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 12, 2000; REOPENED MARCH 20, 2007)	)	PSC REGULATION DOCKET NO. 51

FINDINGS, OPINION, AND ORDER NO. 7774

APPEARANCES:

On behalf of the Public Service Commission Staff:

MURPHY & LANDON
Francis J. Murphy, Esquire
Lauren A. Pisapia Cirrinicione, Esquire

On behalf of Tidewater Utilities, Inc.

PARKOWSKI, GUERKE & SWAYZE, P.A.
Jeremy W. Homer, Esquire

On behalf of Artesian Water Company, Inc.

John J. Schreppler, II, Esquire
General Counsel

On behalf of the Division of the Public Advocate:

DEPUTY ATTORNEY GENERAL
Kent Walker, Esquire

This 4th day of May, 2010, the Commission hereby enters this Order with the following findings of fact and conclusions of law.

I. BACKGROUND.

1. In 2000, the Delaware General Assembly restored this Commission's authority to issue Certificates of Public Convenience and Necessity ("CPCN") to enable entities to enter the water utility business or to allow existing water utilities to expand their operations and facilities into new service territories. *See* 26 *Del. C.* § 203C. The Commission thereafter promulgated rules to chart how the Commission would navigate this water utility CPCN regime. *See* "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" (adopted by PSC Order No. 5730 (June 5, 2001) ("2001 Rules")).[1]

2. In early 2007, the Commission published notice that it proposed to repeal the 2001 Rules in favor of a new set of rules related to CPCNs for water utilities. *See* PSC Order No. 7142 (Mar. 20, 2007) (proposing new rules to supersede 2001 Rules); 10 DE Reg. 1563-1580 (April 1, 2007) (formally noticed repeal and proposed new CPCN rules). Among the motivations that prompted the Commission to propose new rules was an earlier request by Staff that the Commission deny three CPCN applications which Staff believed were inconsistent with the meaning and intent of the "majority rule" provision contained in then-existing Section 203C. In certain instances, CPCN applications were made for hundreds of unrelated parcels. It was Staff's position that this

[1] Published in 5 DE Reg. 212 (July 1, 2001).

"majority rule" was being used to add properties to a utility's service territory where the landowner had never affirmatively requested inclusion (by way of a signed petition) or who had not taken the action of notifying the Commission of their desire to have their property excluded from a proposed service area ("opt-out"). Staff maintained that, by engaging in such practices, a water utility was abusing the CPCN process to amass CPCN territory without regard to when, or if, it would extend or expand water services to the property.

3. In an effort to address these issues, the new rules proposed, among other things, that a utility seeking a CPCN certify that it would actually provide water service to the proposed service territory within three years. If the CPCN was granted, but the utility failed to meet the three-year deadline, the new rules provided a mechanism for the Commission to determine whether the utility should be able to retain the CPCN. Staff believed that this certification process facilitated the intent of Section 203C, which authorizes a water utility to "extend[] or expand[] ... <u>its</u> <u>business</u> <u>or</u> <u>operations</u>." 26 *Del. C.* § 203C(a) (emphasis added). In addition, Staff submitted that the certification's goal to ensure that service follows the CPCN is consistent with the text of Section 203C, which conditions the grant of a CPCN upon a developer's signed "<u>service</u> agreement," with a landowner "requesting such <u>service</u>," or a governmental body "requesting the applicant to provide <u>service</u>." *See* 26 *Del. C.* § 203C(e)(emphasis added.) In each instance, the statutory

criteria looked to water "service" in the territory, not simply the utility accumulating parcels for a large, and allegedly exclusive "franchise" area.

4. However, during the course of the proceedings which were instituted to consider these new rules, the General Assembly amended the provisions of § 203C. *See* 76 Del. Laws ch. 55 (June 28, 2007) ("chap. 55"). In the main, the amendments reworked the listed criteria for awarding a CPCN under § 203C. The amended Section 203C eliminated the "majority rule" provision in most instances and thereby obligated the utility to obtain petitions requesting water services executed by all of the landowners of each parcel to be included in a new service territory.[2] An exception exists for existing developments, subdivisions, and generally recognized unincorporated communities. In such situations, the 2007 amendments to Section 203C permit a CPCN to be granted based on petitions for service signed by the landowners of a majority of the parcels within the development, subdivision, or unincorporated community.[3] In addition, the amendments also direct that, in the case of a CPCN premised on a

