrics used in their quantitative rating analysis and concluded that since revenues can only come from existing customers "that's how I can justify that." (T-608-610) But Mr. Parcell conceded that Standard & Poor's also does a qualitative analysis and that Standard & Poor's would not be oblivious to the potential risk of loss of future service territory that has been franchised and certificated but is not yet serving customers. (T-612-13.)

100. Mr. Parcell agreed that if investors in the water sector are unhappy with their perception of the service territory risk in Delaware they can easily bypass investing in Delaware water companies and invest in the other seven (7) major publicly traded water companies. (T-624.)

101. In its Brief, Staff maintained that the Water Supply Coordinating Council recommended that the CPCN process be considered for revision. (See Staff Opening Brief, 5.) However, this has not been done. (Exh. 59 at ES-3, 4) Artesian dissented from that recommendation. (Exh. 59 at ES-5.) Staff's Nielson testified that the amendments are "contemplated," not proposed. (T-863-64.)]

102. As to the utilities' Water Service Agreements with Developers, Mr. Patrick testified that Tidewater has several Service Agreements with Developers and several potential Service Agreements with other Developers. (T-1093). Tidewater probably has entered into more Service Agreements with landowners than Developers. (*Id.*) The utilities record such Agreements in the public records of the County where the property is located. (T-1094) There was not any record testimony that the five year Opt-Out rule would or would not apply to individual homeowners whose homes were built by Developers who had entered into Service Agreements.

103. As he did in the November, 2007 hearing, Mr. Patrick, Tidewater's Vice President of Engineering, effectively refuted Staff's claims that the utilities were randomly selecting isolated parcels and obtaining CPCNs without performing regional planning. Mr. Patrick described Tidewater's regional planning efforts in the area north of the Dover Wal-Mart (T-1097), the Bush Farm area in Dover (T-1111), East Laurel (T-1120), Lewes/Rehoboth (T-1124) and Northwest of Smyrna. (T-

1215) Mr. Patrick testified that, until the time that a Tidewater regional water system is fully functional serving all customers the system is intended to serve, Tidewater sometimes swaps CPCNs with Artesian, temporarily purchases water from Artesian, builds a temporary well or even builds a permanent facility which will eventually become a part of the regional water system. (T-1135-36, T-1152-53, T-1126, 1153, *respectively.*)

104. Mr. Patrick testified that, adopting the five year Opt-Out rule would damage the utilities' ability to plan their regional water systems since customers would be opting-out. (T-1216). According to Tidewater, the Opt-Out rule would result in less Tidewater customers and less economies of scale. (*Id*.)

105. While Staff testified as to various parcels where the CPCN was held by one utility and the parcels were located in the middle of a certificated area of other utilities (*see, e.g.* T-1113-14, single parcel, 1122, 1183), there was no record evidence of *actual* physical duplication of infrastructure equipment by the utilities in *any* area. In fact, Staff admitted that it had not presented any record evidence regarding this issue. (T-181). Also, if enacted, the utilities persuasively argued that the proposed five year Opt-Out rule would definitely not change the fact that there are interspersed, non-contiguous parcels. This would not change because some customers would be opting-in and other customers would be opting out. (T-1216)

106. Staff raised the issue of the amount of net-profits recently earned by the utilities. In 2007, 1) Artesian earned $6.3 million net profit based on gross water sales revenue of $48.5 million; and 2)

Tidewater's parent company Middlesex Water Company reported $11.8 million of net profits based on $77.1 million of gross water sales revenue. (See Staff's Opening Brief, pp 3-4). However, there was no record evidence of a causal link between the utilities' net profits (nor water rates) and the CPCN process. (T-1084)

VIII. AGREEMENTS REACHED BETWEEN THE PARTIES AS TO PROPOSED REGULATIONS RECOMMENDED FOR APPROVAL BY HEARING EXAMINER

107. On October 15, 2008, the parties conducted a Workshop at the Commission's offices in Dover to discuss the regulations proposed by Staff. Artesian, Tidewater, United, and Staff were present. At the Workshop, those parties reached an agreement and adopted Staff's proposed Regulation 2.1 amending the definitions of the terms "existing development," "subdivision," and "unincorporated community." (T-331-32.) Regulation 2.1 was necessary because the 2007 statutory amendment to 26 Del. C. §203C(e)(1)(c)permits a CPCN to be granted if signed by the landowners of a majority of the parcels within the existing development, subdivision or unincorporated community. (*See* Exhibit "A", pp 2-3 regarding definitions & Pages 12-13, Paragraph 23, *supra,* regarding the 2007 statutory amendment.)

108. On December 19, 2008, the parties informed the Hearing Officer in writing that the parties had also agreed upon the following underlying Regulations proposed by Staff: Section 1.0 entitled "Authority and Scope of Regulations," the remaining portion of the 2.0 "Definitions" section," Section 5.0-"Review of the Application and Deficiencies in the Application," Section 6.0-"Coordination with Other State Agencies,

Counties and Municipalities" (except for Section 6.3 which was disputed and is discussed in Article IX), Section 13.0-"Suspension or Revocation of CPCN for Good Cause" (except the first sentence of 13.2-which was subsequently agreed to on February 19, 2009), and 14.0-"Proceedings to Suspend or Revoke a CPCN for Good Cause." (*See* Exhibit "A" for these regulations.)

109. On February 19, 2009, Staff reported that Tidewater, Artesian, and Staff had also reached an agreement on Section 13.2, which addresses the suspension or revocation of a CPCN for "good cause." Pursuant to the parties' agreement, the initial language in Section 13.2(as contained in Exhibit "A" hereto), shall read as follows:

> "13.2 In addition to the factors required by sections 13.1.1, 13.1.2, and 13.1.3, the Commission may also consider one or more of the following factors to suspend or revoke a CPCN:"

The parties also agreed then that Section 8.5 should be revised in the future to provide that only standard written materials the utility proposes to solicit CPCNs must be filed with the Commission, not each actual solicitation letter sent to a landowner.

110. The Hearing Examiner recommends that the Commission adopt all regulations above agreed upon by the parties because there is "a lawful statutory basis" to adopt these regulations, and there is a just and reasonable and supported by substantial evidence in the record. *See* 29 *Del. C.* §10141(e); *see* Reybold Group et al v. PSC, 2007 WL 2199677 (Del. Super. March 20, 2007), *aff'd* 956 A.2d 643 (Del. 2008); Delmarva Power & Light v. Tolou, 729 A.2d 868,874 (Del. Super.Ct. 1998). The statutory authority for the agreed upon Regulations is 26 Del. C. §203C. The Revocation-related Regulations Nos. 13 and 14 were specifically

authorized to be promulgated by the Commission by 26 Del. C. § 203C(k)(1) & (2). Thus, the Hearing Examiner recommends that all agreed upon Regulations be adopted by the Commission as it is in the public interest to do so. Also, pursuant to 26 Del. C. §512, the Commission is charged by statute to "encourage the resolution of matters brought before it through the use of stipulations and settlements."

IX. HEARING OFFICER'S RECOMMENDATIONS AS TO DISPUTED REGULATIONS

111. Staff's and the utilities' proposed Regulations which are disputed are listed below. The Regulation titles have been paraphrased here to aid the reader. The page number in this Report where the Regulation is discussed is located to the right of the Regulation:

No. 3.2 Application for CPCN (p.74)

No. 3.13 Plan of Service Required of Utilities (p. 78)

No. 6.3 Municipality must be notified 30 days prior to CPCN Application If Proposed Service Area is in a Municipality's "Future Annexation Area" or "Future Growth Area" (P.81)

No. 7.4 "Proposed Service Area" would include single parcel or "contiguous parcels" (p.85)

No. 8 Utilities' Solicitation Notice To Landowners must include Staff solicitation notice (p.89)

No. 9 Utilities' Notice to Landowners 30-35 days prior to CPCN Application (p.93)

No. 10 Notice to Landowners of CPCN Application & Option to "Opt-Out" (p.94)

No. 11 Landowners' & Others' General Objection and "Opt-Out" Options, etc. (p.99)

Alternative Reg. No. 12 - Proposed by Utilities (p.73)

112. The disputed Regulations will now each be discussed in the order presented above except that "Alternative Regulation No. 12" will be

discussed first. This proposed Regulation will be discussed first because it was proposed by the utilities as an alternative to Staff's proposed five year Opt-Out rule. If the reader wants to refer to the text of a particular Regulation, the exhibit to this Report and page number where each Regulation appears at is listed next to each proposed Regulation throughout this Section. For example, regarding (a) below, the reader can locate the text of the Regulation at Exhibit "A" at page 34.

(a) No. 12-Proposed Five Year Opt-Out Rule. (Exh. A-p. 34) For the reasons stated previously in this Report, the Hearing Examiner recommends that Staff's entire proposed Regulation 12, including the five year Opt-Out rule, not be adopted.

Additionally, the Hearing Examiner recommends adoption of the "**Alternative Regulation 12.0**" proposed by Tidewater and Artesian. (See **Exhibit "B"** hereto-the utilities' proposed Regulations-Regulation 12.0 therein, p.23.) The utilities' proposed Regulation No. 12.1 and 12.2 permit the Commission to revoke a CPCN if a utility fails to timely to comply with a Commission Order to provide water service within the utility's certificated service area. The statutory authority for this proposed Regulation is 26 *Del. C.* §203C(e)(3), 26 *Del. C.* §203C(f) and 26 *Del. C.* §403.

The utilities' Proposed Regulation No. 12 also codifies that, if a utility was ordered to provide water service to a CPCN territory, the Commission could require that the landowner pay contributions in aid of construction (CAC) incurred by the utility for on-site infrastructure costs and

off-site costs to provide water service to a new customer. The Commission would determine which CAC, if any, a landowner would be required to pay on a case-by-case basis. (Maucher, Staff, T-1109, B. Patrick/Tide, T-225-228, D. Spacht/Art, T-282-284; *see* Reybold Group v. PSC, *supra*, for an in-depth discussion of PSC Reg. Dkt. No. 15 and CAC).

Depending on the location of the landowner's property and the utility's nearest water main, the cost involved might be prohibitively expensive for the landowner, and the landowner's refusal to pay the cost would excuse the utilities' failure to serve. (*Id.*; T-1114.) Indeed, to date, no Delaware landowner has agreed to pay Regulation Docket No. 15 costs for water service. (T-788.) The Hearing Examiner nevertheless recommends adoption of Regulation 12.0 proposed by the utilities because it *requires* that a dialog be timely opened between the landowner and the utility holding the CPCN (which PSC Staff typically joins as well), toward resolving the matter. During their dialog, presumably the landowner can learn about the utility's current service and planned future service in the landowner's area and compare same with the landowners' needs for water service, his well service, and the cost for the landowner to receive water service now and plan for the future.

(b) No. 3.2 Application for CPCN. (Exh.A-p.4) Artesian and Tidewater object to Staff's proposed **Section 3.2** which seeks to limit a single CPCN application to five (5) "proposed service areas." "Proposed service area" is not defined by Statute. According to Staff, a service area may contain

multiple parcels of land. (*See* Staff's Response to Utilities' January 30, 2009 Filings, docketed February 20, 2009.) Staff's proposal defines the term "Proposed Service Area" in Section 2.1 as follows:

> "Proposed Service Area" is equivalent to "the proposed territory to be served" and means the area in which the applicant proposes to offer and provide its water utility services. The proposed service area shall be described by reference to one or more parcels or properties, identified by the relevant county tax map identification designations. If the proposed service area cannot be described by reference to parcels or properties, it may be described by a metes and bounds description, or any other equivalent description capable of being mapped.

Staff argues that, by limiting the number of proposed service areas on a CPCN application, landowners "in or near the utilities' proposed service territory [will be better able to] learn about a pending application and offer input to the Commission." (*See* Staff's Response to Utilities' January 30, 2009 Filings.) Staff argues that, the less the number of parcels, the more likely the narrower the description of land in the published notice, and therefore the more likely an interested person would receive notice of the CPCN application.

The utilities first objected to Section 3.2 claiming that it would increase the utilities' advertising expense since more parcels are included now in a single advertisement than will be included under the proposed Regulation.

Staff's Ms. Maucher accepted Tidewater's Mr. Patrick's testimony that the cost of publishing a CPCN advertisement in *The News Journal* and *Delaware State News* is approximately $1,000. (T-1061, 1033-34.) Currently, Artesian often places thirty (30) parcels in a single application. (T-1063-64.) Staff's response filed February 20, 2009 states that some prior CPCN applications involve "hundreds of parcels." (T-107.) There was also testimony that CPCN applications involved 1 to 300 parcels. (T-144.)

While cost is a concern, the Hearing Examiner strongly agrees with Staff's goal of providing Delaware residents with improved notice of CPCN Applications. However, the Hearing Examiner does not agree that only limiting the number of parcels on the CPCN application will best accomplish Staff's goal of improved notice of CPCN applications to Delaware residents.

Therefore, the Hearing Examiner recommends that the Commission adopt Regulation 3.2 proposed by Staff except that the Proposed Service Area not be limited to five service areas. However, the Hearing Examiner also recommends that the Commission order that the utilities perform the following: in the published notice of each CPCN application, the utilities shall provide a description of the properties involved, including (a) the nearest intersecting roads (i.e at the intersection of Canterbury Road and Delaware Avenue or approximately one-half mile from intersection of Canterbury Road and Delaware Avenue);(b)

directional information about the parcels (i.e on the north side of Delaware Avenue, etc.); (c) a listing of Property Tax ID numbers if available (metes and bounds descriptions if Tax IN numbers are unavailable or if neither of those are available, some description capable of being mapped); and (d) the street address(es) shall also be provided if available.

Currently, the utilities often publish a property description such as this: "one parcel of land located northeast of Middletown, New Castle County, Delaware." (*See* **Exhibit "C"** hereto-Sample newspaper property description published April 4, 2009 by Tidewater.) Although legal now, this type of property description is not descriptive enough to alert most newspaper readers where this land is actually located. Rather, a newspaper reader will more likely understand where a property is located if the utility publishes the following property description: "one parcel on the northwest corner of Canterbury Road intersecting with Delaware Road, Northeast of Middletown, New Castle County Delaware." Then, the utility lists any Property Tax ID numbers involved with this CPCN application. If a reader wants to learn more about which property this CPCN application affects, the reader can travel to the property or reference the Property Tax ID numbers through the County Tax Records.

The Hearing Examiner believes that this recommendation best satisfies the concerns of all interested parties.

Landowners receive more detailed notice of CPCN applications with a better address description than the property descriptions the utilities are currently using. Also, by not limiting the number of parcels on a CPCN application to no more than five (5) proposed service areas, the utilities' newspaper publication costs are contained and all parcels in the same area can be included on a CPCN application. Without providing personal notice to landowners within some radius of the property involving the CPCN Application, notice by publication must be as specific as possible as to where the property is located.

26 Del. C. § 203C(c) supports the Hearing Examiner's recommended Staff's Proposed Regulation, including 3.2 but not adopt Staff's Proposed Service Area definition limiting an application to five service areas, with even more informative publication requirements required of the utilities by the hearing Examiner than those proposed by Staff. This statute provides that a CPCN application "shall be in the form as determined by the Commission . . . ." This statute provides as follows:

> An application for a certificate of public convenience and necessity to begin, extend or expand the business of a water utility beyond the territory covered by any existing certificate shall be in writing, shall be in such form as determined by the Commission…

(c) No.3.13 Plan of Service Required of Utilities. (Exh.A-p.10)

The utilities also object to proposed **Regulation 3.13** (Exhibit "A", p. 10), because a Plan of Service is allegedly

not permitted by 26 Del. C. § 203C(c). (*See, e.g.,* Artesian's Answering Brief, pp. 23-24). Proposed Regulation 3.13 requires that a CPCN application include a description of how and when the applicant utility plans to provide water utility service to the Proposed Service Area *or* an explanation as to why such an estimated timetable cannot be provided. Staff stipulated that, under Delaware law, the Commission could not deny a CPCN application solely on the basis that the Plan of Service submitted by a utility was determined by the Commission to be unsatisfactory. (T-892.)

Additionally, if the Proposed Service Area is intended to be part of a regional water system, Staff has included a Plan of Service requirement that the Applicant Utility identify the regional water system which includes the Proposed Service Area and provide information setting forth the Applicant's plans for the regional water system.[10]

Staff's Andrea Maucher testified that the Plan of Service would benefit the Staff to assist the landowners and the public regarding inquiries and to provide other Delaware governmental agencies with planned water service information. (T-749, 754-55, ll 20-24, l1.) The utilities' plans will inform the PSC Staff, Delaware governmental agencies such as DNREC and the Fire Marshall, and Delaware residents, of the utilities' plans for water service in the State. (Maucher-T-754, Nielson-T-889.)

[10]According to Staff's proposed Regulation 3.13 (fn.3), this requirement would not apply to "a Proposed Service Area for a municipal water utility or a governmental water utility which lies within the political boundaries of the municipality or government."

The utilities maintained throughout the hearings that they engage in extensive regional planning of their water systems. (T-1119.) Thus, creating the required Plan of Service would not burden the utilities because such regional planning has already been performed. Artesian has eleven (11) employees in its Planning Department whose duties include water infrastructure GIS mapping. (*See* Letter from John J. Schreppler II, Esq., Artesian's General Counsel, to Hearing Examiner and parties dated February 12, 2009.)

Primarily because CPCN applications are a matter of public record and subject to Freedom of Information Act (FOIA) requests, the Hearing Examiner rejects the utilities' unsubstantiated argument that providing the rather limited CPCN information required by Regulation 3.13 would inform their competitors of the utilities' expansion plans. (T-1059-60, 1167-68, Exh. 44-Artesian's 2005 FOIA request directed to PSC requesting Tidewater's CPCN applications, rate information, etc.)

Staff's unrebutted testimony was that public utilities regularly review each other's CPCN applications, which are posted on the PSC's website available to the public. (T-1167-1168.) The utilities regularly telephone PSC Staff about their competitors' CPCN applications. (Id.) CPCN applications are approved at PSC Commission meetings which the utilities regularly attend and which are open to the public. The utilities may review the Agenda for each Commission meeting one (1) week before the meeting on the PSC website. The Agenda contains all CPCN applications (along with a property

description) which are being proposed for Commission approval the following week.

26 *Del. C.* § 203C(c) provides that a CPCN application "shall be in the form as determined by the Commission . . . ." This statute permits the Request for Service and provides as follows:

> An application for a certificate of public convenience and necessity to begin, extend or expand the business of a water utility beyond the territory covered by any existing certificate shall be in writing, shall be in such form as determined by the Commission…

Thus, as to the proposed Regulation 3.13 requiring that the utilities submit a Plan of Service, the Hearing Officer recommends adoption of Regulation 3.13 in its entirety. Except for Regulation 3.2 discussed previously, the remainder of Regulation 3.0 has been agreed upon.

(d) Section 6.3. Municipality must be notified 30 days prior to CPCN Application if Proposed Service Area is in a Municipality's "Future Annexation Area" or "Future Growth Area" (Exhibit "A", p. 14)

Artesian and Tidewater question Staff's proposed regulation that municipalities be notified thirty (30) days prior to the filing a CPCN application, and suggest that municipalities should instead be notified at the time of filing of the application or within three (3) days thereafter as provided in Section 6.1 for certain state agencies.

Staff proposed that municipalities (or their water utilities) be given thirty (30) days prior notice of the filing of a CPCN application by a water utility if any parcel

of land in the Proposed Service Area is located within a future annexation area or future growth area of the municipality. Artesian and Tidewater object, and propose instead that notice be given at the time of the application or within three (3) days thereafter. Artesian and Tidewater therefore concede that the municipalities (and their utilities) should receive notice. The only objection is the timing of such notice. According to § 203C(h)(1), the Commission is required to act on a completed CPCN application within ninety (90) days of submission. The Commission may extend that period for an additional thirty (30) days for "good cause" shown.

Staff persuasively argues that giving a municipality and its utility thirty (30) days advance notice of the CPCN application will afford the municipality one(1) additional month to address a CPCN application affecting the municipality's residents. Artesian and Tidewater do not claim that the additional thirty (30) days will impose a burden. Allowing municipalities additional time will reduce the likelihood of protracted disputes between municipalities and private utilities which impose substantial expense on municipalities, the PSC, utilities, taxpayers and ratepayers.

Staff included this rule so that municipalities (or their water utilities) providing water services are given ample notice of possible changes which may impact their *planned* growth. Unlike private utilities, towns and municipalities are limited geographically as to where they can extend services. 22 *Del. C.* § 702 outlines comprehensive

planning requirements which municipalities must comply with:

> "Comprehensive plan means a document in text and maps, containing at a minimum, a municipal development strategy setting forth the jurisdiction's position on population and housing growth within the jurisdiction, expansion of its boundaries, development of adjacent areas, redevelopment potential, community character, the general uses of land within the community, and critical community development and infrastructure issues."

Therefore, a municipality needs to receive notice of any private water utility's intended expansion into an area designated by the municipality for future growth. Thus, Staff persuasively argues that municipalities should be afforded (30) days prior notice of the filing of a CPCN application by a water utility if any parcel of land in the Proposed Service Area is located within a future annexation area or future growth area of the municipality. The additional thirty (30) days will give the utility, the municipality, and the landowner(s) more time to coordinate comprehensive infrastructure development.

In regards to annexation of properties, 22 *Del. C.* § 101(3) provides:

> "A city or town shall prepare a plan of services indicating those services it expects to provide to the newly annexed area, how such services will be provided, and the fiscal and operating capabilities of the municipality to provide such services. Should any services be provided by another jurisdiction or a public utility regulated by the Delaware Public Service Commission, the written comments of such provider on the provider's ability to provide the necessary services for the proposed annexation shall be obtained and included in the plan of services."

Staff persuasively argues that it is evident from 22

Del. C. § 101(3) that the legislature contemplated a high degree of coordination between municipal water providers and regulated utilities. Staff argues that the Plan of Service requirement imposed by statute on municipalities is comparable to the plan Staff proposes for public water utilities. (*See also* the pre-filed Testimonies of Anthony J. DePrima, City of Dover's City Manager, pp 1-4 and Curtis Larrimore, Developer-Century Homes, pp 1-3, which illustrate the need for coordination as it related to "the Bush Farm" residential real estate development in Dover-Exhibits 82 & 83, *respectively*)

Also, several municipalities had filed written objections to CPCN applications for parcels located near their corporate boundaries (for example, Georgetown (T-1210-11), Bridgeville, Selbyville, Frankford; see Staff's Opening Brief, p. 61). In each case, the applying private utility ultimately agreed to remove the parcel from their CPCN application. According to Staff, the Town of Selbyville became so concerned with the actions of a utility that it went through the time and effort to secure from the Commission a CPCN for all properties located outside its municipal boundaries, but within its designated growth zone. (*Id.*)

26 *Del. C.* § 203C(c) supports the Hearing Examiner's recommendation. This statute provides that a CPCN application "shall be in the form as determined by the Commission . . . ." This statute provides as follows:

> An application for a certificate of public convenience and necessity to begin, extend or expand the business of a water utility beyond the territory covered by any existing certificate shall be in writing, shall be in

such form as determined by the Commission…

For the reasons proffered by Staff, the Hearing Officer recommends the adoption of Rule 6.3 in its entirety. The remainder of Regulation 6.0 has been agreed upon.

(e) Sections 7.4.1 & 7.4.2. Proposed Service Area would include single parcel (7.4.1) or "contiguous parcels" (7.4.2). (Exhibit "A"-p. 15)

Tidewater and Artesian object to the above proposed Regulations which require CPCN applications to encompass only a single parcel of land, or two (2) or more contiguous parcels that will be provided water utility services by the same stand-alone system or by the same water main extension. The utilities argue that, because the Delaware legislature eliminated the utilities' prior statutory right to file CPCN applications signed only by a majority of landowners in a proposed CPCN territory, "there is no good reason to require that parcels in the proposed service area be contiguous." Therefore, the utilities propose to strike the references to "single" and "contiguous."

Staff argues that: (a) the requirement that parcels be contiguous will promote regional planning in the CPCN process; and (b) requiring that parcels be contiguous increases the likelihood of communication among affected landowners in determining whether or not to seek water services from a utility, just as the statute intended. (Staff's Opening Brief, pp. 61-62.)

