EXHIBIT

3

Public Service Commission

2002 Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities

REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE PUBLIC SERVICE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

1.0 Scope of Regulations.

These regulations are intended to govern certain practices and procedures before the Delaware Public Service Commission relating to water utilities.

2.0 Definitions.

As used in these regulations:

"Commission" means the Delaware Public Service Commission.

"CPCN" means a Certificate of Public Convenience and Necessity.

"DPH" means the Delaware Division of Public Health.

"DNREC" means the Delaware Department of Natural Resources and Environmental Control.

"Staff" means the Staff of the Delaware Public Service Commission.

"Secretary" means the Secretary of the Delaware Public Service Commission.

3.0 Application for Certificate of Public Convenience and Necessity.

3.1 An application for a Certificate of Public Convenience and Necessity to begin the business of a water utility or to extend or expand the business or operations of any existing water utility shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

3.1.1 Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application;

3.1.2 Clearly state the relief sought by the application;

3.1.3 State the name, address, telephone number, and e-mail address (if any) of the person to be notified in the event the Staff determines there are deficiencies in the application;

3.1.4 Contain the supporting documentation required by 26 **Del.C.** §203C, including evidence that all the landowners of the proposed territory have been notified of the application;

3.1.5 Include a complete list of county tax map parcel number(s) for the area covered by the application;

3.1.6 Include (along with a complete list of tax map number(s)) corresponding names and addresses of property owners and a copy of all tax map(s) for the area;

3.1.7 For any proposed extension of service, contain a certification by the applicant that the extension will satisfy the provisions of 26 **Del.C.** §403C, including the following:

3.1.7.1 The applicant is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection;

3.1.7.2 The applicant shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection;

3.1.7.3 The applicant is not subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; and

3.1.7.4 The applicant is not subject to any Order issued by the Commission finding that the company has materially failed to provide adequate or proper safe water services to existing customers; and

3.1.8 For applications submitted under 26 **Del.C.** §203C(e), include a statement indicating whether the applicant has determined if a majority of the landowners of the proposed territory to be served object to the issuance of a CPCN to the applicant, and the documentation relied upon to support the applicant's determination.

3.2 If an application for a CPCN involves a water utility project or service that requires the review, approval or authorization of any other state or federal regulatory body, including DNREC, the State Fire Marshal or DPH, the application to the Commission shall so state and shall include the following:

3.2.1 A statement of the current status of such application;

3.2.2 If the application to the other regulatory body or bodies has already been filed, a copy of any permit, order, certificate, or other document issued by the regulatory body relating thereto; and

3.2.3 If such an application or amendment thereof is filed with another state or federal regulatory body or a determination is made by any such regulatory body subsequent to the date of filing the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document that has been issued relating thereto shall be filed with the Commission.

3.3 An applicant for a CPCN – other than a municipality or other governmental subdivision – shall provide with the application (if not presently on file with the Commission) the following:

3.3.1 A corporate history including dates of incorporation, subsequent acquisitions and/or mergers;

3.3.2 A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships;

3.3.3 A map identifying all areas, including all towns, cities, counties, and other government subdivisions to which service is already provided;

3.3.4 A statement identifying any significant element of the application which, to the applicant's knowledge, represents a departure from prior decisions of the Commission;

3.3.5 Annual reports to stockholders for applicant, its subsidiaries, and its parent for the last two years;

3.3.6 The applicant's audited financial statements, 10K's, and all proxy material for the last two years; and

3.3.7 Any reports submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceedings wherein an issue has been raised about the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable water service, including the water quality of water provided to existing customers.

3.4 A municipality or other governmental subdivision applying for a CPCN shall provide with the application (if not presently on file with the Commission) the statement and documents identified in subsections 3.3, 3.3.3, 3.3.4 and 3.3.7 hereof.

3.5 After a completed application has been filed and during the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration of an application, including the provision of safe, adequate, and reliable water service.

3.6 Supporting documentation not filed with the application must be made available for Staff inspection upon request.

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

4.1 If the applicant for a CPCN is a new water utility that has not previously been awarded a CPCN in Delaware, the application, in addition to meeting the requirements of section 3.0, shall include the following:

4.1.1 Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal safe drinking water requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;

4.1.2 A certified copy of the applicant's certificate of incorporation;

4.1.3 Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and

4.1.4 A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.

4.2 If the applicant for a CPCN is a new water utility that is an unincorporated proprietorship, the applicant shall be subject to a rebuttal presumption that the applicant lacks the financial, operational, and managerial capacity to comply with the requirements for a CPCN.

5.0 Review of application; deficiencies in the application.

5.1 The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty-one days after the date of filing, specifically identify any deficiencies in the application, and immediately request the Secretary to promptly notify the applicant of the alleged deficiencies. The applicant shall have thirty days from the date of the receipt of the notice from the Secretary of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.

5.2 Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 **Del.C.** §203C(h). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.

5.3 Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice, such informal review and comment not to be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.

6.0 Filing of application with DNREC, the State Fire Marshal, and DPH; coordination and cooperation.

An applicant for a CPCN shall file a copy of the application and the supporting documentation required by section 3.0, subsections 3.1, 3.1.5, and 3.1.6 with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting immediate written comment as to whether they are aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable drinking water service to existing customers. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPCN. The Staff shall also coordinate and cooperate with other interested state, local, and federal authorities.