[2] *See* 26 *Del. C.* § 203C(e)(1)b., as amended by chap. 55 § 1. Previously, a water utility could obtain a CPCN by presenting petitions signed by a majority of all of the landowners in the proposed service area. The amendment requires petitions for each parcel, executed by all the owners of record of the parcel. At the same time, the amendments did not disturb a utility's ability to receive a CPCN by proffering its agreement with the developer of a new development. The subdivision must have been previously approved by the relevant governmental authority. *See* 26 *Del. C.* § 203C(e)(1)a., as carried forward by chap. 55 § 1.

[3] *See* 26 *Del. C.* § 203C(e)(1)c., as amended by chap. 55 § 1.

resolution or ordinance enacted by a county or municipality, the service territory so authorized cannot extend beyond the political boundaries of the county or municipality entering the ordinance.[4] Finally, in addition to making some other technical changes, the amendments required a municipal water authority to obtain the endorsement of the municipalities that formed it prior to seeking a CPCN to provide its water services beyond those municipalities' borders.[5]

5. In light of the statutory amendments, the Hearing Examiner suspended further proceedings on the proposed new rules. The Commission then withdrew the rule changes proposed by Order No. 7142, because the legislative changes rendered some of those earlier provisions in need of further revisions.

6. On September 4, 2007, this Commission entered Order No. 7254, in which it proposed a revised set of regulations to govern the Commission's jurisdiction to grant and revoke CPCNs for water utilities. Order No. 7254 thus superseded Order No. 7142 (Mar. 20, 2007).

7. Two Class A water utilities, Artesian Water Company ("Artesian") and Tidewater Utilities, Inc. ("Tidewater"), objected to certain provisions of the proposed regulations. The other three Class A water utilities and seven smaller water utilities did not file objections. *Id.*

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[4] *See* 26 *Del. C.* § 203C(e)(1)d., as amended by chap. 55 § 1.

[5] *See* 26 *Del. C.* § 203C(n), as added by chap. 55 § 6. *See* 16 *Del. C.* ch. 14 (describing formation and powers of municipal water and sewer authorities.)

8. The assigned Hearing Examiner conducted an evidentiary hearing on November 19, 2007. At the conclusion of the proceeding, the Hearing Examiner approved the submission of certain post-hearing evidence. Thereafter, Staff proposed substantial revisions to the regulations and, on January 25, 2008, served a motion asking the Hearing Examiner to conduct further proceedings. Among other things, the Staff's proposed revisions a) eliminated the requirement that a utility certify that it would provide service within a given period of time, and b) extended the three year window for providing service to five years.

9. On October 7, 2008, this docket was reassigned to a new Hearing Examiner (*see* Commission Order No. 7451), who granted Staff's motion to conduct further proceedings, and presided at an evidentiary hearing on March 6, 9, and 11, 2009. During the course of the hearings, 163 exhibits were received in evidence. After the submission of post-hearing briefs, the Hearing Examiner issued a 101 page Report with Findings and Recommendations dated November 25, 2009 (the "Report").[6] The Report included exhibits designated by the Hearing Examiner as A through F. Copies of the Report and exhibits are attached hereto as Exhibit "1".

10. As reflected in the Report, Artesian, Tidewater, the Public Advocate and Staff were ultimately in agreement that the

[6] Staff's proposed regulations were attached to the Hearing Examiner's Report as Exhibit A. The Artesian/Tidewater alternative regulations (in black-lined format) were attached to the Report as Exhibit B.

Commission should adopt many of the proposed regulations, with certain stipulated modifications. Report pp. 70-2.

11. Artesian and Tidewater contested the following regulations: a) Section 3.2 which limits CPCN applications to five Proposed Service Areas; b) Section 3.13 which requires a utility to file a Plan of Service with a CPCN application; c) Section 6.3 pertaining to the notice to be afforded a municipality of a CPCN application which might affect the municipality; d) Section 7.4 which specifies the parcels of land which may be included in a Proposed Service Area (as that term is defined in Section 2.1); e) Section 8.0, which i) requires a utility to include a notice to landowners with the CPCN solicitation materials sent to them, and ii) requires that the notice provision advise landowners that their ability to obtain a permit for a new well might be affected; f) Section 9.0, which requires the utility to send the form of notice specified in Section 10.0; g) Sections 10.0 and 11.0 to the extent that they require utilities to give notice to landowners and other interested parties, including utility customers, of their rights to object to CPCN applications; and h) Section 12.0 which would have created a process through which a landowner, whose property was subject to a CPCN, could file a request to opt-out of the utility's service territory if five years had elapsed since the CPCN was awarded and the property was still not receiving water service.