The Hearing Officer recommends against the adoption of proposed Regulations regarding single parcels (Section 7.4.1)

and contiguous parcels (Section 7.4.2) for the following three (3) reasons: (1) as the utilities argue, § 203C(d)&(e) do not require contiguous parcels for a CPCN to be issued; for example, § 203C(e) succinctly requires only that "all landowners of the proposed territory" sign the CPCN application; see also Amer. Auto. Manuf. Ass'n v. PSC, *supra*, ("a regulation must reflect the statutory intent"); (2) depending on where a water main is located, a water main can serve close but non-contiguous parcels; (3)in developing water service for an area, it may be necessary for the utilities to obtain a CPCN for non-contiguous parcels before adding other parcels, possibly later making the parcels "contiguous" through a subsequent CPCN; sometimes it takes years for a particular regional service area to develop to allow the utilities to acquire parcels in the area to achieve the "economies of scale" regarding water service. (T-207).

The utilities sufficiently demonstrated to the Hearing Examiner at the evidentiary hearings that, to date, the utilities have engaged in reasonably-effective regional planning in New Castle County and in the lesser-developed counties of Kent and Sussex. Artesian maintains that it "has an Integrated System ("System") connected from the Delaware/Pennsylvania line all the way to Bethel Church Road in Southern New Castle County. In a few years, that System will be interconnected all the way through Middletown, Odessa and Townsend. In the Southern part of Delaware, the System is much younger and, therefore, not as fully integrated." (*See* Letter from John J. Schreppler II, Esq., Artesian's General

Counsel, to Hearing Examiner and parties dated February 12, 2009.)

The utilities' reasonably effective regional planning was demonstrated by the extensive hearing testimony of Tidewater's Bruce Patrick and Artesian's David Spacht and their references to their respective water service maps. The utilities seek to develop water systems into larger regional systems which achieve "economies of scale." (T-207) Economies of scale are the cost advantages that a business obtains by adding customers. According to Tidewater's Mr. Patrick, "a lot of these regional systems start out as independent systems that are expanded and eventually become regional systems." (T-1125) How a water system grows depends on who needs the water, when they need the water, and where they need it. (T-1139-1140) Except for the possible duplication of facilities at Meridian Crossing, the utilities' regional planning efforts have been reasonably successful in New Castle County. (T-918-919, T-959-62.)

As Kent and Sussex Counties are developed even more, the Hearing Officer presumes that the utilities will continue their regional planning efforts simply because it is in the utilities' financial self-interest to continue to do so. Unnecessary duplication of water infrastructure would deplete the utilities' net profit which the for-profit water utilities do not want to happen. (T-290.)

Thus, the Hearing Officer recommends against the adoption of proposed Regulations regarding single parcels

(Section 7.4.1) and contiguous parcels (Section 7.4.2). The remainder of proposed Regulation 7.0 has been agreed upon.

(f) Sections 8.0, 9.0, 10.0, and 11.0. "Notices To Landowners and related Regulations." (Exhibit "A"-p. 16) A short explanation of these proposed notices to landowners and related Regulations, is first necessary; a more in-depth discussion of each proposed Regulation thereafter follows:

Section 8.0 proposes a Staff-drafted Notice form to be included with each utility water service solicitation letter sent to "all landowners to be encompassed within a service territory" or to solicit "the majority of landowners in an existing development, subdivision, or unincorporated community." *See* 26 *Del C.* § 203C(e)(1)(b) and 26 *Del C.* § 203C(e)(1)(c), *respectively*.

Section 9.0 proposes that a Staff-drafted "Opt-Out Notice form" described in Section 10 be sent certified mail, return receipt requested, to all landowners "not more than thirty-five (35) days and not less than thirty (30) days prior to the filing of the [new] CPCN application." *See* 26 *Del. C.* § 203C(d)(1) and 26 *Del. C.* § 203C(e)(1), *requiring landowner consent to CPCN application after notice by certified mail*.

Section 10.0 proposes the new "Opt-Out Notice form" or "the Landowner's Notice Form" which has been substantially re-written by Staff. *See* 26 *Del. C.* § 203C(d)(1) and 26 *Del. C.* § 203C(e)(1).

Section 11.0 entitled “Landowner’s Options to Object or Opt-Out, and Objections from Other Interested Persons or Entities.” Staff has proposed that Landowners be able to “object” and “opt-out” to a proposed CPCN, and that non-landowners be permitted to object.

Discussion-Sections 8.0, 9.0, 10.0 & 11.0

Section 8.0. The utilities oppose proposed Section 8, the water service solicitation Notice prepared by Staff to accompany any solicitation letter from a utility - for the following reasons:

- "notice is contemplated by the statute only for the phase where the Commission is to consider the petition for a CPCN;"
- "multiple notices may confuse property owners;" and
- "the average member of the public has no basis for understanding the explanation in the notice." (See Letter from Jeremy Homer, Esq. on behalf of Tidewater to the Hearing Examiner and parties dated December 10, 2008.)

Staff simply yet forcefully argues that, if the utilities are required to send Staff’s Section 8 notice along with the utilities’ solicitation letters, Delaware landowners will be better informed of their rights regarding their water

service and CPCNs. (T-1207.) The Hearing Examiner agrees principally because Staff's notice clarifies a landowner's rights regarding their water service much more than the solicitation letters currently being sent by the utilities. (T-765.)

Sample solicitation letters from Artesian and Tidewater are attached as composite **Exhibit "D"** hereto. Staff's proposed "solicitation notice" to accompany all utility solicitation letters is attached as **Exhibit "E"** hereto. The utilities' solicitation letters do not, for example, specify that a landowner can *never* unilaterally change their water utility after the landowner consents to the CPCN if the landowner is not receiving service or is not satisfied with the service. (*See* Exhibit "D"-Sample Solicitation Letters from Artesian & Tidewater; Exh. 113-Artesian & Exh. 129-Tidewater) Also, the utilities' current solicitation letters do not describe the possible effect of a CPCN on well rights, nor when service will be provided, nor do the solicitation letters explain that it is unknown when service will be provided. According to Staff, this lack of critical information about the CPCN process has confused many Delaware landowners. (T-Maucher-116, 169, 214, 758, 759, 1207-1208, 1758)

Additionally, Staff introduced into evidence letters from Delaware landowners in which some landowners were confused as to the CPCN process and their water rights. (Exhs. 97, 98) One Delaware landowner complained that Tidewater provided absolutely no information about "the opt-out or how to do so" yet the letter requested that the landowner sign a CPCN Petition. (Exh. 97-Mock

letter dated 2/24/06 & Tidewater ltr.) Tidewater's letter arguably violates 23 Del. C. C (i) which states that all Delaware landowners "shall be entitled to opt-out and have the landowner's parcel or property excluded from the proposed territory to be served." This particular landowner was not informed by Tidewater of his right to Opt-Out. The words "opt-out" do not appear in Tidewater's letter. This case illustrates the need for the adoption of Staff's Notices proscribed in Rules 8 and 10, except as noted later in this Report. Staff's notice in Section 8 does not address opting-out, like the opt-out notice in Section 10 does, but clearly some Delaware landowners are confused as to the overall CPCN process.

Also, some Delaware landowners, particularly farmers in areas the utilities wish to serve since residential developments may be built there, have complained that the utilities are sending notices every year to get the farmers/landowners to sign up for a CPCN. (Exh. 97) The utilities' CPCN marketing efforts are not restricted by Statute. However, if these farmers/landowners are better informed of their rights, it reasons that it is more likely that they will Opt-Out when they wish to Opt-Out, and not opt-out and give up their water rights, when they did not wish to do so. A farmer/landowner could assume that, if they opted out, that their opt-out is sufficient forever, which is not case if they are sent another CPCN request the following year, which appears to be occurring. (Exh. 97) Only Tidewater apparently has a procedure in place to record when someone opts-out by phone or in writing and not notify the landowner again, but the Hearing Examiner does not believe that

such a procedure solves the issue of better notice to Delaware landowners of the CPCN process. (Exh. 130/Tidewater's "Water Opt-Out Notification Procedure")

In light of Staff's valid concerns that Delaware property owners be fully informed of their rights regarding the CPCN process, the Hearing Examiner recommends that Regulation 8 be adopted in its entirety, despite the utilities' rather weak argument that the Opt-Out Notice in Regulation 10 also contains an explanation of opting-out. (T-764.)

Artesian and Tidewater also object to language in Sections 8.1 and 8.2 directing persons who have any questions to contact the Public Service Commission, rather than the utility seeking to obtain the service territory. The Hearing Examiner sees no problem with this approach since Delaware property owners can speak with an objective representative at the PSC about their water rights, as opposed to a utility seeking their business. Again, this requirement is directed toward have Delaware landowners fully informed of their rights.

The parties agree that Section 8.2 must be revised because Section 8.2.1 cannot be made applicable to applications under 26 *Del. C.* § 203C(e)(1)c, which allows a CPCN to be issued upon the agreement of "a majority of the parcels or properties in the existing development, subdivision, or unincorporated community. (*See* Footnote 6, *supra*.)

Moreover, the utilities object to Staff's language in Sections 8.1 and 8.2.7.1 regarding well permits, because that language is allegedly "misleading" in light of 7 *Del. C.* § 6075. That statute generally permits a landowner to have a

well unless public water is available. (Tidewater Answering Brief, p. 2.) According to the utilities, 7 *Del. C.* § 6075 provides a "high level of protection for property owners seeking a well permit." (*See* Letter from John J. Schreppler II, Esq., Artesian's General Counsel to Hearing Examiner and parties dated January 30, 2009, Para. 9.)

The Hearing Examiner recommends that the changes proposed by Staff regarding well permits are also necessary. Regarding well permits, the Hearing Examiner's explanation is detailed in the discussion regarding proposed Regulation 10-the revised Opt-Out Notice form, *infra*. Thus, the Hearing Examiner recommends adoption of proposed Regulation 8 in its entirety. The legal support for the Hearing Examiner's position is 26 *Del. C.* § 203C(c) which provides that a CPCN application "shall be in the form as determined by the Commission . . . ." Moreover, the "general powers" provisions of 26 *Del. C.* §§§ 201, 202, and 209 also provide authority for Regulation 8.0 to be enacted.

As to proposed **Regulation 9.0**, including Regulation 9.2 which requires that a Staff-drafted "Opt-Out Notice form" described in Section 10 be sent certified mail, return receipt requested, to all landowners "not more than thirty-five (35) days and not less than thirty (30) days prior to the filing of the [new] CPCN application." The Opt-Out notice is different from the Staff's language which must be contained in the utilities' solicitation letters.

The Opt-Out Notice drafted by Staff sent by water utilities must be sent to landowners along with the utilities'

letter asking the landowner to sign a CPCN petition. According to the proposed Regulation, the utilities must establish that each landowner was solicited with such letter and attach it to the CPCN application. Currently, the Opt-Out Process is being described by the utilities in letters drafted by the utilities. Some landowners have been confused by the language used by the utilities in such letters. (T-116, 169, 214, 758, 759, 1207-1208, 1758) Additionally, Staff introduced Opt-Out letters from Delaware landowners in which some landowners were confused as to the Opt-Out process. (Exhs. 97, 98.)

The Hearing Examiner recommends adoption of Regulation 9.0 based upon 26 *Del. C.* § 203C(d)(1) and 26 *Del. C.* § 203C(e)(1), which each require each landowner's consent to CPCN application after notice by certified mail. Additionally, 26 *Del. C.* § 203C(c) provides that a CPCN application "shall be in the form as determined by the Commission . . . ." Lastly, the follow-up mail provision in Section 9.6 is required by the United States Supreme Court's decision in Jones v. Flowers, 547 U.S. 220 (2006)(discussed in footnote 4, *supra*.)

As to **No. 10.0**, the revised Opt-Out Notice, Staff seeks to require water utilities to disclose to landowners the ramifications of a signature on a CPCN petition. Unlike the Notice in Rule 8, this Notice is specifically prescribed by various Statutes, specifically 26 *Del. C.* § 203C(d)(2), (e)(1)(a), or (e)(1)(d). ("must notify landowners of the filing of the [CPCN] application"). Staff's proposed Opt-Out Notice is attached as **Exhibit "F"** hereto.

Currently, the Opt-Out Process is being described by the utilities in letters drafted by the utilities. Some landowners have been confused by the language used by the utilities. (T-116, 169, 214, 758, 759, 1207-08, 1758) Additionally, Staff introduced Opt-Out letters from Delaware landowners in which some landowners were confused as to the Opt-Out process. (Exhs. 97, 98)

Also, there are significant consequences to a parcel of land being included in a certificated service area; consequences which, for the most part cannot be "undone." Inclusion of a parcel of land in a CPCN area means the following:

(1) The land, once included in a service area, cannot, in general, be removed from the service area unless the utility holding the certificate is willing to abandon the certificate. There is no regulation which would allow the Commission to revoke a certificate where the property would be better served by or preferred by the landowner.

(2) Well rights may be affected. 7 *Del. C.* §6075 addresses "nonutility wells and permits for nonutility wells within a service territory served by a water utility under a certificate of public convenience and necessity." The statute

provides as follows:

(a) The Department may not withhold a permit for a potable water well within the service territory served by a water utility under a certificate of public convenience and necessity, or require an applicant for a potable water well permit in an area served by a water utility to utilize the services of the utility, unless:

(i) The Delaware Geological Survey or the Department of Health and Social Services certifies that the ground water supply is inadequate or unsuitable for the intended use for which the permit is being sought;

(ii) The water utility demonstrates to the satisfaction of the Department that it can provide service of equal or better quality at lower cost; or

(iii) The permit applicant is a resident of a municipality, a county water district authority, or a recorded development where public water is available.

(b) Notwithstanding paragraphs (a)(2) and (3) of this section, following the issuance of a certificate of public convenience and necessity to a water utility, the Department shall not withhold a potable water well permit from any person seeking to construct or extend a well on a farm, farmland or the lands of any existing mobile home community, or an addition, modification or extension of that mobile home community, which as of April 11, 2000, self-supplied potable water under existing permits in an area served by a water utility, nor shall it require that the person utilize the services of the utility. However, this subsection shall not authorize or require the issuance of a potable well permit that would enable a person or entity to act as a water utility without a duly issued certificate of public convenience and necessity.

(emphasis supplied)

Tidewater and Artesian argue that DNREC would not deny a well permit for a farm or farmland. However, neither utility proffered any evidence at the hearings from DNREC, landowners

or otherwise to support the utilities' position. While there is a "farm/farmland" exception as underlined in section (b) above, many Delaware landowners solicited by the utilities to sign water service petitions would own property which would not be considered farm/farmland as defined by the Statute, including residential property and commercial property, and therefore would need to receive notice about their well rights. Moreover, the terms "farm" and "farmland" are not defined by the statute, and consequently open to some interpretation. Without any record evidence being proffered, the Hearing Examiner recommends that all of Staff's proposed language in Regulation 10 regarding wells be adopted by the Commission. The policy behind Staff's proposed Rule is sound: to provide adequate notice to Delaware property owners concerning their inter-related well rights and water service rights. Additionally, Staff introduced Opt-Out letters from Delaware landowners in which some landowners were confused as to the Opt-Out process. (Exhs. 97, 98.)

Artesian and Tidewater object to **Section 10.1** (Exhibit "A"- p.21) because it delegates to PSC Staff the authority to approve the form of notice for applications premised on the statutory Sections of 26 *Del. C.* § 203C(d)(2), (e)(1)(a), or (e)(1)(d) without any guidance. By way of contrast, Artesian and Tidewater note that in Section 9.7 the Commission reserves unto itself the authority by Order to approve alternative methods of notice. The utilities assert that the form of notice should not be left to an "ad-hoc determination" by Staff.

The Hearing Examiner recommends that, regarding Section

10.1, the final language of the “Form of Notice to Landowners of Record” i.e Opt-Out form and indeed Regulation 10 itself, shall be determined by the Commission at a meeting open to the participants of this Docket and that PSC Staff will not have sole discretion as to the Notice’s content nor authority to change the form without Commission approval.

Artesian and Tidewater also object to Sections 10.2 and 10.3 as set forth in Mr. Homer's December 10, 2008 letter to Staff’s Counsel Mr. Murphy. Artesian and Tidewater persuasively argue that the "objection" option should be deleted from the Opt-Out form for the reasons stated in Mr. Homer's letter to the Hearing Examiner below.

Tidewater’s Counsel Jeremy Homer, Esq. sent the following letter to the Hearing Examiner and the parties on January 30, 2009 regarding the Notice in Section 10:

> “The notices set out in sec. 10 of the revisions have been simplified so they are easier to understand. [Staff’s] Mr. Murphy's version indicates the landowner can use an attached form to either opt-out or object to the CPCN.
>
> Tidewater sees two problems with that approach: (1) <u>there is sparse statutory basis for that approach under the amended law. The only reference to filing an objection is in sec. 203C(i)</u>, which includes the statement: "Notwithstanding the objection and opt-out provisions contained in this subsection, if the Town Council of the Town of Ocean View...." In fact, <u>however, there no longer is any "objection" provision in the subsection, the provisions all relate to the opt-out</u>; (2) the proposed regulations logically require, in the case of an objection to the CPCN, that the objection be supported by an explanation of the reasons supporting the objection and (in the case of non-landowners within the proposed territory) a statement of interests. See Sec. 11.0. If

> the objection "option" is included in the opt-out form, it would either invite the objecting party to object without providing the required information (if, for example, the opt-out form includes only a box to be checked to indicate an objection is being made), or the form would have to require a lot of information that would make it more complicated and perhaps intimidating.
>
> Inasmuch as the statutory requirement addresses only the opt-out "option," it would be simpler to limit the form to that option. The revisions to the notices proposed in the attachment do explain the right to object and set a deadline which is consistent with the opt-out deadline (the deadline is prior to the issuance of the CPCN; the opt-out deadline is so fixed in the statute at 203C(i), there is no deadline for objections or any other procedure related to objections). One goal of taking the objection option off the opt-out form is to avoid the situation of someone "filing" an objection on the opt-out form without explaining the basis for the objection as required. If that happens, and it is more likely to happen if the objection "option" is on the opt-out form, then PSC Staff and everyone else is placed in the position of having to figure out whether the objection as a legal matter should hold up the issuance of the CPCN."

Regarding Section 10.1, for the reasons described in Tidewater's letter above, the Hearing Examiner recommends that there should not be any "objection" language in the Opt-Out Notice nor Section 11 because such language is not supported by Delaware law and would only confuse landowners. The statutory framework is addressed only to opting-out, not filing objections. If this recommendation is approved by the Commission, Staff's and the utilities' proposed Notice forms, as presently drafted, must be revised.

Lastly, Artesian and Tidewater argue that **Section 10.5** should be modified to make it clear it does not apply to solicitation materials sent to a property owner prior to the filing of a CPCN application. Section 10.5 requires that the utilities "not include any other correspondence with the landowner notice required by these regulations." Although the Section 10 Opt-Out notice entitled "Form of Notice to Landowners of Record" differs from the Staff's Section 8 "solicitation notice," the Hearing Examiner recommends that Regulation 10.5 be clarified that the Section 10 Opt-Out Notice does not need to be included in solicitation materials sent to a landowner prior to the filing of a CPCN application. Of course, when the utility applies for the CPCN, the landowner will receive a Section 10 Opt-Out notice affording the landowner the opportunity to Opt-Out.

X. CONCLUSION

113. For the reasons contained herein, the Hearing Examiner makes the Recommendations to the Commission described in Articles VIII and IX herein. Due to the number of contested issues in this Docket, the Hearing Examiner has not yet drafted a proposed Commission Order. Once the Commission hears this Docket at a Commission Meeting, if directed, the Hearing Examiner will submit a proposed Order to the Commission for its consideration.

Respectfully submitted,

/s/ Mark Lawrence
Mark Lawrence
Hearing Examiner

DATED: November 25, 2009

PUBLIC SERVICE COMMISSION OF DELAWARE

EXHIBIT LOG

SUBJECT: "CPCN WATER UTILITY REGULATIONS **PSC REGULATION DOCKET NO.51**

EXHIBIT NUMBER	DATE PROFFERED	DATE ENTERED	SPONSOR	DESCRIPTION
1				Affidavit of Service
2				United Water Co. submission, May 17, 2007
3				Tidewater Utilities, Inc. submission, May 17, 2007
4				Artesian Water Co. submission, May 18, 2007
5				Tidewater Utilities, Inc. submission, November 1, 2007
6				Artesian Water Co. submission, November 1, 2007
7				Map of northern New Castle Co. Water CPCNs, approved service territories
8A				Map of central New Castle Co. Water CPCNs, circled areas of concern
9				Map of southern New Castle Co. Water CPCNs, approved service territories
9A				Map of southern New Castle Co. Water CPCNs, circled areas of concern
10				Map of Kent Co. Water CPCNs, approved service territories
10A				Map of Kent Co. Water CPCNs, circled areas of concern
11				Map of south Harrington Water CPCNs, approved service territories
11A				Map of south Harrington Water CPCNs, circled areas of concern
12				Map of western Sussex Co. Water CPCNs, approved service territories
13				Map of east Millsboro Water CPCNs, approved service territories
13A				Map of east Millsboro Water CPCNs, circled areas of concern

EXHIBIT NUMBER	DATE PROFFERED	DATE ENTERED	SPONSOR	DESCRIPTION
14				Map of area west of Lewes Water CPCNs, approved service territories
14A				Map of area west of Lewes Water CPCNs, circled areas of concern
15				Map of area west of Selbyville Water CPCNs, approved service territories
15A				Map of area west of Selbyville Water CPCNs, circled areas of concern
16				Map of north & east of Selbyville Water CPCNs, approved service territories
16A				Map of area north & east of Selbyville Water CPCNs, circled areas of concern
17				Map of area southeast of Laurel Water CPCNs, approved service territories
17A				Map of area southeast of Laurel Water CPCNs, circled areas of concern
18				Map of eastern Sussex Co. Water CPCNs, approved service
19				Map of area north & west of Smyrna, approved service territories
20				Map of area southwest of Frederica, approved service territories
21				Tidewater Utilities, Inc.'s correspondence to Mr. & Mrs. Steele, III
22				Direct testimony of Connie S. McDowell, April 29, 2005
23	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 5739, June 10, 2001
24	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6147, April 15, 2003
25	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6911, May 9, 2006
26	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6921, May 23, 2006
27	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6948, June 20, 2006
28	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7102, December 19, 2006
29	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7238, July 24, 2007
30	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7396, May 20, 2008
31	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6111, January 28, 2003
32	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6612, April 26, 2005
33	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6922, May 23, 2006

34	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6946, June 20, 2006
35	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7135, February 27, 2007
36	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7120, January 13, 2007
37	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6484, October 5, 2004
38	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7418, August 5, 2008
39	3/6/2009	3/6/2009	Staff	Artesian Water Company; Commission approval re Bond Purchase Agreement of $15 million; Order No. 7484, November 21, 2008
40	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6180, June 3, 2003
41	3/6/2009	3/6/2009	Staff	E-mail correspondence between Tidewater Utilities, Inc. and PSC re service to Mr. Bowman located at 548 Atlantic Ave., Millville, DE. January 26 and 27, 2009
42	3/6/2009	3/6/2009	Staff	Holland Mills Development LLC's Amended Complaint, PSC Dkt. 08-358
43	3/6/2009	3/6/2009	Staff	Correspondence from Alan L. Fleetwood (Artesian) Water Company to Mr. & Mrs. Ellers re water service territory and "water service petition"
44	3/6/2009	3/6/2009	Staff	John Schreppler, counsel for Artesian, request for information under the Freedom of Information Act (FOIA) to the Delaware Public Service Commission
45	3/6/2009	3/6/2009	Staff	Letter dated August 20, 2008 from the Chamberlins to the July 29, 2008 letter from Joseph C. Cuccinello (Tidewater)
46	3/6/2009	3/6/2009	Staff	Letter from Joseph C. Cuccinello (Tidewater) to Danny L. Messick re Tidewater, November 13, 2008
47	3/6/2009	3/6/2009	Staff	Letter to Commission from Lillian A. Gray re Tidewater, November 12, 2008
48	3/6/2009	3/6/2009	Staff	Letter to Commission from the Evans' including Landowner Notification re Artesian, December 16, 2008
49	3/6/2009	3/6/2009	Staff	Letter from Joseph C. Cuccinello to Jean M. Peoples, including Petition for Inclusion in Tidewater Utilities, Inc. Water Service Territory, July 7, 2008
50	3/6/2009	3/6/2009	Staff	Letter to Doris King from Alan Fleetwood and reply from Doris King re Artesian, June 30, 2008
51	3/6/2009	3/6/2009	Staff	Letters from Hilda Ennis re Town of Selbyville CPCN application, 11/21/2005