7.0 Provision of notice to all landowners of the proposed territory.

7.1 Pursuant to the provisions of 26 **Del.C.** §203C(d)(1) and (e)(1), prior to filing the application with the Commission, the applicant shall provide written notice to all landowners of the proposed territory of the anticipated filing of the application.

7.2 The written notice required by 26 **Del.C.** §203C(d)(1) and (e)(1) shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application.

8.0 Landowners who object, opt-out, and/or request a public hearing; time limits; extension of time.

8.1 In proceedings involving an application submitted under 26 **Del.C.** §203C(e), any landowner whose property, or any part thereof, is located within the proposed territory to be served shall be permitted to (i) object to the issuance of the CPCN; (ii) opt-out of inclusion in the territory; and/or (iii) request a public hearing. The applicant shall inform the Commission of the name and address of all landowners who notify the applicant of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall file with the Commission any written notices received from such landowners. The Commission shall maintain records identifying all landowners who have provided written notice of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall make such records available to the applicant.

8.2 A landowner shall notify the Commission, in writing, if the landowner

8.2.1 objects to the issuance of the CPCN;

8.2.2 intends to opt-out of inclusion in the territory; and/or

8.2.3 requests a public hearing.

8.3 The notice to the Commission from the landowner must be filed with the Commission within

8.3.1 sixty days from the date of the landowner's receipt of a written notice from the water utility that complies with applicable statutes and these regulations, of the landowner's inclusion in the service territory; or

8.3.2 thirty days of the filing of the completed application, whichever period is greater.

8.4 The Commission may, in the exercise of its discretion, extend the time to object, opt-out, and/or request a public hearing even though the period in which to do so has expired. The Commission shall accept for filing written notices from landowners that were sent to the applicant and transmitted by the applicant to the Commission.

9.0 Notification to all landowners of the proposed territory of their rights to object, opt-out, and/or request a public hearing.

9.1 Pursuant to 26 **Del.C.** §203C(e), and for the purposes of notification to all landowners of the proposed territory encompassed by the CPCN, the notice sent to the landowners of the proposed territory must include, at a minimum, the following statement:

"(1) Pursuant to Title 26, §203C(e) of the **Delaware Code**, an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public water and we are required to inform you of certain information. The area to be served is {provide a short hand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required.

(2) Pursuant to current law, you may file an objection to receiving water service from {enter name of your organization}. Under Delaware law, the Public Service Commission cannot grant a CPCN to {enter name of your organization} for the proposed service area, including your property, if a majority of the landowners in the proposed service area object to the issuance of the CPCN. If you object to receiving water service from {enter the name of your organization}, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(3) Pursuant to current law, you may also elect to opt-out of inclusion in the proposed service area. The term "opt-out" means that you decide that you do not want to receive water service from {enter name of your organization}, even if a majority of the landowners in the proposed service area do

elect to receive water service from {enter name of your organization}. If you decide that you do not want to receive water service from {enter name of your organization} and instead wish to opt-out, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(4 You may also request a public hearing on this matter. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(5 The written notice of your decision to object to the issuance of the CPCN, to opt-out of receiving water service from {enter name of your organization}, and/or your written request for a public hearing, shall be sent to the Secretary of the Delaware Public Service Commission at the following address:

Secretary
Delaware Public Service Commission
{insert the address of the Secretary of the Delaware Public Service Commission}

(6) Any written notice you send to the Commission must include the description of the service area referred to in paragraph (1) above and the name of the applicant so the Commission will be able to identify the CPCN application to which your notice is related.

(7) Questions regarding objections, opt-outs, and hearings may be directed to: {enter the name or title, and the address and telephone number of the Commission's contact person(s)}."

9.2 If a landowner sends a written notice directly to the applicant, the applicant shall file the notice with the Commission.

10.0 Suspension or revocation of CPCN for good cause.

10.1 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:

10.1.1 A finding by the Commission of material non-compliance by the holder of a CPCN with 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 any order or rule of the Commission relating to the same; and

10.1.2 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

10.1.3 Either

10.1.3.1 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

10.1.3.2 a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

10.2 In addition to the factors required by sections 10.1, 10.1.1, 10.1.2 and 10.1.3, the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

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

10.2.2 Criminal conduct on the part of the water utility; or

10.2.3 Actual, threatened or impending insolvency of the water utility; or

10.2.4 Persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by section 10, paragraph 10.1 above; or

10.2.5 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

10.2.6 Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

11.0 Proceedings to suspend or revoke a CPCN for good cause.

11.1 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, Subchapter III.

11.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with subsection 11.1 above, that

11.2.1 the conduct of a water utility poses an imminent threat to the health and safety of its customers; or

11.2.2 a water utility is unable to provide safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without first 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.

12.0 Compliance with 29 ***Del.C.*** Ch. 101**, Subchapter III.**

Proceedings before the Commission involving Certificates of Public Convenience and Necessity for water utilities shall be conducted in accordance with the procedures set forth in 29 **Del.C.** Ch. 101, Subchapter III, including any proceedings related to any findings under 26 **Del.C.** §203C(f) that an applicant is unwilling or unable to provide safe, adequate, and reliable water service to existing customers, or is currently subject to such a Commission finding.

13.0 Waiver of requirements of sections 3.0 and 4.0.

The Commission may, in the exercise of its discretion, waive any of the requirements of sections 3.0 and 4.0 above.

5 DE Reg. 212 (07/01/01)