12. The Report recommended adoption of proposed Sections 3.13, 6.3, 8.0 and 9.0 as proposed by Staff and supported by the Public Advocate. The Report recommended that the Commission reject all, or portions of, Staff's proposed Sections 3.2, 7.4, 10.0, and 11.0. In addition, the Report recommended that the notice of a CPCN application published in two newspapers of general circulation (required by Section 10.7) include certain descriptive information about the properties covered by the application. Finally, the Report recommended that the Commission reject Section 12.0, which contained the Staff's proposed five year opt-out rule, and instead urged adoption of a competing rule proposed by Artesian and Tidewater.

13. On January 27, 2010, the Commission Staff and the Public Advocate filed timely exceptions to the Report. Artesian and Tidewater did not file exceptions. At its regularly conducted meeting on March 2, 2010, the Commission considered the exceptions filed by the Staff and the Public Advocate, and the arguments of Artesian and Tidewater in opposition to the exceptions.

14. Before the Commission addresses the Report and the exceptions, the following background is also relevant to the issues raised in this docket. On March 17, 2009, six days after the evidentiary hearing in this matter concluded on March 11, 2009, the Commission considered the application of the City of Dover for a CPCN to provide water service to an area formerly known as the Bush Farm property, which is adjacent to the Dover

city limits. *See* PSC Docket NO. 09-CPCN-11 ("Bush Farm"). Tidewater objected to the application because the Bush Farm property was in an area where Tidewater already held a CPCN. During the Bush Farm proceeding, certain Commissioners expressed a view that the Commission was free, under an appropriate set of facts and circumstances, to review a grant of a CPCN to determine whether such a CPCN remained in the public interest, and ought to be modified in whole or in part. Further, after consideration of the parties' positions, the Commission voted 3 to 1 (Commissioner Clark having recused himself) to approve a motion that the language of § 203C does not create an exclusive service territory and that the Commission is empowered to revisit the issuance of a CPCN. However, the oral motion approved by the Commission was never reduced to a written order, because the proceeding was continued and the parties to the Bush Farm docket settled the dispute before the Commission was able to take any further action on the matter.

II. SUMMARY OF THE EVIDENCE, FINDINGS OF FACT, AND CONCLUSIONS OF LAW.

A. Staff's Proposed Rule 12.0; The Five Year Rule.

15. Staff proposed a new rule 12.0 entitled "Conditional Grant of a CPCN for a Proposed Service Area." Proposed Section 12.0 set forth a process through which a landowner whose property was subject to a CPCN could file a request with the Commission to have the property removed from the water utility's CPCN service territory if the utility was not providing water service to the

property at issue within five years of being awarded the CPCN. The proposed rule did not provide for automatic removal of the property from the utility's service territory. Rather, the utility was afforded the opportunity to object to the landowner's request. In that event, the Commission would have conducted a hearing to address the dispute and the proposed rule contained a description of the factors that the Commission would consider in deciding the matter.

16. The Report recommended that the Commission reject Staff's proposed Section 12.0 for several reasons as discussed below. Report pp. 11-36 (paragraphs 21-62), 40-70 (paragraphs 63(M)-106), and 72-4 (paragraph 112 through the first full paragraph on p. 74). The Report concluded that the language of Section 203C prohibits the adoption of Staff's proposed five year rule as a matter of law. Report paragraphs 39, 41. The Report also found that the Staff failed to demonstrate that proposed Section 12.0 is just and reasonable and supported by substantial evidence. Report paragraph 41. The Report then went on to adopt an alternative Section 12.0 proposed by Artesian and Tidewater.