52	3/6/2009	3/6/2009	Staff	Letters from the Pynes re Artesian, July 3, 2008 and December 28, 2008
53	3/6/2009	3/6/2009	Staff	Letter to Commission from James Melville re Artesian, June 16, 2008
54	3/6/2009	3/6/2009	Staff	Letter to Commission from Philip Gallo re Artesian, May 23, 2008
55	3/6/2009	3/6/2009	Staff	Letter to Commission from the Scotts re Artesian, July 16, 2008
56	3/6/2009	3/6/2009	Staff	Letter to Commission from the Conlons re Tidewater, September 23, 2008
57	3/6/2009	3/6/2009	Staff	Letter to Commission from the Smiths re Artesian, January 12, 2009
58	3/6/2009	3/6/2009	Staff	Final Report Governor's Water Supply Task Force, December 2, 1999
59	3/6/2009	3/6/2009	Staff	Ninth Report to the Governor and the General Assembly regarding the progress of the Delaware Water Supply Coordinating Council June 30, 2006
60	3/6/2009	3/6/2009	Staff	Reybold Group, a Delaware Corporation, and The Home Builders Association of Delaware, Inc. v. The Public Service Commission of the State of Delaware-Superior Court Opinion and Order Decided, July 31, 2007
61	3/6/2009	3/6/2009	Staff	Reybold Group, a Delaware Corporation v. The Public Service Commission of the State of Delaware and the Division of the Public Advocate-Supreme Court Order Decided, February 6, 2008
62	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7092, December 5, 2006
63	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 6873, March 14, 2006
64	3/6/2009	3/6/2009	Staff	Public Service Commission Order No. 7188, May 22, 2007
65	3/6/2009	3/6/2009	Staff	PSC Docket Nos. 05-WW-021 and 07-WW-003 ("Windstone") Hearing Transcript of April 4, 2007
66	3/6/2009	3/6/2009	Staff	Direct Testimony of John J. Schreppler, II on Behalf of Artesian
67	3/6/2009	3/6/2009	Staff	Direct Testimony of Mario Capano on behalf of Windstone, LLC.
68	3/6/2009	3/6/2009	Staff	Direct Testimony of Tidewater Utilities, Inc. and Tidewater Environmental Service Inc. ("Windstone")
69	3/6/2009	3/6/2009	Staff	Hearing Examiner's Report, July 15, 2008 in the matter of the application of Sussex Shores Water Company for and increase in Water Rates, PSC Dkt. 07-278
	3/6/2009	3/6/2009	Staff	

70	3/6/2009	3/6/2009	Staff	Artesian Water Company, Inc.'s Responses to the Public Service Commission's rate base data requests Nos. 1-11, PSC Dkt. 08-96
71	3/6/2009	3/6/2009	Staff	Artesian Water Company, Inc.'s responses to the Public Service Commission's rate base data request Nos. 12-30, PSC Dkt. 08-96
72	3/6/2009	3/6/2009	Staff	Artesian Water Company, Inc's responses to PSC First Requests for Admissions, PSC Dkt. 08-96
73	3/6/2009	3/6/2009	Staff	Letter from Gerard L. Espisito (Tidewater) to City of Dover Manager, Tony DePrima and Richard A. Forsten, Esq. re CPCN deliberations
74	3/6/2009	3/6/2009	Staff	For Tidewater and Artesian: GIS mapping data, information and maps showing CPCN territory, actual territory being served, and infrastructure locations
75	3/6/2009	3/6/2009	Staff	Other information to be produced in discovery by Tidewater and Artesian
76	3/6/2009	3/6/2009	Staff	All reports of the Delaware Water Supply Coordinating Council
77	3/6/2009	3/6/2009	Staff	Water rate increases for Tidewater, Artesian, United Water, Long Neck, and Sussex Shores from 2000 to present, and comparison to Consumer Price Index. Related data on Consumer Price Index for 2000 through present
78	3/6/2009	3/6/2009	Staff	Pre-filed testimony of Marilyn Ellers
79	3/6/2009	3/6/2009	Staff	Pre-filed testimony of Soheil Gharebaghi, P.E.
80	3/6/2009	3/6/2009	Staff	Letter to Commission from J. Logan re communication and correspondence with A. Fleetwood re Artesian Water Co.
81	3/6/2009	3/6/2009	Staff	E-mail correspondence between the Commission and Mrs. Ellers re Artesian
82	3/6/2009	3/6/2009	Staff	Pre-filed testimony of Anthony J. DePrima
83	3/6/2009	3/6/2009	Staff	Pre-filed testimony of Curtis Larrimore
84	3/6/2009	3/6/2009	Staff	Pre-filed testimony of Andrea Maucher
85	3/6/2009	3/6/2009	Staff	Tidewater Utilities, Inc. Water Service Agreement re Fox Hollow development
86	3/6/2009	3/6/2009	Staff	Pre-filed testimony of Kevin Neilson
87	3/6/2009	3/6/2009	Staff	Map – Staff M1; west of Smyrna
88	3/6/2009	3/6/2009	Staff	Map – Staff M2; north of Middletown
89	3/6/2009	3/6/2009	Staff	Map – Staff M3; east of Laurel

90	3/6/2009	3/6/2009	Staff	Map – Staff M4; north of Millsboro
91	3/6/2009	3/6/2009	Staff	Map – Staff M4a; north of Millsboro
92	3/6/2009	3/6/2009	Staff	Map – Staff M5a; east of Millsboro
93	3/6/2009	3/6/2009	Staff	Map – Staff M6a; north of Selbyville
94	3/6/2009	3/6/2009	Staff	Direct Testimony of James Cotton, May 3, 2005
95	3/6/2009	3/6/2009	Staff	Staff's response to the January 30, 2009 filings of Artesian and Tidewater identifying areas of dispute with proposed CPCN regulations (w/o exs.)
96	3/6/2009	3/6/2009		
97	3/6/2009	3/6/2009	Staff	Andrea Maucher Staff Exhibit, Opt-Out letters (1-16)
98	3/6/2009	3/6/2009	Staff	Andrea Maucher Staff Exhibit, Opt-Out letter (2005-2008)
99	3/6/2009	3/6/2009	Staff	Staff exhibit list
100	3/6/2009	3/6/2009	Staff	Staff supplemental exhibit list
101	3/6/2009	3/6/2009	Staff	Stipulation 3/4/09 between Staff & Tidewater Utilities, Inc.
102	3/6/2009	3/6/2009	Staff	Dave Parcell's pre-filed testimony w/ attached exhibits listed as Staff ex. 96
103	3/6/2009	3/6/2009	Artesian	2007 Form 10-K Artesian
104	3/6/2009	3/6/2009	Artesian	Dividend history chart
105	3/6/2009	3/6/2009	Artesian	Trading History – Nasdaq
106	3/6/2009	3/6/2009	Artesian	Pie Chart
107	3/6/2009	3/6/2009	Staff	Pre-filed testimony of J. Cotton
108	3/6/2009	3/6/2009	Artesian	7 Del. C. §6075
109	3/9/2009	3/9/2009	Artesian	PSC Order Nos. 7249,7352,7341,7343
110	3/9/2009	3/9/2009	Artesian	Senate Bill 52
111	3/9/2009	3/9/2009	Artesian	Senate Bill 370
112	3/9/2009	3/9/2009	Artesian	Confidential map of New Castle County; Artesian service territory map § 2.4.4
113	3/9/2009	3/9/2009	Staff	Artesian's letters and frequently asked questions

114	3/9/2009	3/9/2009	H. E.	Title 26 Public Utilities Delaware Administrative Code; 2002 Regulations governing CPCNs for water utilities
115	3/9/2009	3/9/2009	Artesian	7/27/2005 Letter to C. McDowell
116	3/9/2009	3/9/2009	Tidewater	Tidewater Utilities, Inc. district maps marked as TUI-1
117	3/9/2009	3/9/2009	Tidewater	Peachtree run map main extension (4 maps) TU12
118	3/9/2009	3/9/2009	Tidewater	TUI 17 Tidewater Procedure re: landowner verification
119	3/9/2009	3/9/2009	Tidewater	TUI 4 Response to data request 8
120	3/9/2009	3/9/2009	Tidewater	TUI 8 Documents related to Westside Hunt CPCN
121	3/9/2009	3/9/2009	Tidewater	TUI 18 PSC Staff response document
122			Tidewater	TUI 10 transcript of R. Hencks testimony
123	3/9/2009	3/9/2009	Tidewater	TUI 5 Documents related to CWWSA CPN issue
124	3/9/2009	3/9/2009	Tidewater	TUI 14 January 30, 2009 e-mail
125	3/9/2009	3/9/2009	Tidewater	TUI 15 TUI/Art proposal
126	3/9/2009	3/9/2009	Tidewater	TUI 16 January 30, 2009 letter to Hearing Examiner
127	3/9/2009	3/9/2009	Tidewater	TUI 17 December 10, 1998 letter to F. Murphy
128	3/9/2009	3/9/2009	Tidewater	TUI 19 TUI's rebuttal
129			Tidewater	TUI 9 TUI customer solicitation letters
130	3/9/2009	3/9/2009	Tidewater	TUI 12 TUI procedure mass mailings
131	3/9/2009	3/9/2009	Tidewater	TUI 13 A. Maucher Windstone testimony
132	3/9/2009	3/9/2009	Tidewater	TUI 2 Infrastructure maps - *Confidential*
133	3/11/2009	3/11/2009		Report of J. Cotton
134	3/11/2009	3/11/2009	Staff	Order 7142
135	3/11/2009	3/11/2009	Staff	Order 7254
136	3/11/2009	3/11/2009	Staff	E-Mail from J. Schreppler re Windstone attorney fees
137	3/11/2009	3/11/2009	Staff	2/5/09 e-mail from J. Homer re Windstone attorney fees
138	3/11/2009	3/11/2009	Staff	Map compilated after direct/ of Camden Wyoming area based on 6 maps

139	3/11/2009	3/11/2009	Staff	Same as 138 w/ writing on it
140	3/11/2009	3/11/2009	Staff	Map compilated by Staff after direct of KC-5
141	3/11/2009	3/11/2009	Staff	Same as 140 w/ drawing on it
142	3/11/2009	3/11/2009	Staff	Exhibit 90 w/ writing on it
143	3/11/2009	3/11/2009	Staff	Map made by A. Maucher (South DE)
144	3/11/2009	3/11/2009	Staff	Closer view of map 143
145	3/11/2009	3/11/2009	Staff	Map made by A. Maucher labeled NE of Selbyville
146	3/11/2009	3/11/2009	Staff	Zoom in of exhibit 88 Staff-M2RB
147	3/11/2009	3/11/2009	Staff	Staff M3RB1
148	3/11/2009	3/11/2009	Staff	Staff M3RB1 w/ A. Mauchers handwritten notes
149	3/11/2009	3/11/2009	Staff	Zoom in of exhibit 90
150	3/11/2009	3/11/2009	Staff	Map w/ 05-CPCN-05 in orange on right side-additional zoom of exhibit 90
151	3/11/2009	3/11/2009	Staff	Exhibit 150 w/ handwriting of A. Maucher
152	3/11/2009	3/11/2009	Staff	Staff M1RB map same as exhibit 87 w/ CPCN app. #'s
153	3/11/2009	3/11/2009	Staff	Staff M6RB1 map
154	3/11/2009	3/11/2009	Staff	Exhibit 153 w/ A. Mauchers handwritten notations
155	3/11/2009	3/11/2009	Staff	Map of Georgetown area
156	3/11/2009	3/11/2009	Staff	Same as exhibit 155 w/ handwriting
157	3/11/2009	3/11/2009	Staff	Map of area outside Frederica
158	3/11/2009	3/11/2009	Staff	Exhibit 157 w/ drawing on it
159	3/11/2009	3/11/2009	Staff	Example of TUI CPCN application
160	3/11/2009	3/11/2009	Artesian	CD of 2/6/08 Oral Argument in Reybold vs. PSC
161	3/11/2009	3/11/2009	Artesian	Sussex Shores Water Company Territory Map
162	3/11/2009	3/11/2009	Artesian	Long Neck Water Company Territory Map
163	3/11/2009	3/11/2009	Tidewater	PSC Order No. 7556 & Agreement

Reg. 51

EXHIBIT "A"

REGULATIONS CONCERNING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER UTILITIES

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Attached (To Be Constructed Before Final Adoption)

REGULATIONS

1.0 Authority and Scope of Regulations

1.1 These regulations shall govern the process: (a) for a person or entity (as described in 26 Del. C. § 203C(a)) to obtain a Certificate of Public Convenience and Necessity to begin operation as a water utility; and (b) for a water utility to obtain a Certificate of Public Convenience and Necessity to extend, expand, or enlarge its operations, business, or facilities beyond its then certificated service territory. These regulations also govern, in conjunction with the provisions of 26 Del. C. § 203C, how the Commission administers, supervises, and revokes any such Certificate of Public Convenience and Necessity previously granted to a water utility.

1.2 These regulations are enacted pursuant to 26 Del. C. §§ 203C and 209(a).

1.3 In granting, denying, or revoking a Certificate of Public Convenience and Necessity under 26 Del. C. § 203C and these regulations, the Commission shall act consistently with the procedures required by 29 Del. C. ch. 101, Subchapters III and IV.

1.4 The Commission may modify or extend any of the timing requirements set forth in these regulations so long as such timing requirement is not required by statutory provision.

1.5 The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision.

2.0 Definitions

2.1 The following words and terms, when used in this regulation, should have the following meanings, unless the context clearly indicates otherwise:

"Commission" refers to the Public Service Commission.

"CPCN" or "Certificate" means a Certificate of Public Convenience and Necessity required by the provisions of 26 Del. C. § 203C.

"DPH" refers to the Division of Public Health of the Department of Health and Social Services.

"DNREC" refers to the Department of Natural Resources and Environmental Control.

"Existing development" or "existing subdivision" means an aggregate of parcels or properties within a particular geographic area:

(a) that constitute a single-named development or subdivision;

(b) that share common deed restrictions or covenants; or

(c) that are governed by a common homeowners' association or similar type of body.

The existence and boundaries of such a development or subdivision may be established by a plat or subdivision map, documents reflecting common deed or conveyance restrictions, homeowner association documents, or other means.

"Existing unincorporated community" means an aggregate of parcels or properties lying within a particular compact unincorporated geographic area that share common community interests; and

(a) that are generally recognized as an unincorporated community;

(b) that are commonly described as comprising a named community; or

(c) that are identified on maps as a particular named community.

The existence and boundaries of such an unincorporated community may be established by a plat, map, census data, post office designation, testimony of the residents, or other means.

"Landowner notification" means the process for delivering to each landowner of record the relevant form of notice prescribed by either these regulations or further Commission directive.

"Landowner of record" shall mean each person or entity as defined and described in 26 Del. C. § 203C(j). A landowner of record may be identified by reference to public tax or public land records or by relevant land conveyance documents.

"New water utility" means, for the purposes of 26 Del. C. § 203C(e)(2), an entity that has not previously provided water utility services to the public within this State.

"Postal Service" refers to the United States Postal Service.

"Proposed Service Area" is equivalent to "the proposed territory to be served" and means the area in which the applicant proposes to offer and provide its water utility services. The proposed service area shall be described by reference to one or more parcels or properties, identified by the relevant county tax map identification designations. If the proposed service area cannot be described by reference to parcels or properties, it may be described by a metes and bounds

description, or any other equivalent description capable of being mapped.

"Record date" means the date for determining the persons and entities who are landowners of record in the Proposed Service Area. The record date shall be a date chosen by the applicant that is no more than sixty days prior to the date of filing of the application for a CPCN.

"SFM" refers to the Office of the State Fire Marshal.

"Staff" refers to the Staff of the Commission.

"Secretary" refers to the Secretary of the Commission.

"Water utility" means a person or entity as defined by 26 Del. C. § 102(8) that is obligated to obtain a CPCN under 26 Del. C. § 203C(a).

3.0 Application for Certificate of Public Convenience and Necessity

In General

3.1 An application for a Certificate to begin the business of a water utility, or to extend or expand the business, operations, or facilities of any existing water utility, shall be made in writing and shall be filed with the Commission.

3.2 An applicant may request, by a single application Certificates for one to five Proposed Service Areas. In the case of an application joining multiple Proposed Service Areas, the application shall contain sufficient information and documentation to establish the applicant's entitlement to a Certificate for each separate Proposed Service Area. The Commission shall separately determine for each Proposed Service Area whether to grant a Certificate for that area. However, the Commission, by a single Order, may grant a CPCN for one or more of the Proposed Service Areas that have been joined in a single application.

3.3 The CPCN application shall include all information and supporting documentation required by 26 Del. C. § 203C, the Commission's Rules of Practice and Procedure, and these regulations. An application shall not be considered to be complete and filed until all such information and supporting documentation has been submitted to the Commission. An application shall:

3.3.1 summarize the reason(s) why the Commission should grant the CPCN for each requested Proposed Service Area;

3.3.2 provide specific citations to the statutory and regulatory provisions relied upon for a CPCN for each Proposed Service Area;

3.3.3 identify any significant element of the application that, to the applicant's knowledge, poses a unique statutory or factual question or represents a departure from prior decisions of the Commission; and

3.3.4 prominently state the name, address, telephone number, and e-mail address of the individual to be notified concerning the contents of the application.

Information about each Proposed Service Area

3.4 The application shall include, for each Proposed Service Area requested:

3.4.1 a written description of the general geographic location of the area which also describes the type of area (such as a proposed development, an existing development or existing subdivision, an existing unincorporated community, or an aggregation of a number of parcels);

3.4.2 a general map (reflecting towns or cities, and major transportation routes) appropriately marked to show the location of each Proposed Service Area;

3.4.3 for applications premised on 26 Del. C. § 203C(e)(1)(3) a map, plat, or precise description of the boundaries of the existing development, existing subdivision, or existing unincorporated community accompanied by references to the documents or filings used to define and describe the existing development, existing subdivision, or unincorporated community

3.4.3.1 Upon request, the applicant shall provide the underlying documents or filings utilized to define and describe the existing development, existing subdivision, or existing unincorporated community; and

3.4.4 a listing (using county tax map parcel numbers or designations) of each parcel encompassed within the Proposed Service Area, accompanied by the name and mailing addresses of the landowner(s) of record for each such parcel as of the record date.

3.4.4.1 The listing shall conspicuously identify the tax records or land record documents utilized by the applicant to determine the name and address of each landowner of record.

3.4.4.2 The listing shall conspicuously identify the record date used for determining the landowners of record of the encompassed parcel or parcels.

3.4.4.3 For a request premised on 26 Del. C. § 203C(e)(1)(3), the listing shall denote each parcel where all of the landowners of record have executed a

petition requesting water utility services from the applicant.

3.4.4.4 For a request premised on 26 Del. C. § 203C(e)(1)(3), the listing shall also indicate the applicant's calculation of the total number of parcels in the Proposed Service Area and the total number of parcels where the landowners of record have executed a petition requesting water utility services from the applicant.

Evidence of Landowner Notification

3.5 The application shall contain for each Proposed Service Area the documentation reflecting landowner notification as required by 26 Del. C. § 203C(d)(1) or (e)(1), including:

3.5.1 copies of relevant Postal Service forms demonstrating that the applicant sent by certified mail the appropriate form of notice as required by these regulations to each landowner of record of each parcel encompassed within the Proposed Service Area;

3.5.2 copies of all materials or messages provided to the applicant by the Postal Service reflecting either delivery of the certified mail or failure of certified mail delivery because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed; and

3.5.3 a certification (or other evidence) that, for each earlier notice that was returned by the Postal Service due to a failure of certified mail delivery, the applicant then sent another copy of the required notice by first class United States mail to the best available address of the applicable landowner of record.

Criteria for a CPCN Request

3.6 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(d)(2)a., the application shall include all evidence (including reports or studies) that establish that the water sources and supplies then available in the Proposed Service Area do not meet the relevant standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

3.7 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(d)(2)b., the application shall include all evidence (including reports or studies) demonstrating that the supply of water available to the Proposed Service Area is insufficient to meet the projected demand.

3.8 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)(1), the application shall include a copy of a signed service agreement between the applicant and the developer of the proposed development or subdivision, and appropriate documentation reflecting that the development or subdivision has finally been approved by the relevant county or municipal government

3.9 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)(2), the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of each parcel in the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.0

3.10 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)(3), the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of a parcel to be encompassed by the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.0. The application shall include such petitions for a majority of the parcels within the existing development, existing subdivision, or existing unincorporated community that constitutes the Proposed Service Area.

3.11 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)(4), the application shall include a certified copy of the resolution or ordinance from the governing body of the relevant county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the Proposed Service Area. If requested, the applicant must also provide additional references to demonstrate that the county or municipality enacting the ordinance or resolution has the appropriate legal authority to authorize the provision of water utility services to the Proposed Service Area.[1]

Additional Criteria for a CPCN Request by a Municipal Water Authority

3.12 If the applicant is a municipal water authority created under the provisions of Chapter 14 of title 16 of the Delaware Code, and it seeks a Proposed Service Area that lies, wholly or in part, outside of the political boundaries of the municipality or municipalities that originally created such municipal authority, the application shall also include, as required by 26 Del. C. § 203C(n), a certified copy of a resolution of the governing body of each such municipality requesting that the Certificate for the extra-territorial portion of the Proposed Service Area be granted.[2]

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[1]Pursuant to the provisions of 26 Del. C. § 203C(e)(1)(4), the resolution or ordinance shall only entitle the applicant to a Proposed Service Area that lies within the political boundaries of the county or municipality that entered the resolution or ordinance. If the applicant is a municipality or municipal utility, and it seeks a Proposed Service Area that lies, wholly or in part, outside of the municipality's political boundaries, the applicant must, in the case of those parcels that are outside of the political boundaries, either (1) provide documentation to support a Certificate under some other provision of 26 Del. C. § 203C(d) or (e) or (2) cite another statutory provision that entitles the applicant to serve such parcels and which preempts the limitation expressed in 26 Del. C. § 203C(e)(1)(4).

[2]This requirement for a resolution from each municipality requesting the grant of a Certificate does not excuse the municipal water authority from establishing its entitlement to a Certificate for the Proposed Service Area outside of the municipality's boundaries under the provisions of 26 Del. C. § 203C(d) or (e).

Plan of Service

3.13 An application shall include, for each Proposed Service Area, a description of how and when the applicant plans to provide water utility services to the Area, including an estimated timetable for providing service or an explanation as to why such an estimated timetable cannot be provided. If the Proposed Service Area is intended to be part of a regional water system, the applicant shall identify the region that includes the Proposed Service Area, and provide information setting forth the applicant's plans for the regional water system.[3]

Quality of Service Certifications and Information

3.14 In the case of a request by a water utility to expand or extend its operations and business, the application shall contain a certification that the proposed extension and expansion will satisfy the provisions of 26 Del. C. § 403(c). The applicant shall certify that:

3.14.1 the applicant is then furnishing water to its present customers in such manner that water pressure at every connection is at least 25 pounds at all times;

3.14.2 the applicant will furnish water to each new customer in each Proposed Service Area at the pressure of at least 25 pounds at the service connection while continuing also to supply each existing customer at a pressure of at least 25 pounds at each service connection;

3.14.3 the applicant is not then subject to a ruling, decision, or finding by any Federal or State regulatory authority that found, concluded, or determined that the applicant materially failed to comply with applicable safe drinking water or water quality standards; and

[3] This requirement shall not apply in the case of a Proposed Service Area for a municipal water utility or a governmental water utility that lies within the political boundaries of the municipality or government.

3.14.4 the applicant is not subject to any finding or Order of the Commission that determined that the applicant materially failed to provide adequate or proper safe water services to existing customers.

3.15 If an applicant cannot supply each of the above certifications, the application shall include a statement why the provisions of 26 Del. C. § 403(c) do not apply to the applicant or the particular application.

3.16 If an application will involve a water utility project or water utility services that require the review, approval, or authorization of any other State or Federal regulatory body (including DNREC, the SFM, or the DPH) the application shall also include:

3.16.1 a description of the nature of the review by the other regulatory body and current status of such review; and

3.16.2 a copy of any permit, order, certificate, approval, or other documents already issued by any other regulatory body relating to the water project or services.

3.17 If, after the filing of the application, any other State or Federal regulatory body issues any permit, order, certificate, approval, or other documents related to the water project or services relevant to the application, the applicant shall promptly file such document with the Commission.

Additional Materials to be Supplied with the Application

3.18 Unless the following materials are already on file with, or available to, the Commission, an applicant – other than a municipal or other governmental water utility - shall provide with the application the following information:

3.18.1 a corporate or business history including dates of incorporation and subsequent acquisitions and/or mergers;

3.18.2 a complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates, including a chart of such intra- and inter-company relationships.

3.18.3 a map identifying all areas where the applicant then provides water utility services;

3.18.4 the Annual Reports provided to owners of the applicant, or to the owners of its parent or subsidiaries, over the two-year period prior to the filing of the application;

3.18.5 the audited financial statements, SEC 10K filings, and all proxy material related to the applicant for the two years prior to the filing of the application; and

3.18.6 copies of all reports submitted by the applicant within the preceding twelve months to any State or Federal authority related to whether the applicant has complied with any statute, regulation, rule, or order concerning the provision of safe, adequate, and reliable water services (including the quality of water provided to existing customers).

3.19 Unless the materials are already on file with the Commission or available to the Commission, a municipal or other governmental water utility shall provide with the application the statement and documents identified in sections 3.18.3 and 3.18.6.

4.0 Additional Requirements for an Application Filed by a New Water Utility

4.1 If the applicant is a new water utility, the application, in addition to fulfilling the requirements of sections 3.0 through 3.19, shall also include the following:

4.1.1 a copy of the applicant's certificate of incorporation, partnership agreement, or other enabling document;[4]

4.1.2 materials that demonstrate that the applicant possesses the financial, operational, and managerial capacity to comply with all State and Federal safe drinking requirements and that the applicant has available, or will be able to procure, an adequate supply of water (even during drought conditions) to meet reasonably anticipated peak daily and monthly demands for its water utility services;

4.1.3 a description of the plant to be utilized to provide its water utility services (including details as to the type and capacity of treatment facilities, cost of facilities, and the projected construction schedule);

4.1.4 a map detailing the composition, diameter, length, and location of mains and pipes to be initially installed; and

4.1.5 a projection of the number of customers to be served in the five-year period following the grant of the requested CPCN.

5.0 Review of the Application and Deficiencies in the Application

5.1 An applicant may ask the Staff to informally review a draft of an application prior to its formal filing. Such informal review shall not affect or delay the filing of an application that complies with applicable statutes and these regulations.

[4]If the business structure of the applicant is a sole proprietorship, the Commission will presume, subject to rebuttal, that the applicant lacks the financial, operational, and managerial capabilities to provide adequate water utility services. An applicant that is a sole proprietorship may provide with its application evidence to rebut this presumption and demonstrate that it will have the capabilities to provide adequate and reliable services.

5.2 Upon filing, the Staff shall review an application for compliance with the applicable statutory provisions and these regulations. Within thirty days after the date of filing, Staff may notify the applicant of specific deficiencies in the application. The applicant shall have thirty days from the date of the receipt of such notice to file an amended or supplemental application. The Commission may, in its discretion, extend the period for curing deficiencies in the application for an additional period of time.

5.3 If the applicant submits an amended or supplemental application, the application shall then be deemed filed on the date of such submission for the purposes of the time limits set forth in 26 Del. C. § 203C(h). In the event the deficiencies identified by Staff are not cured within the time period provided, Staff may request that the Commission reject the application.

5.4 During the period the application is pending before the Commission, the Staff may request that the applicant provide additional relevant information or documents.

6.0 Coordination with Other State Agencies, Counties, and Municipalities

6.1 At the time of the filing of an application, or within three days thereafter, the applicant shall serve copies of its application on DNREC, the SFM, and the DPH.

6.2 At the time of the filing of an application, or within three days thereafter, the applicant shall also send a notice of its application, with a description of the Proposed Service Area, to the county in which the Area lies (in whole or in part).

6.3 In addition, if any parcel of land in a Proposed Service Area is located within a "future annexation area" or "future growth area" under a comprehensive plan (22 Del. C. §§ 101 and 702) adopted by a municipality that provides water utility services, then the applicant shall also serve a copy of the application on the municipality (or its municipal utility). The applicant shall serve such copy on the municipality (or its utility) at least thirty days prior to filing the

application with the Commission. The application filed with the Commission shall include a certification of such service on the identified municipality.

6.4 During the process of reviewing an application, the Staff shall coordinate and cooperate with DNREC, the SFM, and the DPH. Staff may also coordinate and cooperate with other interested State, local, and Federal authorities in reviewing the request for a CPCN.

7.0 Proposed Service Area

7.1 For a request premised on 26 Del. C. § 203C(d)(2)a, the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies that meet the standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

7.2 For a request premised on 26 Del. C. § 203C(d)(2)b, the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies sufficient to meet the projected demand for water in such parcels.

7.3 For a request premised on 26 Del. C. § 203C(e)(1)(1), the Proposed Service Area shall encompass only such parcels that are within the subdivision or development plat or plan that has been finally approved by the relevant county or municipal government.

7.4 For a request premised on 26 Del. C. § 203C(e)(1)(2), the Proposed Service Area shall encompass either:

7.4.1 a single parcel; or

7.4.2 two or more contiguous parcels that will be provided water utility services by the same stand-alone system or by the same main extension.[5]

[5]If a landowner of record removes a contiguous property from the Proposed Service Area by the exercise of the "opt-out" option available under 26 Del. C. § 203C(i), the exclusion of the parcel shall not render the remaining parcels non-contiguous.

7.5 For a request premised on 26 Del. C. § 203C(e)(1)(4), the Proposed Service Area shall encompass only such parcels of land that the governing body of the county or municipality has directed, requested, or authorized the applicant to serve.

7.5.1 For a request premised on 26 Del. C. § 203C(e)(1)(3), the Proposed Service Area shall encompass only such parcels of land that lie within the existing development, existing subdivision, or the existing unincorporated community as described and defined under § 2.1.

8.0 Requirements Related to 26 Del. C. § 203C(e)(1)(2) and (3)

8.1 If a water utility solicits a landowner of record of a property to sign a petition to request water service, the utility must provide the landowner with the following notice:

YOU SHOULD READ THIS NOTICE CAREFULLY.

Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*. *[insert water utility's name]* plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as *[insert name and description of existing development, existing subdivision, or existing unincorporated community]*.

[INSERT WATER UTILITY'S NAME] WANTS YOU TO SIGN A PETITION BY WHICH YOU AGREE TO INCLUDE YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. *[INSERT WATER UTILITY'S NAME]* ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language*: [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY [AND] *[insert description of proposed service territory]*.

IF YOU SIGN THE PETITION PROPOSED BY [INSERT WATER UTILITY'S NAME] YOUR DECISION TO INCLUDE YOUR PROPERTY IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY MAY BE PERMANENT. IT MAY ALSO AFFECT YOUR ABILITY TO OBTAIN A PERMIT FOR A NEW WELL.

IF YOU DO NOT WISH TO BE INCLUDED IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY, DO NOT SIGN THE PETITION.

IF YOU DO NOT SIGN THE PETITION, [INSERT WATER UTILITY'S NAME] MAY NEVERTHELESS SEND YOU A LETTER ASKING YOU TO INCLUDE YOUR PROPERTY IN ITS SERVICE TERRITORY. IF YOU RECEIVE SUCH A LETTER, YOU MAY HAVE TO TAKE ADDITIONAL ACTION.

IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).

8.2 For a request premised on either 26 Del. C. § 203C(e)(1)(2) or 26 Del. C. § 203C(e)(1)(3), each petition requesting water utility services from the applicant must:

8.2.1 bear the signature of each landowner of record (or a duly authorized agent) that is requesting water utility services from the applicant;

8.2.2 reflect the date for each signature by each landowner of record, which date shall not be any earlier than one year prior to the date of the filing of the application;

8.2.3 bear a printed recitation of the name of each landowner of record executing the petition;

8.2.4 describe the nature and office of the executing individual if the request is by an artificial entity;

8.2.5 identify the tax map parcel number associated with each landowner of record requesting water service; and

8.2.6 list the present mailing address and telephone number of each landowner of record that executes the request for water utility services.

8.2.7 contain the following statement in conspicuous language:

I UNDERSTAND THAT BY SIGNING THIS PETITION MY PROPERTY MAY HAVE TO REMAIN IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY PERMANENTLY. I ALSO UNDERSTAND THAT IT MAY AFFECT MY ABILITY TO OBTAIN A PERMIT FOR A NEW WELL.

IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).

8.3 If a petition under 26 Del. C. § 203C(e)(1)(2) or 26 Del. C. § 203C(e)(1)(3) involves a petition for water utility services on behalf of condominium units as defined by 26 Del. C. § 203C(j), the applicant shall provide with such petition the materials required by 26 Del. C. § 203C(g)(1).

8.4 If a petition for water utility services is executed by an agent of the landowner of record, the applicant shall provide with the petition

evidence to demonstrate the agent's authority to act for the landowner of record.

8.5 Each water utility shall file with the Commission any written materials the utility proposes to use to solicit landowners of record to sign a petition requesting water utility service from the utility.

9.0 Notice to Landowners in the Proposed Service Area

9.1 Pursuant to the provisions of 26 Del. C. § 203C(d)(1) and (e)(1), prior to filing the application, the applicant shall send the form of notice prescribed by these regulations to each landowner of record in the Proposed Service Area. The landowners of record shall be determined as of the record date.

9.2 The form of notice required by these regulations shall be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the application.

9.3 For requests premised on 26 Del. C. § 203C(d)(2)a. or b., the notices shall be sent by United States Postal Service certified mail, return receipt requested, with delivery restricted to the addressee.

9.4 For requests premised on 26 Del. C. § 203C(e)(1)(1) or (4), the notices shall be sent by United States Postal Service certified mail, return receipt requested, with delivery restricted to the addressee.

9.5 For requests premised on 26 Del. C. § 203C(e)(1)(2) or (3), the notices shall be sent to those landowners of record who did not execute a petition for water services by United States Postal Service certified mail, return receipt requested, and with delivery restricted to the addressee. In the case of landowners of record who did execute petitions for water service, the notices shall be sent by United States Postal Service certified mail, return receipt requested.

9.6 If the Postal Service returns to the applicant any materials reflecting that, in the case of a particular landowner of record, the certified mail delivery required under sections 9.3 through 9.5 failed because the

delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed, then the applicant shall promptly re-send the form of the required notice by first class United States mail to the best available address of that landowner of record.

9.7 The Commission, by Order, may authorize a method of providing notice to landowners of record that is equivalent to the methods set forth in sections 9.3 through 9.6.

10.0 Form of Notice to Landowners of Record

10.1 The notice to be sent to landowners of record in a request premised on either 26 Del. C. § 203C(d)(2), 26 Del. C. § 203C(e)(1)(1), or 26 Del. C. § 203C(e)(1)(4) shall be in a form approved by Staff.

10.2 If the request is premised on 26 Del. C. § 203C(e)(1)(2), the form of notice sent to landowners of record must include the following statements:

> **YOU SHOULD READ THIS NOTICE CAREFULLY.**
>
> Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*. Within thirty-five (35) days, *[insert water utility's name]* plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as *[insert name and description of existing*

development, existing subdivision, or existing unincorporated community].

[INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. *[INSERT WATER UTILITY'S NAME]* ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language*: [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR *[insert description of proposed service territory].*

IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.

1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, or, if you did not sign a petition for water service but want to be included, you do not have to take any action.

2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in *[insert development or community name]* might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your

property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees. Please note that, after the Public Service Commission has granted the Certificate to the utility, you cannot opt-out for five years, and then only if the Commission approves your request.

3) You may object to the Public Service Commission granting a Certificate for *[insert development or community name]*. For example, you may object that the water

> utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you (and other owners of the property) to exercise your options. You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although you may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted, if you choose to opt-out, it is requested that you complete the form and return it

to the Public Service Commission at the address listed below within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

If you want to "opt-out" or object, you must send the completed form to the Public Service Commission, even if you already informed the utility of your intent to "opt-out" or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

10.3 If the request is premised on 26 Del. C. § 203C(e)(1)(3), the form of notice sent to landowners of record must include the following statements:

YOU SHOULD READ THIS NOTICE CAREFULLY.

Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*. Within thirty-five (35) days, *[insert water*

utility's name] plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as *[insert name and description of existing development, existing subdivision, or existing unincorporated community]*.

[INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. *[INSERT WATER UTILITY'S NAME]* ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language*: [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR *[insert description of proposed service territory]*.

IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.

1) You may choose to be included in the utility's proposed service territory. If you signed a petition for water service asking to be included in the utility's proposed service territory, or, if you did not sign a petition for water service but want to be included, you do not have to take any action.

2) You have the right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. You can do this even though others in *[insert development or community name]*, might desire water service from the utility. You should understand that being included in a

utility's service territory does not mean that public water service will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees. Please note that, after the Public Service Commission has granted the Certificate to the utility, you

cannot opt-out for five years, and then only if the Commission approves your request.

3) You may object to the Public Service Commission granting a Certificate for *[insert development or community name]*. For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to tell the Public Service Commission why the utility should not receive the Certificate. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you (and other owners of the property) to exercise your options. You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although you may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted, if you choose to opt-out, it is requested that you complete the form and return it to the Public Service Commission at the address listed below within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

If you want to "opt-out" or object, you must send the completed form to the Public Service Commission, even if you already informed the utility of your intent to "opt-out" or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

10.4 In a request under 26 Del. C. § 203C(e), the notice sent to each landowner shall also include a form of response (in a form approved by Staff) that allows the landowner to easily and plainly exercise the options available under the form of notice.

10.5 Except as the Commission might specifically approve, the applicant shall not include any other correspondence with the landowner notice required by these regulations. The exterior of the envelope for any notice shall carry language (approved by Staff) to alert the landowner of the importance of the notice.

10.6 Within ten days of the filing of the application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application. The Staff shall approve a form of such public notice. The applicant shall promptly file proof of such publication with the Commission.

11.0 Landowner's Options to Object or "Opt-Out," and Objections from Other Interested Persons or Entities

11.1 A landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area may object to a CPCN being granted by filing with the Commission a signed written document reflecting such objection. The objection shall set forth the reasons why the applicant is not entitled to a Certificate. Except for good cause, the written objection shall be filed with the Commission no later than seventy-five (75) days after the landowner receives the notice required under Sections 9.1 and 10.1.

11.2 The Commission may allow persons or entities that are not landowners of record to file an objection to an application for a CPCN. The objection shall set forth the person's or entity's interest in the matter and the reasons why the applicant is not entitled to a Certificate. Except for good cause, the objection by a non-landowner shall be filed with the Commission no later than forty days after publication of the notices required under § 10.6.

11.3 In an application premised on 26 Del. C. § 203C(e)(1)(2) or (3), a landowner of record of a parcel that is, in whole or in part, within a

Proposed Service Area may: (a) object to the issuance of the CPCN or (b) "opt-out" and have the landowner's parcel excluded from the Proposed Service Area pursuant to 26 Del. C. § 203C(i). A landowner of record may exercise one or more of the above options.

11.3.1 The applicant shall immediately inform the Commission of the name and address of each landowner of record that notifies the applicant, either verbally or in writing, that the landowner wishes to exercise any of the options under section 11.3. The applicant shall immediately file with the Commission any written documents from a landowner that exercises any of the options in section 11.3.

11.4 At any time prior to the issuance of the CPCN premised on 26 Del. C. § 203C(e)(1)(2)or (3), a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area, may file with the Commission a signed written document requesting that the landowner's parcel be excluded from the Proposed Service Area pursuant to 26 Del. C. § 203C(i). A parcel will be excluded from the Proposed Service Area if any landowner of record of such parcel submits a signed "opt-out" request for exclusion of the parcel. The Commission may deny an "opt-out" request submitted by a landowner of record if the landowners of record holding, or vested with, a controlling interest in the parcel rescind, or countermand, the request to "opt-out." The other owners shall demonstrate to the Commission that they hold the authority to bind the parcel.

11.5 The Commission shall maintain a record of all written documents received from landowners of record that exercise the options available under sections 11.1 through 11.4.

11.6 An applicant shall retain all records related to an application for a Certificate for a period of seven years after the date of the filing of the application. The applicant shall make such records available to the Commission upon request.

12.0 Conditional Grant of a CPCN for a Proposed Service Area

12.1 This Section 12.0 shall only apply to properties subject to a CPCN which was granted by the Commission after the date this Section 12.0 became effective.

12.2 For any CPCN granted pursuant to 26 Del. C. § 203C(e)(1)(2) or § 203C(e)(1)(3) after the effective date of this Section, the landowner of record of a property included in a water utility's certificated service area shall be afforded an opportunity to "opt-out" and have their property removed from the water utility's service area if the water utility has failed to provide water service to the property within five years of the date on which the CPCN was granted. To that extent, a CPCN granted to a water utility shall be conditional.

12.3 When five years have passed since the Commission granted a CPCN to a water utility, the utility shall, within sixty days thereafter, file a report with the Commission plainly identifying the properties within the CPCN service territory that are actually receiving water service from the utility and those properties that are not receiving water service from the utility.

12.4 If five years have passed since a water utility was granted a CPCN, and the water utility is not actually providing water service to any property within the service territory granted by the CPCN, the water utility shall send notice to the landowners of record of each such property that the landowners may have the opportunity to "opt-out" and have their property removed from the utility's service territory, due to the water utility's failure to provide water service. This notice shall be sent within thirty days after the five year period has expired. The notice shall be sent by United States Postal Service certified mail, return receipt requested, with delivery restricted to the addressee. If the United States Postal Service returns any materials reflecting that, in the case of a particular landowner of record, the certified mail delivery failed because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed, then the water utility shall promptly re-send the form of the required notice by first class United States Postal Service mail to the best available address of that landowner of record. Copies of documents related to the notices sent to the landowners shall be filed with

the Commission. The Commission, by Order, may authorize a method of providing notice to landowners of record that is equivalent to the methods set forth above. The form of notice sent to landowners of record by the water utility must include the following statements:

YOU SHOULD READ THIS NOTICE CAREFULLY.

Public records list you as a landowner of the property with the following tax map parcel identification number(s): [*insert tax map parcel identification number(s)*] Your Property is included in [INSERT WATER UTILITY'S NAME] service territory. Five years have passed since the Delaware Public Service Commission granted [INSERT WATER UTILITY'S NAME] a Certificate of Public Convenience and Necessity to provide water service to your property. If [INSERT WATER UTILITY'S NAME] is not providing water service to your property, you may file a request to opt-out, which means your property may be removed from [INSERT WATER UTILITY'S NAME] service territory.

1) You may choose to remain in the utility's service territory. If so, you do not have to take any action.

2) You may wish to have your property removed from [INSERT WATER UTILITY NAME] service territory,

which means "opt-out" of the service territory. If you wish to "opt-out" you must complete the enclosed form and return it to the Public Service Commission at the address listed below within ninety (90) days from the date you receive this notice:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

Please note that a request to "opt-out" will not automatically remove your property from a water utility's service territory. If the water utility objects to your request to "opt-out," the Commission may consider other factors outlined in its regulations in making a final determination whether your property should be removed from the service territory.

3) If you do not send the completed opt-out request form to the Public Service Commission, your property will remain in the utility's service territory. If you have any questions, comments, or concerns, please contact the

Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574).

12.4.1 If the water utility's CPCN was granted pursuant to 26 Del. C. § 203C(e)(1)(2), the properties of landowners of record, who want their properties to remain within the utility's proposed service territory, shall remain within the water utility's service territory. If the water utility's CPCN was granted pursuant to 26 Del. C. § 203C(e)(1)(3), and a majority of the landowners of record of the existing development, existing subdivision, or existing unincorporated community want their properties to remain within the water utility's service territory, then all of the properties within the existing development, existing subdivision, or existing unincorporated community shall remain within the utility's service territory.

12.5 If the water utility that was granted the CPCN wishes to oppose a request by a landowner of record to opt-out of the utility's service territory, the utility must file a proceeding with the Commission within 150 days of the date on which the landowner filed the opt-out notice with the Commission.

12.6 In a proceeding filed by a water utility under Section 12.5, to obtain a determination whether landowners of record who request to opt-out of the utility's service territory should be permitted to opt-out, the Commission shall consider relevant factors, including, but not limited to, the following: a) whether the water utility has a reasonable plan to begin to provide water utility service to properties whose landowners of record wish to opt-out, and the water utility's anticipated timetable for providing such service, b) whether the properties support, or are essential to, the water utility providing water utility service to another Proposed Service Area, (c) whether any delay in providing service was beyond the reasonable control of the utility; (d) the extent to which the utility has invested resources pursuant to the CPCN; and (e) the extent to which the public convenience and necessity would be served by denying the landowner's request to opt-out.

12.7 In any proceeding instituted under Section 12.5, the water utility shall have the burden of proof, including the burden of proving the factors set forth in Section 12.6 a) through e).

12.8 In any proceeding instituted under Section 12.5, the Commission shall have the authority to determine the manner and form of notice to be provided to landowners of record whose properties may be affected by the proceeding.

13.0 Suspension or Revocation of CPCN for Good Cause

13.1 Pursuant to the provisions of 26 Del. C. § 203C(k) and (l), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

13.1.1 a finding by the Commission that the holder of a CPCN has not materially complied with: (a) any provisions of Titles 7, 16, or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers; or (b) any order or rule of the Commission relating to the same;

13.1.2 a finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

13.1.3 either (a) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (b) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

13.2 In addition to the factors required by sections 13.1.1, 13.1.2, and 13.1.3, the Commission may also consider one or more of the

following factors in determining whether to suspend or revoke a CPCN:

13.2.1 fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

13.2.2 criminal conduct on the part of the water utility; or

13.2.3 actual, threatened or impending insolvency of the water utility; or

13.2.4 persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by section 13.1.1 above; or

13.2.5 failure or inability on the part of the water utility to comply with an Order of any other State or Federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

13.2.6 such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

14.0 Proceedings to Suspend or Revoke a CPCN for Good Cause

14.1 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del. C. ch. 101, Subchapters III and IV.

14.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with section 14.1 above, that (a) the conduct of the water utility poses an imminent threat to the health and safety of its customers; or (b) the water utility is incapable of providing safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without initially affording the water utility a reasonable opportunity to correct the conditions that are

alleged to constitute the grounds for the suspension or revocation of the CPCN.

REG.51

EXHIBIT "B"

REGULATIONS CONCERNING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR WATER UTILITIES

TABLE OF CONTENTS

(To Be Constructed Before Final Adoption)

REGULATIONS

1.0 Authority and Scope of Regulations

1.1 These regulations shall govern the process: (a) for a person or entity (as described in 26 Del. C. § 203C(a)) to obtain a Certificate of Public Convenience and Necessity to begin operation as a water utility; and (b) for a water utility to obtain a Certificate of Public Convenience and Necessity to extend, expand, or enlarge its operations, business, or facilities beyond its then certificated service territory. These regulations also govern, in conjunction with the provisions of 26 Del. C. § 203C, how the Commission administers, supervises, and revokes any such Certificate of Public Convenience and Necessity previously granted to a water utility.

1.2 These regulations are enacted pursuant to 26 Del. C. §§ 203C and

209(a).

1.3 In granting, denying, or revoking a Certificate of Public Convenience and Necessity under 26 Del. C. § 203C and these regulations, the Commission shall act consistently with the procedures required by 29 Del. C. ch. 101, Subchapters III and IV.

1.4 The Commission may modify or extend any of the timing requirements set forth in these regulations so long as such timing requirement is not required by statutory provision.

1.5 The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision.

2.0 Definitions

2.1 The following words and terms, when used in this regulation, should have the following meanings, unless the context clearly indicates otherwise:

"Commission" refers to the Public Service Commission.

"CPCN" or "Certificate" means a Certificate of Public Convenience and Necessity required by the provisions of 26 Del. C. § 203C.

"DPH" refers to the Division of Public Health of the Department of Health and Social Services.

"DNREC" refers to the Department of Natural Resources and Environmental Control.

"Existing development" or "existing subdivision" means an aggregate of parcels or properties within a particular geographic area:

(a) that constitute a single-named development or subdivision;

(b) that share common deed restrictions or covenants; or

(c) that are governed by a common homeowners' association or similar type of body.

The existence and boundaries of such a development or subdivision may be established by a plat or subdivision map, documents reflecting common deed or conveyance restrictions, homeowner association documents, or other means.

"Existing unincorporated community" means an aggregate of parcels or properties lying within a particular compact unincorporated geographic area that share common community interests; and

(a) that are generally recognized as an unincorporated community;

(b) that are commonly described as comprising a named community; or

(c) that are identified on maps as a particular named community.

The existence and boundaries of such an unincorporated community may be established by a plat, map, census data, post office designation, testimony of the residents, or other means.

"Landowner notification" means the process for delivering to each landowner of record the relevant form of notice prescribed by either these regulations or further Commission directive.

"Landowner of record" shall mean each person or entity as defined and described in 26 Del. C. § 203C(j). A landowner of record may be identified by reference to public tax or public land records or by relevant land conveyance documents.

"New water utility" means, for the purposes of 26 Del. C. § 203C(e)(2), an entity that has not previously provided water utility services to the public within this State.

"Postal Service" refers to the United States Postal Service.

"Proposed Service Area" is equivalent to "the proposed territory to be served" and means the area in which the applicant proposes to offer and provide its water utility services. The proposed service area shall be described by reference to one or more parcels or properties, identified by the relevant county tax map identification designations. If the proposed service area cannot be described by reference to parcels or properties, it may be described by a metes and bounds

description, or any other equivalent description capable of being mapped.

"Record date" means the date for determining the persons and entities who are landowners of record in the Proposed Service Area. The record date shall be a date chosen by the applicant that is no more than sixty days prior to the date of filing of the application for a CPCN.

"SFM" refers to the Office of the State Fire Marshal.

"Staff" refers to the Staff of the Commission.

"Secretary" refers to the Secretary of the Commission.

"Water utility" means a person or entity as defined by 26 Del. C. § 102(8) that is obligated to obtain a CPCN under 26 Del. C. § 203C(a).

3.0 Application for Certificate of Public Convenience and Necessity

In General

3.1 An application for a Certificate to begin the business of a water utility, or to extend or expand the business, operations, or facilities of any existing water utility, shall be made in writing and shall be filed with the Commission.

3.2 An applicant may request, by a single application Certificates for multiple Proposed Service Areas. In the case of an application joining multiple Proposed Service Areas, the application shall contain sufficient information and documentation to establish the applicant's entitlement to a Certificate for each separate Proposed Service Area. The Commission shall separately determine for each Proposed Service Area whether to grant a Certificate for that area. However, the Commission, by a single Order, may grant a CPCN for one or more of the Proposed Service Areas that have been joined in a single application.

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3.3 The CPCN application shall include all information and supporting documentation required by 26 Del. C. § 203C, the Commission's Rules of Practice and Procedure, and these regulations. An application shall not be considered to be complete and filed until all such information and supporting documentation has been submitted to the Commission. An application shall:

3.3.1 summarize the reason(s) why the Commission should grant the CPCN for each requested Proposed Service Area;

3.3.2 provide specific citations to the statutory and regulatory provisions relied upon for a CPCN for each Proposed Service Area;

3.3.3 identify any significant element of the application that, to the applicant's knowledge, poses a unique statutory or factual question or represents a departure from prior decisions of the Commission; and

3.3.4 prominently state the name, address, telephone number, and e-mail address of the individual to be notified concerning the contents of the application.

Information about each Proposed Service Area

3.4 The application shall include, for each Proposed Service Area requested:

3.4.1 a written description of the general geographic location of the area which also describes the type of area (such as a proposed development, an existing development or existing subdivision, an existing unincorporated community, or an aggregation of a number of parcels);

3.4.2 a general map (reflecting towns or cities, and major transportation routes) appropriately marked to show the location of each Proposed Service Area;

3.4.3 for applications premised on 26 Del. C. § 203C(e)(1)c. a map, plat, or precise description of the boundaries of the existing development, existing subdivision, or existing unincorporated community accompanied by references to the documents or filings used to define and describe the existing development, existing subdivision, or unincorporated community

3.4.3.1 Upon request, the applicant shall provide the underlying documents or filings utilized to define and describe the existing development, existing subdivision, or existing unincorporated community; and

3.4.4 a listing (using county tax map parcel numbers or designations) of each parcel encompassed within the Proposed Service Area, accompanied by the name and mailing addresses of the landowner(s) of record for each such parcel as of the record date.

3.4.4.1 The listing shall conspicuously identify the tax records or land record documents utilized by the applicant to determine the name and address of each landowner of record.

3.4.4.2 The listing shall conspicuously identify the record date used for determining the landowners of record of the encompassed parcel or parcels.

3.4.4.3 For a request premised on 26 Del. C. § 203C(e)(1)b., the listing shall denote each parcel where all of the landowners of record have executed a

petition requesting water utility services from the applicant.

3.4.4.4 For a request premised on 26 Del. C. § 203C(e)(1)b., the listing shall also indicate the applicant's calculation of the total number of parcels in the Proposed Service Area and the total number of parcels where the landowners of record have executed a petition requesting water utility services from the applicant.

Evidence of Landowner Notification

3.5 The application shall contain for each Proposed Service Area the documentation reflecting landowner notification as required by 26 Del. C. § 203C(d)(1) or (e)(1), including:

3.5.1 copies of relevant Postal Service forms demonstrating that the applicant sent by certified mail the appropriate form of notice as required by these regulations to each landowner of record of each parcel encompassed within the Proposed Service Area;

3.5.2 copies of all materials or messages provided to the applicant by the Postal Service reflecting either delivery of the certified mail or failure of certified mail delivery because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed; and

3.5.3 a certification (or other evidence) that, for each earlier notice that was returned by the Postal Service due to a failure of certified mail delivery, the applicant then sent another copy of the required notice by first class United States mail to the best available address of the applicable landowner of record.

Criteria for a CPCN Request

3.6 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(d)(2)a., the application shall include all evidence (including reports or studies) that establish that the water sources and supplies then available in the Proposed Service Area do not meet the relevant standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

3.7 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(d)(2)b., the application shall include all evidence (including reports or studies) demonstrating that the supply of water available to the Proposed Service Area is insufficient to meet the projected demand.

3.8 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)a., the application shall include a copy of a signed service agreement between the applicant and the developer of the proposed development or subdivision, and appropriate documentation reflecting that the development or subdivision has finally been approved by the relevant county or municipal government

3.9 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)b., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of each parcel in the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.1

3.10 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)c., the application shall include copies of each petition requesting that the applicant provide water services which has been signed by all of the landowners of record of a parcel to be encompassed by the Proposed Service Area. Each such petition must meet the criteria set forth in section 8.1. The application shall include such petitions for a majority of the parcels within the existing development, existing subdivision, or unincorporated community that constitutes the Proposed Service Area.

3.11 For a request for a Proposed Service Area premised on 26 Del. C. § 203C(e)(1)d., the application shall include a certified copy of the resolution or ordinance from the governing body of the relevant county or municipality that requests, directs, or authorizes the applicant to provide water utility services to the Proposed Service Area. If requested, the applicant must also provide additional references to demonstrate that the county or municipality enacting the ordinance or resolution has the appropriate legal authority to authorize the provision of water utility services to the Proposed Service Area.[1]

Additional Criteria for a CPCN Request by a Municipal Water Authority

3.12 If the applicant is a municipal water authority created under the provisions of Chapter 14 of title 16 of the Delaware Code, and it seeks a Proposed Service Area that lies, wholly or in part, outside of the political boundaries of the municipality or municipalities that originally created such municipal authority, the application shall also include, as required by 26 Del. C. § 203C(n), a certified copy of a resolution of the governing body of each such municipality requesting that the Certificate for the extra-territorial portion of the Proposed Service Area be granted.[2]

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[1]Pursuant to the provisions of 26 Del. C. § 203C(e)(1)d., the resolution or ordinance shall only entitle the applicant to a Proposed Service Area that lies within the political boundaries of the county or municipality that entered the resolution or ordinance. If the applicant is a municipality or municipal utility, and it seeks a Proposed Service Area that lies, wholly or in part, outside of the municipality's political boundaries, the applicant must, in the case of those parcels that are outside of the political boundaries, either (1) provide documentation to support a Certificate under some other provision of 26 Del. C. § 203C(d) or (e) or (2) cite another statutory provision that entitles the applicant to serve such parcels and which preempts the limitation expressed in 26 Del. C. § 203C(e)(1)d.

[2]This requirement for a resolution from each municipality requesting the grant of a Certificate does not excuse the municipal water authority from establishing its entitlement to a Certificate for the Proposed Service Area outside of the municipality's boundaries under the provisions of 26 Del. C. § 203C(d) or (e).

Plan of Service

3.13 An application by a New water utility shall include, for each Proposed Service Area, a description of how and when the applicant plans to provide water utility services to the Area., including an estimated timetable for providing service or an explanation as to why such an estimated timetable cannot be provided. If the Proposed Service Area is intended to be part of a regional water system, the New water utility applicant shall identify the region that includes the Proposed Service Area, and provide information setting forth the applicant's plans for the regional water system.[3]

Quality of Service Certifications and Information

3.14 In the case of a request by a water utility to expand or extend its operations and business, the application shall contain a certification that the proposed extension and expansion will satisfy the provisions of 26 Del. C. § 403(c). The applicant shall certify that:

3.14.1 the applicant is then furnishing water to its present customers in such manner that water pressure at every connection is at least 25 pounds at all times;

3.14.2 the applicant will furnish water to each new customer in each Proposed Service Area at the pressure of at least 25 pounds at the service connection while continuing also to supply each existing customer at a pressure of at least 25 pounds at each service connection;

3.14.3 the applicant is not then subject to a ruling, decision, or finding by any federal or state regulatory authority that found, concluded, or determined that the applicant materially failed to comply with applicable safe drinking water or water quality standards; and

[3] This requirement shall not apply in the case of a Proposed Service Area for a municipal water utility or a governmental water utility that lies within the political boundaries of the municipality or government.

3.14.4 the applicant is not subject to any finding or Order of the Commission that determined that the applicant materially failed to provide adequate or proper safe water services to existing customers.

3.15 If an applicant cannot supply each of the above certifications, the application shall include a statement why the provisions of 26 Del. C. § 403(c) do not apply to the applicant or the particular application.

3.16 If an application will involve a water utility project or water utility services that require the review, approval, or authorization of any other state or federal regulatory body (including DNREC, the SFM, or the DPH) the application shall also include:

3.16.1 a description of the nature of the review by the other regulatory body and current status of such review; and

3.16.2 a copy of any permit, order, certificate, approval, or other documents already issued by any other regulatory body relating to the water project or services.

3.17 If, after the filing of the application, any other state or federal regulatory body issues any permit, order, certificate, approval, or other documents related to the water project or services relevant to the application, the applicant shall promptly file such document with the Commission.

Additional Materials to be Supplied with the Application

3.18 Unless the following materials are already on file with, or available to, the Commission, an applicant – other than a municipal or other governmental water utility - shall provide with the application the following information:

3.18.1 a corporate or business history including dates of incorporation and subsequent acquisitions and/or mergers;

3.18.2 a complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates, including a chart of such intra- and inter-company relationships.

3.18.3 a map identifying all areas where the applicant then provides water utility services;

3.18.4 the Annual Reports provided to owners of the applicant, or to the owners of its parent or subsidiaries, over the two-year period prior to the filing of the application;

3.18.5 the audited financial statements, SEC 10K filings, and all proxy material related to the applicant for the two years prior to the filing of the application; and

3.18.6 copies of all reports submitted by the applicant within the preceding twelve months to any State or federal authority related to whether the applicant has complied with any statute, regulation, rule, or order concerning the provision of safe, adequate, and reliable water services (including the quality of water provided to existing customers).

3.19 Unless the materials are already on file with the Commission or available to the Commission, a municipal or other governmental water utility shall provide with the application the statement and documents identified in sections 3.18.3 and 3.18.6.

4.0 Additional Requirements for an Application Filed by a New Water Utility

4.1 If the applicant is a new water utility, the application, in addition to fulfilling the requirements of sections 3.0 through 3.19, shall also include the following:

4.1.1 a copy of the applicant's certificate of incorporation, partnership agreement, or other enabling document;[4]

4.1.2 materials that demonstrate that the applicant possesses the financial, operational, and managerial capacity to comply with all State and federal safe drinking requirements and that the applicant has available, or will be able to procure, an adequate supply of water (even during drought conditions) to meet reasonably anticipated peak daily and monthly demands for its water utility services;

4.1.3 a description of the plant to be utilized to provide its water utility services (including details as to the type and capacity of treatment facilities, cost of facilities, and the projected construction schedule);

4.1.4 a map detailing the composition, diameter, length, and location of mains and pipes to be initially installed; and

4.1.5 a projection of the number of customers to be served in the five-year period following the grant of the requested CPCN.

5.0 Review of the Application and Deficiencies in the Application

5.1 An applicant may ask the Staff to informally review a draft of an application prior to its formal filing. Such informal review shall not affect or delay the filing of an application that complies with applicable statutes and these regulations.

[4]If the business structure of the applicant is a sole proprietorship, the Commission will presume, subject to rebuttal, that the applicant lacks the financial, operational, and managerial capabilities to provide adequate water utility services. An applicant that is a sole proprietorship may provide with its application evidence to rebut this presumption and demonstrate that it will have the capabilities to provide adequate and reliable services.

5.2 Upon filing, the Staff shall review an application for compliance with the applicable statutory provisions and these regulations. Within thirty days after the date of filing, Staff may notify the applicant of specific deficiencies in the application. The applicant shall have thirty days from the date of the receipt of such notice to file an amended or supplemental application. The Commission may, in its discretion, extend the period for curing deficiencies in the application for an additional period of time.

5.3 If the applicant submits an amended or supplemental application, the application shall then be deemed filed on the date of such submission for the purposes of the time limits set forth in 26 Del. C. § 203C(h). In the event the deficiencies identified by Staff are not cured within the time period provided, Staff may request that the Commission reject the application.

5.4 During the period the application is pending before the Commission, the Staff may request that the applicant provide additional relevant information or documents.

6.0 Coordination with Other State Agencies, Counties, and Municipalities

6.1 At the time of the filing of an application, or within three days thereafter, the applicant shall serve copies of its application on DNREC, the SFM, and the DPH.

6.2 At the time of the filing of an application, or within three days thereafter, the applicant shall also send a notice of its application, with a description of the Proposed Service Area, to the county in which the Area lies (in whole or in part).

6.3 In addition, if any parcel of land in a Proposed Service Area is located within a "future annexation area" or "future growth area" under a comprehensive plan (22 Del. C. §§ 101 and 702) adopted by a municipality that provides water utility services, then the applicant shall also serve a copy of the application on the municipality (or its municipal utility). The applicant shall serve such copy on the municipality (or its utility) at the time of filing the application with the

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Commission, or within three days thereafter. The application filed with the Commission shall include a certification of such service on the identified municipality.

6.4 During the process of reviewing an application, the Staff shall coordinate and cooperate with DNREC, the SFM, and the DPH. Staff may also coordinate and cooperate with other interested State, local, and federal authorities in reviewing the request for a CPCN.

7.0 Proposed Service Area

7.1 For a request premised on 26 Del. C. § 203C(d)(2)a., the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies that meet the standards governing drinking water for human consumption promulgated and enforced by the Department of Health and Social Services.

7.2 For a request premised on 26 Del. C. § 203C(d)(2)b., the Proposed Service Area shall encompass only such parcels of land that lack available water sources or supplies sufficient to meet the projected demand for water in such parcels.

7.3 For a request premised on 26 Del. C. § 203C(e)(1)a., the Proposed Service Area shall encompass only such parcels that are within the subdivision or development plat or plan that has been finally approved by the relevant county or municipal government.

7.4 For a request premised on 26 Del. C. § 203C(e)(1)b., the Proposed Service Area shall encompass either:

7.4.1 a single parcel; or

7.4.2 two or more parcels that will be provided water utility services by the same stand-alone system or by the same main extension.

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7.5 For a request premised on 26 Del. C. § 203C(e)(1)d., the Proposed Service Area shall encompass only such parcels of land that the governing body of the county or municipality has directed, requested, or authorized the applicant to serve.

7.5.1 For a request premised on 26 Del. C. § 203C(e)(1)c., the Proposed Service Area shall encompass only such parcels of land that lie within the existing development, existing subdivision, or the existing unincorporated community as described and defined under § 2.1.

9.0 Notice to Landowners in the Proposed Service Area

9.1 Pursuant to the provisions of 26 Del. C. § 203C(d)(1) and (e)(1), prior to filing the application, the applicant shall send the form of notice prescribed by these regulations to each landowner of record in the Proposed Service Area. The landowners of record shall be determined as of the record date.

9.2 The form of notice required by these regulations shall be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the application.

9.3 For requests premised on 26 Del. C. § 203C(d)(2)a. or b., the notices shall be sent by United States certified mail, return receipt requested, with delivery restricted to the addressee.

9.4 For requests premised on 26 Del. C. § 203C(e)(1)a. or d., the notices shall be sent by United States certified mail, return receipt requested, with delivery restricted to the addressee.

9.5 For requests premised on 26 Del. C. § 203C(e)(1)b. or c., the notices shall be sent to those landowners of record who did not execute a petition for water services by United States certified mail, return receipt requested, and with delivery restricted to the addressee. In the case of landowners of record who did execute petitions for water service, the notices shall be sent by United States certified mail, return receipt requested.

9.6 If the Postal Service returns to the applicant any materials reflecting that, in the case of a particular landowner of record, the certified mail delivery required under sections 9.3 through 9.5 failed because the

Deleted: 8.0 . Requirements Related to 26 Del. C. § 203C(e)(1)b. and c.¶
8.1 . For a request premised on either 26 Del. C. § 203C(e)(1)b. or 26 Del. C. § 203C(e)(1)c., each petition requesting water utility services from the applicant must:¶
¶
8.1.1 . bear the signature of each landowner of record (or a duly authorized agent) that is requesting water utility services from the applicant;¶
8.1.2 . reflect the date for each signature by each landowner of record, which date shall not be any earlier than one year prior to the date of the filing of the application;¶
¶
8.1.3 . bear a printed recitation of the name of each landowner of record executing the petition;¶
¶
8.1.4 . describe the nature and office of the executing individual if the request is by an artificial entity;¶
¶
8.1.5 . identify the tax map parcel number associated with each landowner of record requesting water service; and ¶
¶
8.1.6 . list the present mailing address and telephone number of each landowner of record that executes the request for water utility services.¶
¶
8.2 . If a petition under 26 Del. C. § 203C(e)(1)b. or 26 Del. C. § 203C(e)(1)c involves a petition for water utility services on behalf of condominium units as defined by 26 Del. C. § 203C(j), the applicant shall provide with such petition the materials required by 26 Del. C. § 203C(g)(1).¶
¶
8.3 . If a petition for water utility services is executed by an agent of the landowner of record, the applicant shall provide with the petition evidence to demonstrate the agent's authority to act for the landowner of record.

delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed, then the applicant shall promptly re-send the form of the required notice by first class United States mail to the best available address of that landowner of record.

9.7 The Commission, by Order, may authorize a method of providing notice to landowners of record that is equivalent to the methods set forth in sections 9.3 through 9.6.

10.0 Form of Notice to Landowners of Record

10.1 The applicant shall send an appropriate notice to landowners of record in a request premised on either 26 Del. C. § 203C(d)(2), 26 Del. C. § 203C(e)(1)a., or 26 Del. C. § 203C(e)(1)d.

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10.2 If the request is premised on 26 Del. C. § 203C(e)(1)b., the form of notice sent to landowners of record must include the following statements:

> Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*. *[insert water utility's name]* plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new service territory which would be comprised of properties with the following tax parcel numbers *[insert numbers]*.
>
> [INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. You should read this notice carefully to understand the options you have under the applicable statute.
>
> 1) You may choose to be included in the utility's proposed service territory. If so, you do not have to take any action.

Deleted: Within thirty-five (35) days,

Deleted: described as *[insert name and description of existing development, existing subdivision, or existing unincorporated community]*.

Deleted: *[INSERT WATER UTILITY'S NAME]* ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language:* [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR *[insert description of proposed service territory]*. IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.

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Deleted: you signed a petition for water service asking to be included in the utility's proposed service territory, or, if you did not sign a petition for water service but want to be included,

2) The applicable statute provides for a right to "opt-out" of the utility's proposed service territory. According to the statute, if you "opt-out", your property will not be included in the utility's service territory. If you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees. Please note you cannot "opt-out" after the Public Service Commission has granted the Certificate to the utility.

3) You may object to the Public Service Commission granting a Certificate for the proposed service territory. For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to explain to the Public Service Commission the reasons why the utility should not receive the Certificate. Any such objection must be submitted to the Public Service Commission before the Certificate is granted. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you to exercise your option to opt-out. You may exercise your right to "opt-out" of the utility's service territory at any time before the Certificate is granted. The Certificate will not be granted until at least _____ days after the date of this notice. If you choose

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Deleted: You can do this even though others in *[insert development or community name]* might desire water service from the utility. You should understand that being included in a utility's service territory does not mean that public water service will be immediately available to your property or that, when available, you will be required to hook-up to the public water system. However, if your property is included in the utility's water service territory, and later the water from the well providing your drinking water cannot be used, the Department of Natural Resources and Environmental Control might deny you a permit for a new well if public water is available to your property. On the other hand, if

Deleted: *[insert development or community name]*.

Deleted: tell

Deleted: (and other owners of the property)

Deleted: s

Deleted: You have seventy-five (75) days from your receipt of this notice to file your objection with the Commission. Although

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to opt-out, complete the form and return it to the Public Service Commission at the address listed below:

Deleted: it is requested that you

Deleted: within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

If you want to "opt-out," you must so notify the Public Service Commission before the Certificate is granted even if you already informed the utility of your intent to "opt-out."

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Deleted: send the completed form to

Deleted: ,

Deleted: or object.

If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574) or by Internet e-mail at http://depsc.delaware.gov.

10.3 If the request is premised on 26 Del. C. § 203C(e)(1)c., the form of notice sent to landowners of record must include the following statements:

> Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*. *[insert water utility's name]* plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as *[insert name and description of existing development, existing subdivision, or existing unincorporated community]*.
>
> [INSERT WATER UTILITY'S NAME] HAS INCLUDED YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. You should read this notice carefully to understand the options you have under the applicable statute.

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Deleted: *[INSERT WATER UTILITY'S NAME]* ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language:* [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY OR *[insert description of proposed service territory]*.* IF YOU DO NOT TAKE ANY ACTION NOW, YOU MAY LOSE YOUR CHOICE OF WHO CAN PROVIDE WATER SERVICE TO YOUR PROPERTY AND WHETHER YOU CAN OBTAIN A WELL PERMIT.

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1) You may choose to be included in the utility's proposed service territory. If so, you do not have to take any action.

2) The applicable statute provides for a right to "opt-out" of the utility's proposed service territory. If you "opt-out", your property will not be included in the utility's service territory. If you elect to "opt-out" of the utility's service territory, but later change your mind and decide to connect to the utility's public water system, you could be charged additional fees. Please note you cannot "opt-out" after the Public Service Commission has granted the Certificate to the utility.

3) You may object to the Public Service Commission granting a Certificate for *[insert development or community name]*. For example, you may object that the water utility does not have the legal right to serve the territory. You should review the law about what a utility must provide in order to obtain a Certificate (contact the Public Service Commission to obtain a copy of the law). If you file such an objection, you will need to explain to the Public Service Commission the reasons why the utility should not receive the Certificate. Any such objection must be submitted to the Public Service Commission before the Certificate is granted. Please note that an objection will not remove your property from a proposed service territory. To remove your property from the service territory, you must request to "opt-out."

Attached to this letter is a form which allows you to exercise your option to opt-out. You may exercise your right to "opt-

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out" of the utility's service territory at any time before the Certificate is granted. The Certificate will not be granted until at least _____ days after the date of this notice. If you choose to opt-out, complete the form and return it to the Public Service Commission at the address listed below:

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Deleted: i

Deleted: it is requested that you

Deleted: within seventy-five (75) days from the date you receive this notice:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

If you want to "opt-out," you must so notify the Public Service Commission before the Certificate is granted, even if you already informed the utility of your intent to "opt-out."

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If you have any questions, comments or concerns, please contact the Public Service Commission at (302) 736-7500 (in Delaware, call 800-282-8574) or by Internet e-mail at http://depsc.delaware.gov.

10.4 In a request under 26 Del. C. § 203C(e), the notice sent to each landowner shall also include a form of response (in an appropriate form) that allows the landowner to easily and plainly exercise the opt-out option.

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10.5 Except as the Commission might specifically approve, the applicant shall not include any other correspondence with the landowner notice required by these regulations. The exterior of the envelope for any notice shall carry language (approved by Staff) to alert the landowner of the importance of the notice.

10.6 Within ten days of the filing of the application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application. The Staff shall approve a form of such public notice. The applicant shall promptly file proof of such publication with the Commission.

11.0 Landowner's Options to Object or "Opt-Out," and Objections from Other Interested Persons or Entities

11.1 A landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area may object to a CPCN being granted by filing with the Commission a signed written document reflecting such objection. The objection shall set forth the reasons why the applicant is not entitled to a Certificate. Except for good cause, the written objection shall be filed with the Commission no later than seventy-five (75) days after the landowner receives the notice required under Sections 9.1 and 10.1.

11.2 The Commission may allow persons or entities that are not landowners of record to file an objection to an application for a CPCN. The objection shall set forth the person's or entity's interest in the matter and the reasons why the applicant is not entitled to a Certificate. Except for good cause, the objection by a non-landowner shall be filed with the Commission no later than thirty days after publication of the notices required under § 10.6.

11.3 In an application premised on 26 Del. C. § 203C(e)(1)b. or c., a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area may: (a) object to the issuance of the CPCN or (b) "opt-out" and have the landowner's parcel excluded from the Proposed Service Area pursuant to 26 Del. C. § 203C(i). A landowner of record may exercise one or more of the above options.

11.3.1 The applicant shall immediately inform the Commission of the name and address of each landowner of record that notifies the applicant, either verbally or in writing, that the landowner wishes to exercise any one of the options under section 11.3. The applicant shall immediately file with the Commission any written documents from a landowner that exercises any of the options in section 11.3.

11.4 At any time prior to the issuance of the CPCN premised on 26 Del. C. § 203C(1)b. or c., a landowner of record of a parcel that is, in whole or in part, within a Proposed Service Area, may file with the Commission a signed written document requesting that the

landowner's parcel be excluded from the Proposed Service Area pursuant to 26 Del. C. § 203C(i). A parcel will be excluded from the Proposed Service Area if any landowner of record of such parcel submits a signed "opt-out" request for exclusion of the parcel. The Commission may deny an "opt-out" request submitted by a landowner of record if the landowners of record holding, or vested with, a controlling interest in the parcel rescind, or countermand, the request to "opt-out." The other owners shall demonstrate to the Commission that they hold the authority to bind the parcel.

11.5 The Commission shall maintain a record of all written documents received from landowners of record that exercise the options available under sections 11.1 through 11.4.

11.6 An applicant shall retain all records related to an application for a Certificate for a period of seven years after the date of the filing of the application. The applicant shall make such records available to the Commission upon request.

12.0 Revocation of CPCN for Failure to Serve

12.1 Pursuant to the provisions of 26 Del. C. §204, the Commission, after notice and hearing, may order a utility to provide water service to a property in the utility's certificated service area. In such a proceeding the legal or equitable owner of the property has the burden to prove that the owner is ready and willing to accept service and to make any contributions in aid of construction required by rule or order of the Commission.

12.2 Pursuant to the provisions of 26 Del. C. §203C(k) and (l), the Commission may revoke a CPCN or portion thereof for failure of a utility to comply with an order to provide service to a property in a timely manner.

13.0 Suspension or Revocation of CPCN for Good Cause

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Deleted: . 12.0 . Conditional Grant of a CPCN for a Proposed Service Area¶
12.1 . A CPCN to provide water utility services to a Proposed Service Area shall be conditioned on the applicant subsequently actually providing water utility services to consumers within the Area within five years from the grant of the CPCN.¶
¶
12.2 . If at the end of five years after the grant of a CPCN the water utility is not actually providing water utility services to consumers within the Service Area granted by the CPCN, the Commission may institute a proceeding to determine whether the previously granted CPCN should lapse because of the water utility's failure to provide water utility services. ¶
¶
12.3 . In determining whether the previously granted CPCN should lapse, the Commission shall consider relevant factors, such as: (a) whether the landowners of record in the Service Area continue to endorse the water utility providing water utility services to their properties; (b) whether the utility has a reasonable plan to begin to provide water utility services in the near future; (c) whether the Service Area supports, or is essential to, the water utility providing water services to another Service Area; (d) whether any delay in providing service was beyond the reasonable control of the utility; (e) the extent to which the utlity has invested resources pursuant to the CPCN; and (f) the extent to which the public convenience and necessity would be served by allowing the utility to retain the CPCN. ¶
¶
12.4 . If the Commission determines that the previously granted CPCN should lapse, any water utility may then file an application for a CPCN to provide water utility services to one or more parcels encompassed by the lapsed CPCN. ¶
¶
12.5 . A water utility granted a CPCN shall, within five years of the date of the CPCN, file a notice with the Commission reporting the date that it actually began providing water utility services to consumers in each Service Area granted by the CPCN.¶
¶
12.6 . The provisions of sections 12.1 through 12.5 shall not apply to a CPCN granted to a municipal water utility or a government water utility to provide water utility services to a service area in its governmental capacity. In addition, those provisions shall not apply to any Service Area granted under 26 Del. C. § 203C(e)(1)d. to a non-municipal or non-governmental water utility unless the relevant governing board of the ... [1]

13.1 Pursuant to the provisions of 26 Del. C. § 203C(k) and (l), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

13.1.1 a finding by the Commission that the holder of a CPCN has not materially complied with: (a) any provisions of Titles 7, 16, or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers; or (b) any order or rule of the Commission relating to the same;

13.1.2 a finding by the Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

13.1.3 either (a) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (b) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

13.2 In addition to the factors required by sections 13.1.1, 13.1.2, and 13.1.3, one or more of the following factors must be present for a finding of good cause to suspend or revoke a CPCN:

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13.2.1 fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

13.2.2 criminal conduct on the part of the water utility; or

13.2.3 actual, threatened or impending insolvency of the water utility; or

13.2.4 persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by section 13.1.1 above; or

13.2.5 failure or inability on the part of the water utility to comply with an Order of any other State or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

13.2.6 such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

14.0 Proceedings to Suspend or Revoke a CPCN for Good Cause

14.1 Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 Del. C. ch. 101, Subchapters III and IV.

14.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with section 14.1 above, that (a) the conduct of the water utility poses an imminent threat to the health and safety of its customers; or (b) the water utility is incapable of providing safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without initially affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.

H\Tidewater\CPCN Regulation Legislation\Water\Docket 51\PSC-Reg 51 Exhibit B (red-lined-JWH) 01292008.doc

EXHIBIT No.
"C"

LEGAL NOTICE

IN THE MATTER OF THE APPLICATION OF TIDEWATER UTILITIES, INC., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 DEL. C. § 203C (FILED FEBRUARY 12, 2009)	PSC DOCKET 09-CPCN-03 ("MAPLE VIEW")

On February 12, 2009, Tidewater Utilities, Inc. ("Tidewater"), filed an application with the Delaware Public Service Commission ("PSC") for a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to one parcel of land located northeast of Middletown, New Castle County, Delaware. The basis for the application is Tidewater's possession of a petition requesting water service signed by the landowner in the proposed service area as set forth in 26 Del. C. § 203C(e)(1)b.

The PSC is investigating this matter to the extent deemed necessary to determine whether the CPCN should be granted. An evidentiary hearing on this application will not be held unless there is a meritorious request received within thirty (30) days of publication of this notice. A meritorious request is deemed to be one which sets forth reasonable grounds why a public hearing would be appropriate or would be in the public interest.

Pursuant to current law, property owners within the proposed CPCN service area may file an objection to the issuance of a CPCN to Tidewater and may also choose to "opt-out" of inclusion in the proposed service area. Written notice of such objection or a decision to "opt-out" of inclusion in the proposed service area must be sent to the Delaware Public Service Commission at the following address within thirty (30) days after publication of this notice.

The Commission's mailing address is:
Public Service Commission
861 Silver Lake Blvd., Cannon Bldg.
Suite 100, Dover, DE 19904
Attention: PSC Docket No. 09-CPCN-03 – Maple View

Copies of Tidewater's application in this matter are available for public inspection at the Commission's Dover office at the address noted above during normal business hours, or from the Commission's website at http://depsc.delaware.gov/cpcn/cpcnindex.shtml.

Any individual with a disability who wishes to participate in these proceedings, or to review the application, should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. Persons with questions concerning this matter may contact the Commission at its toll-free number (within Delaware) 1-800-282-8574, by Text Telephone ("TT"), by regular telephone at (302) 736-7500, or by e-mail to kevin.neilson@state.de.us.

4/6-NJ (O-0110688748)

EXHIBIT No.
"D"

March 31, 2008

«First_Name» «Last_Name»
«Address»
«City», «State» «ZIP»

Re: Kent County Delaware Tax parcel «PARCELID»

Dear «First_Name» «Last_Name»:

Artesian Water Company (Artesian) service is available to many areas in central Kent County. Your property lies in an area where service is currently or is expected to be available soon. Additional infrastructure has recently been added in the Magnolia and Frederica areas. Future water mains will be installed as petitions for water service are received and evaluated. You may soon be able to enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 103 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and returning it in the postage-paid envelope. Your property will then be included in our next application to the Delaware Public Service Commission. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

EXHIBIT No.
113

November 22, 2006

Kenneth and Daniel Wisniewski
2100 St. Francis St
Wilmington, DE 19808

RE: Sussex County Tax Parcel 13402320004809

Dear Kenneth and Daniel Wisniewski:

Your property in Fenwick Island is currently being served by Artesian Water Company, Inc. Prior to providing water service in Delaware a water utility must obtain a "Water Service Petition" from the landowner. Due to an administrative oversight, a signature on this petition was not requested from you prior to providing water service.

In order to continue receiving water service from Artesian, please sign and return the enclosed "Water Service Petition" in the enclosed, postage-paid envelope. Thank you for your attention to this matter.

If you have any questions please feel free to contact me at 800 332-5114.

Sincerely,

Alan L. Fleetwood
CPCN Coordinator

March 4, 2008

«First_Name» «Last_Name»
«Address»
«Community», «STATE» «ZIP»

Re: Sussex County Delaware Tax parcel «PARCELID»

Dear «First_Name» «Last_Name»:

Artesian Water Company (Artesian) service will soon be available to your area. With the installation of water mains along Beaver Dam Road to connect the developments of Heron Bay and Independence, you may soon be able enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and returning it in the postage-paid envelope. Your property will then be included in our next application to the Delaware Public Service Commission. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

March 31, 2008

«First_Name» «Last_Name»
«Address»
«City», «State» «ZIP»

Re: Kent County Delaware Tax parcel «PARCELID»

Dear «First_Name» «Last_Name»:

Artesian Water Company (Artesian) service is available to many areas in central Kent county. Your property lies in an area where service is currently or is expected to be available soon. Additional infrastructure has recently been added in the Magnolia and Frederica areas. Future water mains will be installed as petitions for water service are received and evaluated. You may soon be able enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 103 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and returning it in the postage-paid envelope. Your property will then be included in our next application to the Delaware Public Service Commission. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

October 19, 2006

«Owner» «Owner_Last»
«OWNERADDRE»
«OWNERCITY», «State» «Zip»

Re: Sussex County Delaware Tax parcel «PARCELID»

Dear «Owner» «Owner_Last»:

Artesian Water Company (Artesian) service is now available to your property. With the installation of water mains near your property you can now enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory in either of two ways. First, you could sign the attached "Petition for Water Service" and return in the postage-paid envelope. Second, you could do nothing and allow your property to be included in our next application to the Delaware Public Service Commission. In either case, you are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

July 26, 2007

Allen M & Lela J Beachy
8154 N Old State Rd
Lincoln, DE 19960

Re: Sussex County Delaware Tax parcel(s) 13000600011102

Dear Allen M & Lela J Beachy:

Artesian Water Company (Artesian) service has expanded in Sussex County with the installation of regional water systems to serve the areas around Stonewater Creek, Heron Bay and Beaver Creek. Future plans include systems near Milton and mains to interconnect its facilities. With Artesian, you can enjoy the benefits of public water such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and return in the postage-paid envelope. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs. Enclosed you will find a map of your area with Artesian's current service territory highlighted in blue.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

July 31, 2007

«Owner_Name» «Owner_Last»
«Address»
«City», «State» «Zip»

Re: Kent County Delaware Tax parcel «Parcelid»

Dear «Owner_Name» «Owner_Last»:

Artesian Water Company (Artesian) service is will soon be available to your property. With the installation of water mains along Buffalo and Barretts Chapel Roads you will soon be able to enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and returning it in the postage-paid envelope. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs. The enclosed map of your area shows in blue the properties that are currently in Artesian's service territory.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

November 2, 2006

Leah D and Joseph J Parsons
4411 S State St
Magnolia, DE 19962

Re: Kent County Delaware Tax parcel NM00-104.00-02-42.01

Dear Leah D and Joseph J Parsons:

Artesian Water Company (Artesian) service is now available to your property. With the installation of water mains near your property you can now enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory in either of two ways. First, you could sign the attached "Petition for Water Service" and return in the postage-paid envelope. Second, you could do nothing and allow your property to be included in our next application to the Delaware Public Service Commission. In either case, you are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

July 16, 2007

«Owner» «Owner_Last»
«OWNERADDRE»
«OWNERCITY», «State» «Zip»

Re: Kent County Delaware Tax parcel «PARCELID»

Dear «Owner» «Owner_Last»:

Artesian Water Company (Artesian) service is now available to your property. With the installation of water mains along Millington and Alley Corner Roads you can now enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and return in the postage-paid envelope. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

July 18, 2007

«Owner_Name» «Owner_Last»
«Address»
«City», «State» «Zip»

Re: Kent County Delaware Tax parcel «Parcelid»

Dear «Owner_Name» «Owner_Last»:

Artesian Water Company (Artesian) service is available to your property. With the installation of water mains along Swaim Avenue, Mulberrie Point, Clapham and Skeeter Neck Roads, you can enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and return in the postage-paid envelope. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs. Enclosed you will find a map of your area with Artesian's current service territory in blue.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

July 17, 2007

«Owner_Name» «Owner_Last»
«Address»
«City», «State» «Zip»

Re: Kent County Delaware Tax parcel «Parcelid»

Dear «Owner_Name» «Owner_Last»:

Artesian Water Company (Artesian) service will be available to your property in January. With the installation of water mains along Alley Corner, Wheatley's Pond and Mt. Friendship Roads you will soon be able to enjoy the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality; and fire protection provided through hydrants

As we celebrate 100 years of excellent customer service, we continue our dedication to excellent water quality and outstanding customer service to each family we serve. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Your property can be included in Artesian's service territory by signing the attached "Petition for Water Service" and return in the postage-paid envelope. You are not required to hook up to public water at this time. You are simply indicating that you want to be included in Artesian's service territory in the future. Including your property in our service territory will help us plan for future infrastructure needs.

If you are currently not interested in becoming a part of Artesian service territory at this time, we respect your position. However, if you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Thank you for your time and consideration. We are looking forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

April 2, 2008

Robert and Willard F (Est) Patterson
22 Peach Road
Elkton, MD 21921

Re: Kent County Delaware Tax parcel ED00-095.00-01-01.00 and -02.00

Dear Robert and Willard F (Est) Patterson:

The above listed property lies in an area where service is currently being provided by Artesian Water Company (Artesian) or is expected to be available in the near future. As our regional system develops, we continue to add infrastructure including a one million gallon elevated storage tank now under construction near Barrett's Chapel Road. We are also anticipating future water mains being installed in the Magnolia and Frederica areas as petitions for water service are received and evaluated. As our system develops we will be offering the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality, and fire protection provided through hydrants. However, we will only be able to offer services to properties located within our service territory.

Your property can be included in Artesian's service territory in our next application to the Delaware Public Service Commission by signing the attached "Petition for Water Service" and returning it in the postage-paid envelope provided. You are not required to hook up to public water at this time; you are simply indicating that you want your property to be included in Artesian's service territory in the future. This process will then help us plan for future infrastructure needs to better serve you.

If you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Artesian has over 100 years of providing excellent customer service and we will continue our dedication to ensure the highest quality water to our customers. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Thank you for your time and consideration. We look forward to serving you in the future!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

Enclosure

April 25, 2008

«First_Name» «Last_Name»
«Address»
«Community», «STATE» «ZIP»

Re: Sussex County Delaware Tax parcel «PARCELID»

Dear «First_Name» «Last_Name»:

Your property is located in Sussex County's "Bayard Planning Area". That means that the County is contemplating provision of wastewater service to your area at some time in the future. Much of the Bayard Planning Area is already withing the service territory of Artesian Water Company, Inc. (Artesian). As Artesian continues to develop its regional water system in the area we will be able to serve your water needs in the future. We are also anticipating future water mains being installed as petitions for water service are received and evaluated. As our system develops we will be offering the benefits of public water service such as uninterrupted service, constant water pressure, excellent water quality, and fire protection provided through hydrants. However, we will only be able to offer services to properties located within our service territory.

Your property is not currently in Artesian's service territory, but it can be included in Artesian's next application to the Delaware Public Service Commission by signing the attached "Petition for Water Service" and returning it in the postage-paid envelope provided. You are not required to hook up to public water at this time; you are simply indicating that you want your property to be included in Artesian's service territory in the future. This process will then help us plan for future infrastructure needs to better serve you.

If you would like to be included in a future application with the Public Service Commission, please take a few minutes to review the enclosed information regarding Artesian Water Company, Inc's "Frequently Asked Questions". If you feel that there are benefits to having your property included within our service territory, please sign the enclosed petition and return it to us in the self-addressed, postage paid envelope.

Artesian has over 100 years of providing excellent customer service and we will continue our dedication to ensure the highest quality water to our customers. In fact, Artesian has taken first place in three of the past four years in the American Water Works Association's Mid-Atlantic regional taste test competition.

Thank you for your time and consideration. We look forward to serving you!

Sincerely

Alan L. Fleetwood

The Artesian Water Company Family

Enclosure

December 1, 2006

301 Land Investments LLC
501 Paper Mill Rd
Newark, DE 19711

Re: New Castle County Tax Parcel(s): 1401000019

To Whom It May Concern:

Your property is located in an area that is adjacent to Middletown and is in the Town's comprehensive plan for annexation. Artesian Water Company, Inc. is the water provider for the Town in your area and we serve most of the adjacent communities through our interconnected system. We are planning our future requirements at this time and we would like to include your property in our planning module.

To accurately determine the size of pipes and equipment needed to service the area, we must determine the future demand for those services mentioned previously. If you are interested in services now or in the future, please sign and return the attached water service petitions so that we may include your property in our calculation of demand.

If you have any questions about water and wastewater services provided by Artesian Water Company, Inc., please contact Alan Fleetwood at 453-6983. We look forward to hearing from you.

Sincerely,

Alan L. Fleetwood

Alan L. Fleetwood
CPCN Coordinator

January 11, 2008

Donald L And Faith E Reed
2707 Mesibov Road
Houston, DE 19954

Re: Kent County Delaware Tax parcel MD00-189.00-01-01.00

Dear Donald L And Faith E Reed:

Artesian is developing water and wastewater facilities in your area to provide services to the development of Abbotts Pond Acres. We are sending you this letter to inform you of our plans and to provide you with the opportunity to have your property included within our service territory.

The cost to provide water service to your property is directly related to the proximity of existing water mains. As the construction of our system progresses, water mains will be extended outside of the development and may be installed near your property. This will allow us to provide water service to landowners who have made requests and service to your property could become available. The enclosed map depicts municipal boundaries and Artesian's current service territory in southern Kent County.

Your property can be included in Artesian's service territory by signing the attached "water service petition" and returning it in the postage-paid envelope. By signing the petition you are not obligated to receive public water when it becomes available. You are simply saying that you want your property included in the area Artesian would serve and are allowing us to begin the CPCN process for your property. Having your property included in our service territory will help us plan for future infrastructure needs and will help to insure that adequate water service is available for your property.

I have also included a list of "Frequently Asked Questions" for your review and a return envelope for the forms. I look forward to hearing from you and would welcome your call. I can be reached at (800) 332-5114. Thank you for your consideration.

Sincerely,

Alan L. Fleetwood

Alan L. Fleetwood
CPCN Coordinator

Artesian Water Company, Inc.
Frequently Asked Questions

1. Who is Artesian Water Company?

Artesian Water Company is the largest and oldest investor-owned water utility in Delaware. The company was founded in 1905 by Aaron Taylor to provide water service to the growing suburbs in New Castle County. Artesian is currently providing water service to approximately 230,000 people in all three counties, or around 29% of Delaware's population. Using primarily ground water sources, Artesian has consistently earned high marks for water taste and quality.

2. Where are Artesian Water Company's Service Territories?

Artesian's service territories are located in and expanding in all three counties. Artesian will consider submitting an application to the Public Service Commission (PSC) to establish a new service area upon a request for service by the majority of property owners within the proposed service area. Requests for service are submitted to the PSC in the form of a simple one-page petition.

3. What Delaware authorities regulate the operation of Artesian Water Company, Inc.?

The PSC, Delaware Department of Natural Resources and Environmental Control (DNREC), D ivision of Public Health, and the State Fire Marshall regulate us.

4.What is a Certificate of Public Convenience and Necessity (CPCN)?

Prior to providing water service to a property, Artesian is required to obtain a CPCN from the PSC. The CPCN gives Artesian the legal right to provide service to an area. As part of our application for a CPCN, we are required to list all tax parcels within the proposed service area. We are also required to show that over 50% of the property owners within the proposed service area have requested to be included within Artesian's service territory.

5. What is the Petition For?

The petition allows you to request that your property be included within Artesian Water Company's service territory and will help to ensure that water service to your property will be available upon your request. To have your property included in our next CPCN application, please sign the petition and return it to us in the enclosed postage paid envelope

6. If I request to be included in Artesian's Service Territory, am I required to receive public water when it becomes available?

No, there is no requirement or obligation on your part to receive service. You can continue using your existing well, or you can tie into Artesian's system to receive the benefits of public water once it becomes available. You may retain your existing well for irrigation and non-potable uses. However, if your well fails after public water is within 200 feet of your property, DNREC may not issue a well permit to drill a replacement well.

7. Why is it important to be in Artesian's Service Territory?

When Artesian extends service to your area, we will be able to offer service to those properties located within our service territory. If your property is not included within our service territory, and you request service, we will be required to file for a CPCN prior to the delivery of water service. This will require a separate filing with the PSC and a delay in the delivery of service to your property.

If your property is ever developed, the property owner is required to provide the County with information regarding the water supply for the proposed community. An "ability to serve" letter from the water provider is required, as part of the application process. The "ability to serve" letter is based on information submitted by the developer and confirms that the project is within the provider's service territory and that the provider has the capacity to provide service and meet all regulatory responsibilities, including fire protection.

Although Artesian's regional water systems are designed and constructed to provide service to existing and future projects, it is possible that rapid development in an area could limit supply availability. If that occurs, service requests for projects located within Artesian's service territory will be assured service. However, requests for service for projects located outside of our service area may be declined.

Having your property located within Artesian's service territory does not obligate you to receive service and there is no financial obligation on your part. If you are a farmer, you may continue to farm the property, and you are able to continue using any existing wells. If in the future you decide to develop the property and public water is required, then Artesian would be the water provider. Any costs associated with the provision of water service to the property would be the responsibility of the developer.

Numerous large property owners throughout the state have requested to be included within one of Artesian's service areas. Many have no plans for development and are interested in continuing with the agricultural use of their property. However, they believe that a regional water system is the best use of resources and have selected Artesian as their future water provider. We encourage others to do the same.

8. When will water service be available for my property?

If your property is located adjacent to the road where a water main extension has been completed, water service will become available as soon as a CPCN is granted. If your property is located in an area in which water mains have not yet been extended, water will become available as soon as water mains are extended to your area.

9. Where will the water supply come from?

The water Artesian provides will come from one of the deeper confined aquifers. This helps to ensure excellent quality of water largely because of the lack of potential surface contaminants, and does not interfere with shallow residential wells.

10. Who should I contact at Artesian for answers to specific questions?

You may either call Artesian's toll free number 1-800-332-5114, or (302) 453-6900, and ask for Alan Fleetwood.

TUI9

EXHIBIT NO.
129

January 24, 2006

Dear

Tidewater Utilities, Inc. (TUI) is the largest private water utility in southern Delaware. TUI has been serving water in Sussex County for almost 40 years. We currently have over 27,000 household and business customers that are served by several regional water districts. We would like to give you the opportunity to have your property included in one of our service areas.

TUI will begin providing central water and community wastewater service to a proposed development southeast of Laurel, west of Trussum Pond sometime in the year 2007. As we are planning this new district as well as others in your area we would like to invite you to become part of this service territory. As new development occurs in this area, TUI plans to build multiple water production and storage facilities, as well as expanding wastewater systems. In addition, TUI plans to build water and wastewater mains along County Roads as the development occurs.

In doing our planning, we would also like to offer you the opportunity to include your property in our service territory. As our regional system is expanded and water mains are extended, TUI will be able to offer you the same high quality service that is offered to our existing customers in this area. In order to be able to provide service to an area, we must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Delaware Public Service Commission. If you are interested in being included in one of our upcoming CPCN filings with the Public Service Commission, please sign the attached water CPCN petition. By signing the petition, you are not required to receive public water service; you are merely saying that you would like to have your property included in an area that TUI would serve.

Our sister company, Tidewater Environmental Services, Inc. (TESI) provides wastewater utility services. We are also in the process of planning several regional wastewater systems. Similarly, we must obtain a CPCN in order to provide wastewater service. For your convenience we have also attached a wastewater CPCN petition. If you are interested, please sign and return the wastewater petition, along with the water petition, and you will be included in the upcoming CPCN filing.

Should you have additional questions, please review the attached "Frequently Asked Questions". After review, we believe you will realize the benefits to being included in our future service areas. If you are interested, please sign the petition and return it to our office as soon as possible. Should you have any questions, please feel free to contact me at 1-800-523-7224, ext. 1014 or visit our website at www.tuiwater.com.

Sincerely,

TIDEWATER UTILITIES, INC.

Joseph C. Cuccinello
CPCN Coordinator

Frequently Asked Questions

1. Why is Tidewater Utilities, Inc. sending me this pamphlet?

Tidewater Utilities, Inc. is introducing ourselves to the community, developers, landowners and people who may have a need for our services now or in the future. Numerous property owners and developers throughout the state have requested to be included within one of Tidewater's service areas. They believe that a regional water and wastewater system is the best use of resources and have selected Tidewater as their future utility provider. We encourage you to do the same.

2. Where is Tidewater Utilities, Inc. located?

Tidewater Utilities, Inc. has employees throughout the state, with our headquarters centrally located in Dover. We also have a customer service office in the Oak Orchard area, which we are expanding.

3. How does becoming part of Tidewater Utilities, Inc. water service territories benefit me?

Two of the many benefits of our services are the quality and quantity of the water you receive & the added safety of on-site water for fire protection. This alone should reduce your insurance premiums. Our employees are also your neighbors and will respond to local concerns promptly with the knowledge, expertise, and talent that our superior team offers. Central wastewater services by a respected, experienced, regulated utility will assure long term operational efficiency and protection of Delaware's vital natural resources.

4. What do I have to do to become part of Tidewater's water & wastewater service territory?

The attached petitions allow you to request that your property be included within a Tidewater service area for water or wastewater service. To have your property included in a future franchise area, all that is required is for you to sign the attached petitions and mail them back to Tidewater. There is one petition for water and one for wastewater.

5. What is a CPCN?

Certificate of Public Convenience and Necessity is an authorization issued by the state Public Service Commission (PSC) for the delivery and/or provision of a public service to a designated area or parcel of land. Designated areas are determined by the residents in the area and the PSC with review by Public Health, DNREC, State Fire Marshall's Office, and others. For an area to be considered it will require over 50% of the residents in the proposed area to agree to receive future water or wastewater services.

6. When will water and wastewater services be provided to my property?

That depends; if your property is located adjacent to the road where a water main currently exists, water service can become available as soon as a CPCN is granted. If your property is located in an area in which water mains have not yet been installed, water will become available as soon as water mains are extended to your area. If you live near a community being served by a Tidewater central sewer system, that may be able to be expanded and extended to serve your home. Tidewater will contact property owners within each phase of all projects to inform them of the current schedule and steps required to receive service.

If you have further questions please feel free to contact a member of the Planning & Development Department at 1-800-523-7224.

TIDEWATER UTILITIES INC.

www.tuiwater.com

February 10, 2006

Dear ,

Tidewater Utilities, Inc. (TUI) is the largest private water utility in southern Delaware. TUI has been serving water in Sussex County for almost 40 years. We currently have over 27,000 household and business customers that are served by several regional water districts. We would like to give you the opportunity to have your property included in one of our service areas.

Fortunately your property is located near our Rehoboth district which currently is TUI's largest. TUI has several production facilities within this area as well as a 750,000 gallon elevated storage tank near the Home Depot on Route One that produces a quality of water that either meets or exceeds state and federal water quality standards. As we are planning to expand this district for future growth we would like to invite you to become part of this service territory. As new developments occur in this area, TUI will plan to expand and or build new production and storage facilities.

In doing our planning, we would also like to offer you the opportunity to include your property in our service territory. As our regional system is expanded and water mains are extended, TUI will be able to offer you the same high quality service that is offered to our existing customers in this area. In order to be able to provide service to an area, we must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Delaware Public Service Commission. If you are interested in being included in one of our upcoming CPCN filings with the Public Service Commission, please sign the attached water CPCN petition. By signing the petition, you are not required to receive public water service; you are merely saying that you would like to have your property included in an area that TUI would serve.

Our sister company, Tidewater Environmental Services, Inc. (TESI) provides wastewater utility services. We are also in the process of planning several regional wastewater systems. Similarly, we must obtain a CPCN in order to provide wastewater service. For your convenience we have also attached a wastewater CPCN petition. If you are interested, please sign and return the wastewater petition, along with the water petition, and you will be included in the upcoming CPCN filing.

Should you have additional questions, please review the attached "Frequently Asked Questions". After review, we believe you will realize the benefits to being included in our future service areas. If you are interested, please sign the petition and return it to our office as soon as possible. Should you have any questions, please feel free to contact me at 1-800-523-7224, ext. 1014 or visit our website at www.tuiwater.com.

Sincerely,

TIDEWATER UTILITIES, INC.

Joseph C. Cuccinello
CPCN Coordinator

Frequently Asked Questions

1. Why is Tidewater Utilities, Inc. sending me this pamphlet?

Tidewater Utilities, Inc. is introducing ourselves to the community, developers, landowners and people who may have a need for our services now or in the future. Numerous property owners and developers throughout the state have requested to be included within one of Tidewater's service areas. They believe that a regional water and wastewater system is the best use of resources and have selected Tidewater as their future utility provider. We encourage you to do the same.

2. Where is Tidewater Utilities, Inc. located?

Tidewater Utilities, Inc. has employees throughout the state, with our headquarters centrally located in Dover. We also have a customer service office in the Oak Orchard area, which we are expanding.

3. How does becoming part of Tidewater Utilities, Inc. water service territories benefit me?

Two of the many benefits of our services are the quality and quantity of the water you receive & the added safety of on-site water for fire protection. This alone should reduce your insurance premiums. Our employees are also your neighbors and will respond to local concerns promptly with the knowledge, expertise, and talent that our superior team offers. Central wastewater services by a respected, experienced, regulated utility will assure long term operational efficiency and protection of Delaware's vital natural resources.

4. What do I have to do to become part of Tidewater's water & wastewater service territory?

The attached petitions allow you to request that your property be included within a Tidewater service area for water or wastewater service. To have your property included in a future franchise area, all that is required is for you to sign the attached petitions and mail them back to Tidewater. There is one petition for water and one for wastewater.

5. What is a CPCN?

Certificate of Public Convenience and Necessity is an authorization issued by the state Public Service Commission (PSC) for the delivery and/or provision of a public service to a designated area or parcel of land. Designated areas are determined by the residents in the area and the PSC with review by Public Health, DNREC, State Fire Marshall's Office, and others. For an area to be considered it will require over 50% of the residents in the proposed area to agree to receive future water or wastewater services.

6. When will water and wastewater services be provided to my property?

That depends; if your property is located adjacent to the road where a water main currently exists, water service can become available as soon as a CPCN is granted. If your property is located in an area in which water mains have not yet been installed, water will become available as soon as water mains are extended to your area. If you live near a community being served by a Tidewater central sewer system, that may be able to be expanded and extended to serve your home. Tidewater will contact property owners within each phase of all projects to inform them of the current schedule and steps required to receive service.

If you have further questions please feel free to contact a member of the Planning & Development Department at 1-800-523-7224.

TIDEWATER UTILITIES INC.

www.tuiwater.com

June 15, 2006

Dear ,

Tidewater Utilities, Inc. (TUI) is the largest private water utility in southern Delaware. TUI has been serving water in Sussex County for almost 40 years. We currently have over 27,000 household and business customers that are served by several regional water districts. We would like to give you the opportunity to have your property included in one of our service areas.

Fortunately your property is located near one of our wide area franchise. TUI has several production facilities within this area that produce a quality of water that either meets or exceeds state and federal water quality standards. As we are planning to expand this district for future growth and improvements we would like to invite you to become part of this service territory. As new developments occur in this area, TUI will plan to expand and or build new production and storage facilities.

In doing our planning, we would also like to offer you the opportunity to include your property in our service territory. As our regional system is expanded and water mains are extended, TUI will be able to offer you the same high quality service that is offered to our existing customers in this area. In order to be able to provide service to an area, we must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Delaware Public Service Commission. If you are interested in being included in one of our upcoming CPCN filings with the Public Service Commission, please sign the attached water CPCN petition. By signing the petition, you are not required to receive public water service; you are merely saying that you would like to have your property included in an area that TUI would serve.

Our sister company, Tidewater Environmental Services, Inc. (TESI) provides wastewater utility services. We are also in the process of planning several regional wastewater systems. Similarly, we must obtain a CPCN in order to provide wastewater service. For your convenience we have also attached a wastewater CPCN petition. If you are interested, please sign and return the wastewater petition, along with the water petition, and you will be included in the upcoming CPCN filing.

Should you have additional questions, please review the attached "Frequently Asked Questions". After review, we believe you will realize the benefits to being included in our future service areas. If you are interested, please sign the petition and return it to our office as soon as possible. Should you have any questions, please feel free to contact me at 1-800-523-7224, ext. 1014 or visit our website at www.tuiwater.com.

Sincerely,

TIDEWATER UTILITIES, INC.

Joseph C. Cuccinello
CPCN Coordinator

Frequently Asked Questions

1. Why is Tidewater Utilities, Inc. sending me this pamphlet?

Tidewater Utilities, Inc. is introducing ourselves to the community, developers, landowners and people who may have a need for our services now or in the future. Numerous property owners and developers throughout the state have requested to be included within one of Tidewater's service areas. They believe that a regional water and wastewater system is the best use of resources and have selected Tidewater as their future utility provider. We encourage you to do the same.

2. Where is Tidewater Utilities, Inc. located?

Tidewater Utilities, Inc. has employees throughout the state, with our headquarters centrally located in Dover. We also have a customer service office in the Oak Orchard area, which we are expanding.

3. How does becoming part of Tidewater Utilities, Inc. water service territories benefit me?

Two of the many benefits of our services are the quality and quantity of the water you receive & the added safety of on-site water for fire protection. This alone should reduce your insurance premiums. Our employees are also your neighbors and will respond to local concerns promptly with the knowledge, expertise, and talent that our superior team offers. Central wastewater services by a respected, experienced, regulated utility will assure long term operational efficiency and protection of Delaware's vital natural resources.

4. What do I have to do to become part of Tidewater's water & wastewater service territory?

The attached petitions allow you to request that your property be included within a Tidewater service area for water or wastewater service. To have your property included in a future franchise area, all that is required is for you to sign the attached petitions and mail them back to Tidewater. There is one petition for water and one for wastewater.

5. What is a CPCN?

Certificate of Public Convenience and Necessity is an authorization issued by the state Public Service Commission (PSC) for the delivery and/or provision of a public service to a designated area or parcel of land. Designated areas are determined by the residents in the area and the PSC with review by Public Health, DNREC, State Fire Marshall's Office, and others. For an area to be considered it will require over 50% of the residents in the proposed area to agree to receive future water or wastewater services.

6. When will water and wastewater services be provided to my property?

That depends; if your property is located adjacent to the road where a water main currently exists, water service can become available as soon as a CPCN is granted. If your property is located in an area in which water mains have not yet been installed, water will become available as soon as water mains are extended to your area. If you live near a community being served by a Tidewater central sewer system, that may be able to be expanded and extended to serve your home. Tidewater will contact property owners within each phase of all projects to inform them of the current schedule and steps required to receive service.

If you have further questions please feel free to contact a member of the Planning & Development Department at 1-800-523-7224.

TIDEWATER UTILITIES INC.

www.tuiwater.com

October 25, 2006

Dear

Tidewater Utilities, Inc. (TUI) is the largest private water utility in southern Delaware. TUI has been serving water in Sussex County for almost 40 years. We currently have over 29,000 household and business customers that are served by several regional water districts. We would like to give you the opportunity to have your property included in one of our service areas.

Fortunately your property is located close to several parcels of land which we will supplying water and wastewater service to in the near future. As we are planning to expand this district as well as create new districts we would like to invite you to become part of our expanding service territory. As new developments occur in this area, TUI will plan to expand and or build new production and storage facilities.

In doing our planning, we would also like to offer you the opportunity to include your property in our service territory. As our regional system is expanded and water mains are extended, TUI will be able to offer you the same high quality service that is offered to our existing customers in this area. In order to be able to provide service to an area, we must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Delaware Public Service Commission. If you are interested in being included in one of our upcoming CPCN filings with the Public Service Commission, please sign the attached water CPCN petition. By signing the petition, you are not required to receive public water service; you are merely saying that you would like to have your property included in an area that TUI would serve.

Our sister company, Tidewater Environmental Services, Inc. (TESI) provides wastewater utility services. We are also in the process of planning several regional wastewater systems. Similarly, we must obtain a CPCN in order to provide wastewater service. For your convenience we have also attached a wastewater CPCN petition. If you are interested, please sign and return the wastewater petition, along with the water petition, and you will be included in the upcoming CPCN filing.

Should you have additional questions, please review the attached "Frequently Asked Questions". After review, we believe you will realize the benefits to being included in our future service areas. If you are interested, please sign the petition and return it to our office as soon as possible. Should you have any questions, please feel free to contact me at 1-800-523-7224, ext. 1014 or visit our website at www.tuiwater.com.

Sincerely,

TIDEWATER UTILITIES, INC.

Joseph C. Cuccinello
CPCN Coordinator

Frequently Asked Questions

1. Why is Tidewater Utilities, Inc. sending me this pamphlet?

Tidewater Utilities, Inc. is introducing ourselves to the community, developers, landowners and people who may have a need for our services now or in the future. Numerous property owners and developers throughout the state have requested to be included within one of Tidewater's service areas. They believe that a regional water and wastewater system is the best use of resources and have selected Tidewater as their future utility provider. We encourage you to do the same.

2. Where is Tidewater Utilities, Inc. located?

Tidewater Utilities, Inc. has employees throughout the state, with our headquarters centrally located in Dover. We also have a customer service office in the Oak Orchard area, which we are expanding.

3. How does becoming part of Tidewater Utilities, Inc. water service territories benefit me?

Two of the many benefits of our services are the quality and quantity of the water you receive & the added safety of on-site water for fire protection. This alone should reduce your insurance premiums. Our employees are also your neighbors and will respond to local concerns promptly with the knowledge, expertise, and talent that our superior team offers. Central wastewater services by a respected, experienced, regulated utility will assure long term operational efficiency and protection of Delaware's vital natural resources.

4. What do I have to do to become part of Tidewater's water & wastewater service territory?

The attached petitions allow you to request that your property be included within a Tidewater service area for water or wastewater service. To have your property included in a future franchise area, all that is required is for you to sign the attached petitions and mail them back to Tidewater. There is one petition for water and one for wastewater.

5. What is a CPCN?

Certificate of Public Convenience and Necessity is an authorization issued by the state Public Service Commission (PSC) for the delivery and/or provision of a public service to a designated area or parcel of land. Designated areas are determined by the residents in the area and the PSC with review by Public Health, DNREC, State Fire Marshall's Office, and others. For an area to be considered it will require over 50% of the residents in the proposed area to agree to receive future water or wastewater services.

6. When will water and wastewater services be provided to my property?

That depends; if your property is located adjacent to the road where a water main currently exists, water service can become available as soon as a CPCN is granted. If your property is located in an area in which water mains have not yet been installed, water will become available as soon as water mains are extended to your area. If you live near a community being served by a Tidewater central sewer system, that may be able to be expanded and extended to serve your home. Tidewater will contact property owners within each phase of all projects to inform them of the current schedule and steps required to receive service.

If you have further questions please feel free to contact a member of the Planning & Development Department at 1-800-523-7224.

TIDEWATER
UTILITIES INC.

www.tuiwater.com

TIDEWATER UTILITIES, INC.

TIDEWATER ENVIRONMENTAL SERVICES, INC.

May 17, 2007

Dear

Tidewater Environmental Services, Inc (TESI) was selected by the Town of Milton to be their wastewater service provider. We are very excited about this opportunity and look forward to providing safe, reliable and economical wastewater service to the Town. This also presents a great opportunity for the lands surrounding the Town to join our franchise areas and become part of our water and wastewater planning districts.

The Tidewater enterprise offers both water and wastewater services to Delawareans through two distinct and award winning companies. Tidewater Environmental Services, Inc (TESI) is the wastewater utility and Tidewater Utilities, Inc. (TUI) is the drinking water utility. Some of our recent achievements include being awarded the "Best Tasting Drinking Water in Delaware" for 2007 by the Delaware Rural Water Association. In April of 2007, TUI was awarded the Torch Award for Marketplace Ethics by the Better Business Bureau of Delaware. Tidewater is especially proud of our employees and recently, two of our water and wastewater operators were named Water and Wastewater Operator of the Year for 2007.

TESI currently owns and operates several wastewater plants in Sussex County and has been in the wastewater business since the regulation of wastewater in the year 2004. TUI is the largest private water utility in southern Delaware. TUI has been serving water in Sussex County for over 43 years. We currently have over 30,000 household and business customers that are served by several regional water districts.

If you would like to be included in our water and wastewater service territories, please sign and date the enclosed petitions and return them to Tidewater in the enclosed self addressed envelope. As Tidewater receives requests for service from landowners in your area we will then include your petition in an application to the Public Service Commission for the CPCN franchise rights to be able to provide water and wastewater service to your property. We are excited about the possibility of including your property in our planning districts in areas where Tidewater will provide water and wastewater service in the future.

Please take a moment to review the attached "Frequently Asked Questions" sheet. We believe it will explain the benefits to being included in our existing and or future service areas. Should you have any further questions, please feel free to contact me at 302-734-7500, ext. 1014 or visit our website at www.tuiwater.com.

Sincerely,

Joseph C. Cuccinello, CPCN Coordinator

1100 South Little Creek Road • Dover, DE 19901 • 302-734-7500 • Fax 302-734-9297

BBB MEMBER

Frequently Asked Questions

1. Why is Tidewater Utilities, Inc. sending me this pamphlet?

Tidewater Utilities, Inc. is introducing ourselves to the community, developers, landowners and people who may have a need for our services now or in the future. Numerous property owners and developers throughout the state have requested to be included within one of Tidewater's service areas. They believe that a regional water and wastewater system is the best use of resources and have selected Tidewater as their future utility provider. We encourage you to do the same.

2. Where is Tidewater Utilities, Inc. located?

Tidewater Utilities, Inc. has employees throughout the state, with our headquarters centrally located in Dover. We also have a customer service office in the Oak Orchard area, which we are expanding.

3. How does becoming part of Tidewater Utilities, Inc. water service territories benefit me?

Two of the many benefits of our services are the quality and quantity of the water you receive & the added safety of on-site water for fire protection. This alone should reduce your insurance premiums. Our employees are also your neighbors and will respond to local concerns promptly with the knowledge, expertise, and talent that our superior team offers. Central wastewater services by a respected, experienced, regulated utility will assure long term operational efficiency and protection of Delaware's vital natural resources.

4. What do I have to do to become part of Tidewater's water & wastewater service territory?

The attached petitions allow you to request that your property be included within a Tidewater service area for water or wastewater service. To have your property included in a future franchise area, all that is required is for you to sign the attached petitions and mail them back to Tidewater. There is one petition for water and one for wastewater.

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6. When will water and wastewater services be provided to my property?

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If you have further questions please feel free to contact a member of the Planning & Development Department at 1-800-523-7224.

TIDEWATER
UTILITIES INC.

www.tuiwater.com

December 17, 2008

Dear

Tidewater Utilities, Inc. (Tidewater) is the largest private water utility in southern Delaware. Tidewater has been serving water in Kent and Sussex County for over 40 years. We currently have over 41,000 household and business customers that are served by several regional water districts. We would like to give you the opportunity to have your property included in one of our newest service areas.

As we are planning to expand our districts as well as create new ones, we would like to invite you to become part of our expanding service territory. As new developments occur and the demand for our service increases, Tidewater will plan to expand and or build new production and storage facilities, allowing us to offer you the same quality service that is offered to our existing customers.

In order to be able to provide service to an area, we must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Delaware Public Service Commission (PSC). If you are interested in being included in one of our upcoming CPCN filings with the PSC, please have all land owners sign the attached water CPCN petition and mail it back to our office at you earliest convenience. It is important for you, as the landowner, to know that when water service is made available to your parcel you are not obligated to connect to our water system as long as your current water system is functioning properly. By signing the petition you are merely saying that you would like to have your property included in Tidewaters' water planning district.

Please take a moment to review the attached "Frequently Asked Questions". We believe it will explain the benefits to being included in our existing and or future service areas. Should you have any further questions, please feel free to contact me at 1-800-523-7224, ext. 1014 or visit our website at www.tuiwater.com.

Sincerely,

TIDEWATER UTILITIES, INC.

Joseph C. Cuccinello
CPCN Coordinator

Frequently Asked Questions

1. Why is Tidewater Utilities, Inc. sending me this pamphlet?

Tidewater Utilities, Inc. is introducing ourselves to the community, developers, landowners and people who may have a need for our services now or in the future. Numerous property owners and developers throughout the state have requested to be included within one of Tidewater's service areas. They believe that a regional water system is the best use of resources and have selected Tidewater as their future utility provider. We encourage you to do the same.

2. How does becoming part of Tidewater Utilities, Inc. water service territories benefit me?

Two of the many benefits of our services are the quality and quantity of the water you receive & the added safety of on-site water for fire protection. This alone should reduce your insurance premiums. Our employees are also your neighbors and will respond to local concerns promptly with the knowledge, expertise, and talent that our superior team offers.

3. What do I have to do to become part of Tidewater's water service territory?

The attached petitions allow you to request that your property be included within a Tidewater service area for water service. To have your property included in a future franchise area, all that is required is for you to sign the attached petitions and mail them back to Tidewater.

4. I have an irrigation well for my farm/lawn but I would like to become a member of Tidewater's water service area. Will I need to abandon my well and connect my irrigation to your service?

If you want to connect to our service when water becomes available in your area Tidewater will allow land owners to continue to operate their wells for irrigation purposes.

5. What is a CPCN?

Certificate of Public Convenience and Necessity is an authorization issued by the state Public Service Commission (PSC) for the delivery and/or provision of a public service to a designated area or parcel of land. Designated areas are determined by the residents in the area and the PSC with review by Public Health, DNREC, State Fire Marshall's Office, and others.

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If you have further questions please feel free to contact a member of the Planning & Development Department at 1-800-523-7224.

TIDEWATER UTILITIES INC.

www.tuiwater.com

TIDEWATER
UTILITIES INC.

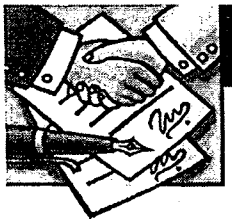
This is to notify you that a Tidewater Utilities, Inc. representative stopped by on _____20____ at _____ to discuss water and wastewater service opportunities in regards to your property. We are currently planning for future regional water and wastewater systems for this area. To learn more about these opportunities or to schedule an appointment, please contact a representative at the phone number or e-mail on the business card below.

"Providing water and wastewater solutions that make sense"

TIDEWATER
UTILITIES, INC.

1100 South Little Creek Road
Dover, DE 19901
302-734-7500 ext.1014
800-523-7224
302-734-9297 fax
302-218-3405 cell
jcuccinello@tuiwater.com
www.tuiwater.com

JOSEPH C. CUCCINELLO
CPCN Coordinator



CPCN PROCESS

Tidewater Utilities, Inc. (Tidewater) works within the process set forth by the Delaware Public Service Commission (PSC) for obtaining Certificate of Public Convenience and Necessity (CPCN), commonly known as "franchise" areas. This process consists of many steps which are summarized below:

1. Tidewater receives a signed water or wastewater petition or a signed water service agreement from an interested developer or landowner.

2. Tidewater notifies the developer or landowner via a certified letter that states our intention to submit a CPCN application and explains to the developer or landowner the options that are available to them.

3. Tidewater then must wait a minimum of thirty days, but no longer than sixty days, from the day the certified letter was sent to submit the CPCN application to the PSC.

4. Once the application has been received by the PSC it is reviewed for compliance and then a legal notice is posted in two local papers.

5. As long as everything is correct and received by the PSC, thirty days after the legal notice has been posted in the papers the application will be brought before the PSC to be voted on during a formal hearing.

Tidewater Utilities, Inc. is eager to build long-lasting and successful business relationships with you, beginning with the first step – a signed CPCN petition.

WATER SERVICE PETITION

PETITION FOR INCLUSION IN TIDEWATER UTILITIES, INC. WATER SERVICE TERRITORY

In accordance with 26 Delaware Code 203-C., I/we, the undersigned, as the recorded property owners according to current tax records for the following property/properties, request to be included in the water service territory of Tidewater Utilities, Inc. I/We understand that the majority of the property owners must sign this petition in order for Tidewater Utilities, Inc to apply for a Certificate of Public Convenience and Necessity (CPCN) in order to provide water service to the following property/properties:

Tax Parcel Number(s) _____

Owner's Signature(s): _____ Date: _____

_____ Date: _____

_____ Date: _____

Owner's Name(s): _____

_____

_____

Title: _____

Company: _____

Owner's Address: _____

_____

_____

PETITION FOR INCLUSION IN TIDEWATER ENVIRONMENTAL SERVICES, INC. WASTEWATER SERVICE TERRITORY

In accordance with 26 Delaware Code 203-D., I/we, the undersigned, as the recorded property owners according to current tax records for the following property/properties, request to be included in the wastewater service territory of Tidewater Environmental Services, Inc. I/We understand that the majority of the property owners must sign this petition in order for Tidewater Environmental Services, Inc to apply for a Certificate of Public Convenience and Necessity (CPCN) in order to provide wastewater service to the following property/properties:

Tax Parcel Number(s) _____

Owner's Signature(s): _____ Date: _____

_____ Date: _____

_____ Date: _____

Owner's Name(s): _____

_____

_____

Title: _____

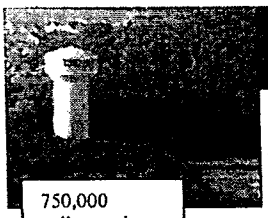
Company: _____

Owner's Address: _____

_____

_____

About Tidewater Utilities, Inc.



750,000 gallon tank located in Lewes, DE serves more than 7,000 customers

Experience, hard work, and capital investment have made Tidewater Utilities, Inc. (Tidewater) "Southern Delaware's Premier Water Company Since 1964".

Safe drinking water is vital to our public health and to the growth and economic well-being of our communities. Tidewater is well positioned to maintain its role as southern Delaware's dominant water resources utility for many years to come.

Tidewater, established in 1964, provides service to retail water customers, south of the Chesapeake and Delaware Canal, who together make up over 10 percent of Delaware's population. Its parent Company, Middlesex Water Company **(NASDAQ: MSEX)** based in Iselin, New Jersey, is a century-old water utility serving nearly a quarter of a million New Jersey residents.

From its headquarters in Dover, Delaware, and from numerous satellite facilities, Tidewater's employees work to deliver quality drinking water and wastewater treatment services 24 hours a day, 365 days a year. The Company's employees live within the communities they serve, so they are readily available and sensitive to local needs. The Company works with landowners and developers to find solutions to their water and wastewater needs and is well-positioned to support rapidly developing growth in southern Delaware. Tidewater's source of water supply is comprised exclusively of safe, drought-resistant and abundant groundwater sources, which have consistently earned it high marks for taste and quality. The Company maintains hundreds of miles of water main, and has invested millions of dollars in plant upgrades, water storage, and new equipment and treatment facilities to strengthen its water and wastewater infrastructure.

Quality and reliability are the hallmarks of Tidewater. In addition to meeting the needs of its customers, the Company works as an active community partner striving to improve the quality of life in its service areas. Its capital investment, dedicated and hard-working employees and proven experience are solid indicators of its commitment to be leaders in water and wastewater in Delaware.

To learn more about Tidewater, visit our website at www.tuiwater.com or call 800-523-7224.

Serving Our Customers

Tidewater provides residential communities with an abundant and reliable water supply.

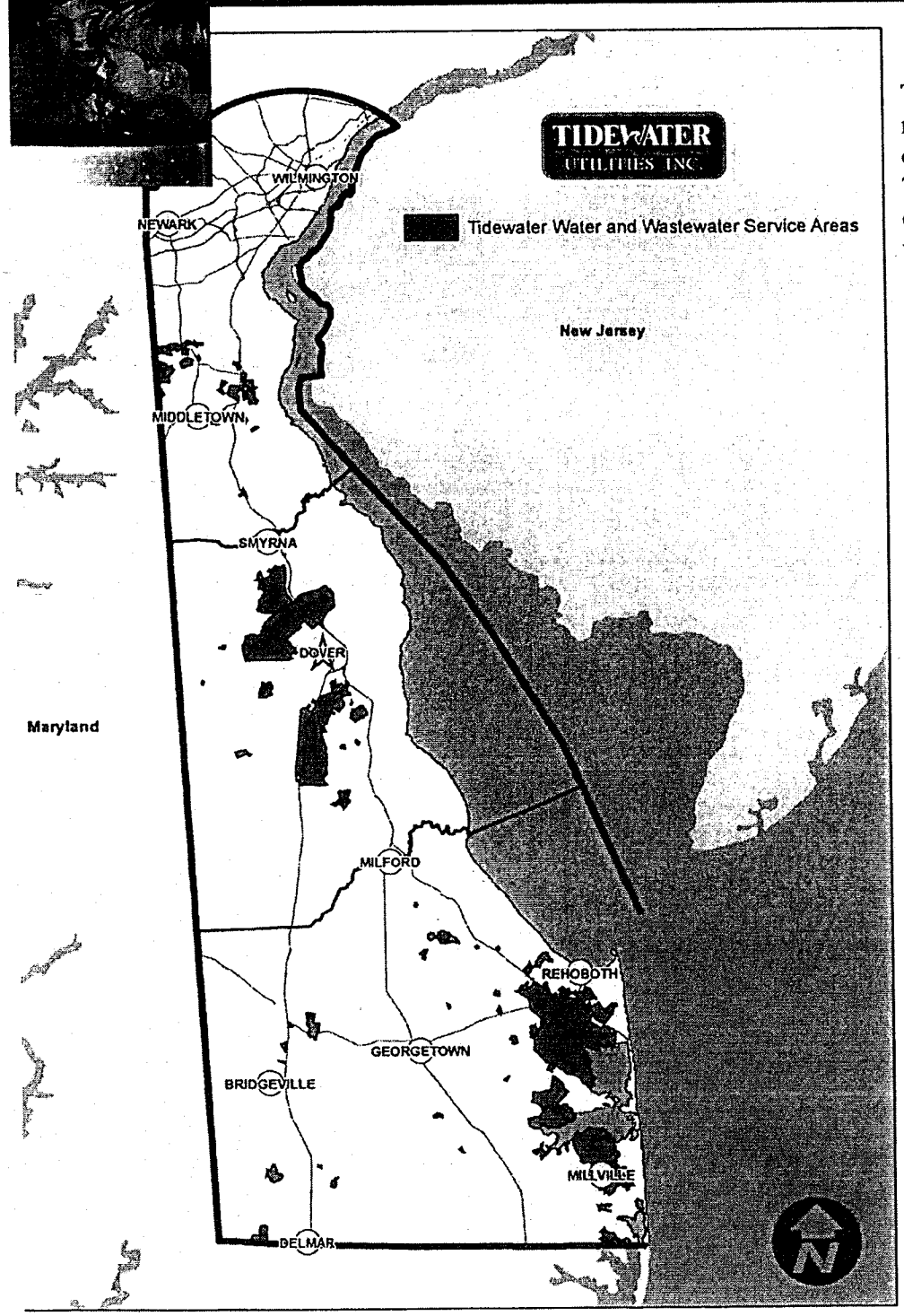
In 2005, Tidewater Utilities, Inc. produced more than 1.6 billion gallons of water, a 9.4% increase over 2004. The Company placed a strong focus on expanding and upgrading its facilities to meet the regulatory and customer requirements of a growing retail customer base. In 2005, Tidewater's customer base expanded by over 9% to more than 28,000 customers statewide through its 477 miles of water main. Conservative estimates project Tidewater's customer base could grow to more than 47,000 customers through build-out of existing systems alone. As further evidence of its accelerating momentum, Tidewater signed 27 new water agreements with developers in 2005 to provide service in new residential developments.

Ensuring Water Quality—1.6 Billion Gallons Delivered in 2005

Providing high quality water is critical to meeting customer needs. Tidewater conducts extensive testing annually of its water quality to ensure that water delivered to customers meets or exceeds federal and state primary drinking water requirements. The water quality in each of our 61 water districts is constantly monitored and is described in separate Consumer Confidence Reports (CCRs) and provided to the customers annually. In 2005 we are proud to state ***no*** violations were detected and reported in our CCRs.

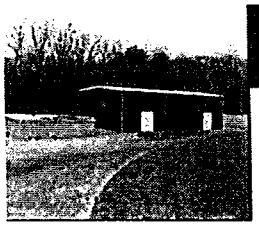
Tidewater staff takes seriously building and maintaining relationships with those who have been with us from the beginning, as well as those who have joined us along the way.

Water and Wastewater Franchise Areas



Tidewater operates 87 water plants, and more than 183 wells in its 271 communities throughout Delaware. The company provides a comprehensive suite of water and wastewater utility and management services, including consulting, contract operations, maintenance and bulk water supply. Its retail water supply customer base has consistently grown an annual compounded growth rate of 19.6% per year for over a decade, making it the largest growing water utility in the state. Its affiliate Tidewater Environmental Services, Inc., focuses exclusively on wastewater utility operations and services. It is expected to rapidly grow its customer count to match or exceed Tidewater's significant water supply growth rate, due to demand for these services from Delaware's strong housing industry.

Wastewater Management and Contract Operations

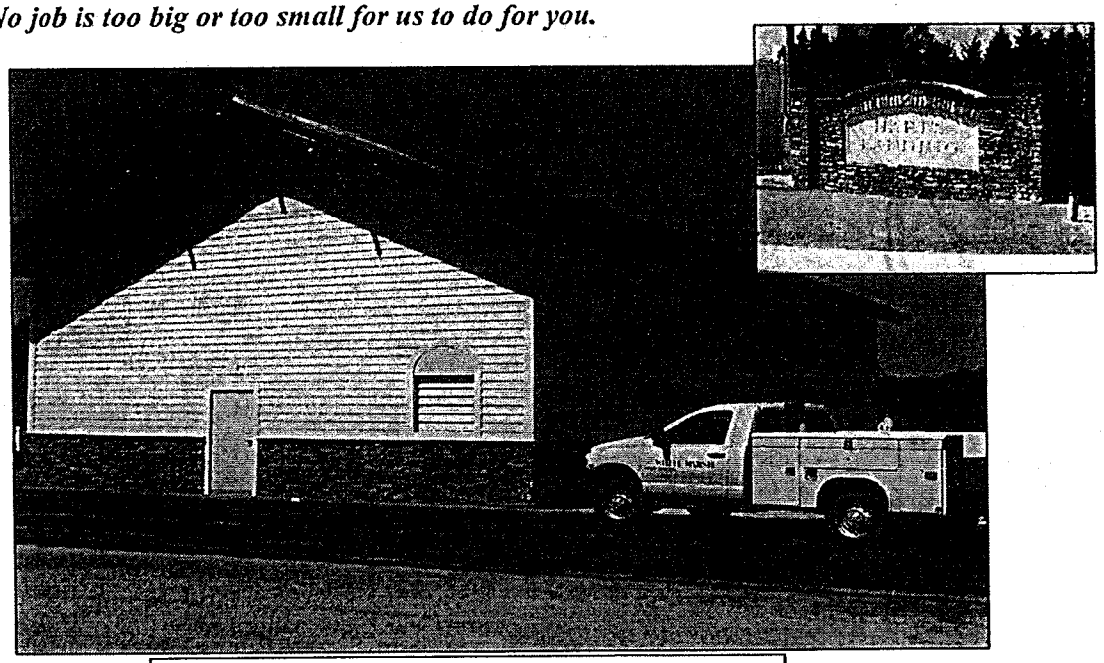


Bay Front Wastewater Treatment Facility in Angola, DE

Our growth in wastewater operations has also flourished. Tidewater Environmental Services, Inc. (TESI) has been in business only since summer 2004, when Delaware law changed to allow this business. We took possession of our first regulated wastewater treatment system in winter 2005 in Sussex County. Five more facilities are underway and scheduled to start up in 2006. Also in 2005, TESI obtained 18 wastewater franchises which will result in approximately 8,200 customers at build-out and an additional 15 petitions awaited approval from the Public Service Commission at year's end. In all, TESI has requests from developers where build out will result in approximately 20,000 customers.

Tidewater's subsidiary, White Marsh Environmental Systems (WMES), has been in business for two years and already operates 37 water and wastewater systems under contract, including manufactured home communities, housing subdivisions, stores and government buildings. WMES currently has three certified operators who operate and maintain these systems and provide additional services to their clients (e.g., provide equipment upgrades to the systems). Between Tidewater, TESI, and WMES, we employ over two dozen licensed water and wastewater operators with a combined total of over **350 years of experience.**

Tidewater Environmental Services, Inc. and White Marsh Environmental Systems, Inc. are available to serve any of your water or wastewater needs. We can provide a wide range of services ranging from consulting, contract operations, community irrigation, maintenance, bulk supply, to direct acquisition and business partnerships. ***No job is too big or too small for us to do for you.***



TESI Wastewater Facility placed on line Spring 2006 near Love Creek

PETITION FOR INCLUSION IN TIDEWATER UTILITIES, INC. WATER SERVICE TERRITORY

In accordance with 26 Delaware Code 203-C., I/we, the undersigned, as the recorded property owners according to current tax records for the following property/properties, request to be included in the water service territory of Tidewater Utilities, Inc. I/We understand that all of the property owners must sign this petition in order for Tidewater Utilities, Inc to apply for a Certificate of Public Convenience and Necessity (CPCN) in order to provide water service to the following property/properties:

Tax Parcel Number(s):

Property Owner(s):

Owner's Signature(s):

X_____

Date:_____

Owner's Signature(s):

X_____

Date:_____

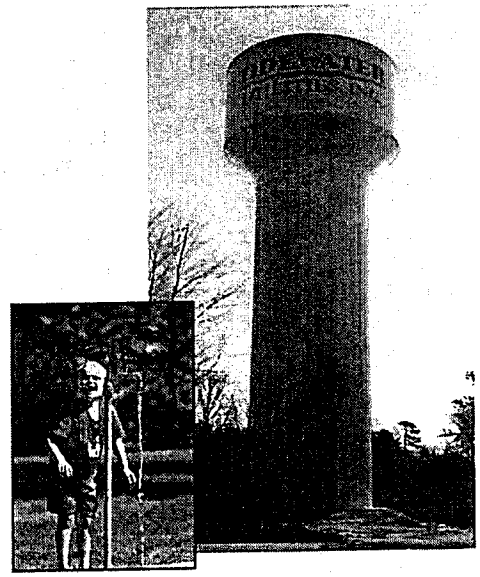
Please sign at the X, date and return the signed petition to the following address in the enclosed self addressed stamped envelope.

Tidewater Utilities, Inc.
1100 South Little Creek Road
Dover, DE 19901

Tidewater Utilities, Inc.
1100 South Little Creek Rd.
Dover, DE 19901

You can play a valuable role in the efficient management of our area's water resources!

TIDEWATER UTILITIES INC.



Strategic Water Planning Now... And For The Future

1100 South Little Creek Rd.
Dover, DE 19901

302-734-7500
www.tuiwater.com

Land Owners Name & Parcel

There is no substance more critical to life than water. As a steward of the environment, Tidewater Utilities, Inc. (Tidewater) takes its role in managing the area's water supplies seriously. In reviewing our water infrastructure, we identified your property as one adjacent to our existing service area. This has potential benefits that we would like to explain in more detail.

Tidewater is the largest private water utility in southern Delaware and has been serving water in Sussex County for over 40 years. We serve over 32,000 household and business customers through various regional water districts, and also operate facilities for several municipalities with in the state.

As part of our strategic utility planning, we focus on how to manage our water districts more efficiently. As new residential developments arise and the demand for water increases, Tidewater invests in its water distribution infrastructure building new production and storage facilities, extending pipelines, etc. Often, we work to regionalize our water treatment to the advantage of our customers.

Due to new regulations, new water service must pay for itself, which means that a person looking to have water connected to their home or to a piece of land that they are seeking to develop would be required to pay for that expense. For practical and economic purposes, a land owner seeking access to water would therefore be interested in connecting to the nearest neighboring utility. As you can see in the map provided in this package, your parcel is contiguous to one of our service areas. Even if you currently have no plans to develop or run water to this parcel you should consider signing the petition to be included in our franchise area. This costs you nothing until you decide to connect and does not obligate you to receive public water service as long as your current water supply is working properly. However, your early association with our service area can save you frustration when hooking up later and helps us to better address the area's demand for water to support future growth.

Please take a moment to review the attached "Frequently Asked Questions" sheet, as well as the map that shows your parcel (marked with a blue star) and its relative position to our existing service area (highlighted in blue). Please have all landowners sign the attached petition and mail the form back using the attached prepaid envelope. If you have any questions or concerns after reviewing this information, please contact me by phone at 1-800-523-7224, ext. 1014 or via e-mail at jcuccinello@tuiwater.com.

Sincerely;

Joseph C. Cuccinello
CPCN Coordinator

Area used for map of parcel

Frequently Asked Questions

1)Why is Tidewater Utilities, Inc. (Tidewater) sending me this pamphlet?

Tidewater is seeking to educate landowners about its services. A number of property owners throughout the state have already requested to be included within one of Tidewater's service areas. We encourage you to do the same.

2)I have an irrigation well for my farm/lawn, will I need to abandon my well and connect my irrigation to your service?

If you want to connect to our service when water becomes available in your area Tidewater will allow land owners to continue to operate their wells for irrigation purposes.

3)How does becoming part of Tidewater's water service territories benefit me?

There are several benefits to becoming a part of Tidewater's service territory. Such as the quality of our drinking water supplies, access to a reliable supply of water and added safety of on-site water for fire protection. In addition, you enjoy the added security that our employees are also your neighbors and will respond to local concerns promptly with the expertise that our superior team offers.

4)How Can I become part of Tidewater's water service territory?

The attached petition allows you to request that your property be included within a Tidewater service area for water service. To have your property included in a future franchise area, all you need to do is sign the attached petitions and mail them back to Tidewater in the enclosed self addressed stamped envelope.

5)What is a Certificate of Public Convenience and Necessity (CPCN)?

A CPCN is an authorization issued by the state Public Service Commission (PSC) for the delivery and/or provision of a public service to a designated area or parcel of land. Designated areas are determined by the residents in the area and the PSC with review by Public Health, DNREC, State Fire Marshall's Office, and others.

6)When can I expect water service to be provided to my property?

That depends: If your property is located adjacent to the road where a water main currently exists, water service can become available as soon as a CPCN is granted. However, if your property is located in an area in which water mains have not yet been installed, water will become available as soon as water mains are extended to your area.

EXHIBIT No.
"E"

7.5 For a request premised on 26 Del. C. § 203C(e)(1)(4), the Proposed Service Area shall encompass only such parcels of land that the governing body of the county or municipality has directed, requested, or authorized the applicant to serve.

7.5.1 For a request premised on 26 Del. C. § 203C(e)(1)(3), the Proposed Service Area shall encompass only such parcels of land that lie within the existing development, existing subdivision, or the existing unincorporated community as described and defined under § 2.1.

8.0 Requirements Related to 26 Del. C. § 203C(e)(1)(2) and (3)

8.1 If a water utility solicits a landowner of record of a property to sign a petition to request water service, the utility must provide the landowner with the following notice:

YOU SHOULD READ THIS NOTICE CAREFULLY.

Public records list you as a landowner of the property with the following tax map parcel identification number(s): *[insert tax map parcel identification number(s)]*. *[insert water utility's name]* plans to file an application with the Delaware Public Service Commission requesting a Certificate of Public Convenience and Necessity (Certificate) to provide water service to a new territory described as *[insert name and description of existing development, existing subdivision, or existing unincorporated community]*.

[INSERT WATER UTILITY'S NAME] WANTS YOU TO SIGN A PETITION BY WHICH YOU AGREE TO INCLUDE YOUR PROPERTY IN THE TERRITORY IT INTENDS TO SERVE. *[INSERT WATER UTILITY'S NAME]* ESTIMATES THAT IT WILL PROVIDE WATER SERVICE TO *[insert description of proposed service territory and estimated timetable for providing service. If the utility cannot provide an estimated timetable for providing service, the notice must make the following disclosure in conspicuous language*: [INSERT UTILITY'S NAME] IS UNABLE TO ESTIMATE WHEN IT WILL PROVIDE WATER SERVICE TO YOUR PROPERTY [AND] *[insert description of proposed service territory]*.

IF YOU SIGN THE PETITION PROPOSED BY [INSERT WATER UTILITY'S NAME] YOUR DECISION TO INCLUDE YOUR PROPERTY IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY MAY BE PERMANENT. IT MAY ALSO AFFECT YOUR ABILITY TO OBTAIN A PERMIT FOR A NEW WELL.

IF YOU DO NOT WISH TO BE INCLUDED IN [INSERT WATER UTILITY'S NAME] SERVICE TERRITORY, DO NOT SIGN THE PETITION.

IF YOU DO NOT SIGN THE PETITION, [INSERT WATER UTILITY'S NAME] MAY NEVERTHELESS SEND YOU A LETTER ASKING YOU TO INCLUDE YOUR PROPERTY IN ITS SERVICE TERRITORY. IF YOU RECEIVE SUCH A LETTER, YOU MAY HAVE TO TAKE ADDITIONAL ACTION.

IF YOU HAVE ANY QUESTIONS, COMMENTS, OR CONCERNS, PLEASE CONTACT THE PUBLIC SERVICE COMMISSION AT (302) 736-7500 (in Delaware, call 800-282-8574).

8.2 For a request premised on either 26 Del. C. § 203C(e)(1)(2) or 26 Del. C. § 203C(e)(1)(3), each petition requesting water utility services from the applicant must:

8.2.1 bear the signature of each landowner of record (or a duly authorized agent) that is requesting water utility services from the applicant;

8.2.2 reflect the date for each signature by each landowner of record, which date shall not be any earlier than one year prior to the date of the filing of the application;