17. In its exceptions, Staff argued that the Commission should decline to adopt those findings and recommendations in the Report which served as the bases to reject Staff's proposed Section 12.0. Nevertheless, Staff did not take exception to the ultimate conclusion of the Hearing Examiner that the Commission should decline to adopt Staff's proposed Section 12.0. Staff's exceptions explained in detail that it was not excepting to the

recommendation against adoption of the Staff's proposed rule 12.0, in light of the views expressed by certain Commissioners during the Bush Farm proceeding. The Commissioners' comments during the Bush Farm hearing, in large part, alleviated Staff's original concerns, which prompted Staff to propose the new rules, including Rule 12.0. Staff also expressed concern that further litigation over Section 12.0 might delay the implementation of the other proposed rules which were recommended for adoption in the Report. And Staff pointed out that the adoption of several of the proposed rules, for example, the Plan of Service and the additional notice requirements, would provide greater protections for landowners who are solicited by a water utility to have their properties included within the utility's service territory.

18. The Commission unanimously rejects the Report's findings and recommendations as they relate to Staff's proposed Section 12.0. Those findings and recommendations are found in the Report at: a) pages 11-36 (paragraphs 21-62), b) pages 40-70 (paragraphs 63M-106), and c) pages 72-4 (paragraph. 112 through the first full paragraph on page 74). While the Commission rejects the Report's findings and recommendations, the Commission declines to decide the issue of its legal authority to adopt the Five Year Rule set forth in Section 12.0, and also declines to address the issue of whether the Staff established that the proposed rule is just and reasonable and supported by substantial evidence.

19. The Commission is convinced that the most reasonable course at this juncture is to adopt the regulations without Section 12.0 and assess, over time, the effectiveness of the new regulations in protecting the rights of landowners in Delaware. At this time, the Commission is also of the view that the legal issue of its authority to adopt a rule like Section 12.0 is perhaps best decided in the context of a specific factual record developed by the aggrieved parties, much like the docket involving Bush Farm, discussed above.[7]

B. The Alternative Section 12.0 Proposed by Artesian and Tidewater.

20. Artesian and Tidewater proposed an alternative to Section 12.0 which would have permitted the Commission to revoke a CPCN if a water utility failed to comply with an order of the Commission to provide service to a property in a timely manner. Under the utility proposal, the owner of the property would have the burden of proving the ability to make any contributions in-aid-of construction called for by any Commission rule or order. The Report recommended adoption of the utilities' proposal. Report pp. 73-4.

21. The Commission unanimously rejects the Report's recommendation that it adopt the utilities' proposed Section 12.0. Report pp. 73-4. As reflected above, the Commission is convinced that the most reasonable course at this juncture, based upon the record developed before the Hearing Examiner, the

[7] In addition, the Commission wishes to implement the rules that are not contested.

exceptions made by the Staff and the Public Advocate, and the arguments raised by Artesian and Tidewater, is to adopt the proposed regulations without Section 12.0 and assess, over time, the effectiveness of the new regulations in protecting the rights of landowners in Delaware.

C. Staff's Proposed Rules 3.2 and 7.4.

22. Section 3.2 of Staff's proposed regulations limits CPCN applications to five "Proposed Service Areas." Section 3.2 should be read in conjunction with Section 7.4 which limits a "Proposed Service Area" to either "a single parcel" or "two or more contiguous parcels that will be provided water utility services by the same stand-alone system or by the same main extension." The Report recommended against the adoption of Sections 3.2 and 7.4. Report pp. 74-8 and 85-8.

23. The Commission declines to adopt the Report's recommendation that it reject Sections 3.2 and 7.4. Instead, the Commission unanimously approves the adoption of proposed Sections 3.2 and 7.4. Sections 3.2 and 7.4 must be read in conjunction with proposed Section 3.13, which will require a water utility to submit a "Plan of Service" with a CPCN application. The Report does recommend adoption of Section 3.13, and Artesian and Tidewater have not taken exception to that recommendation.

24. In Section 3.13, the Plan of Service is defined as follows:

> [A] description of how and when the applicant plans to provide water services to the [Proposed Service] 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.

25. The Commission concludes that Staff's proposals a) to limit CPCN applications to one to five Proposed Service Areas, and b) to limit the parcels that may be included in a Proposed Service Area, are permitted by law and are just and reasonable limitations which are supported by substantial evidence in the record.

26. Section 203C(c) provides, in relevant part:

> 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, [and] shall be in such form as determined by the Commission….

Under Section 203C(c), then, the Commission has the power to prescribe the form that a CPCN application will take, and inherent authority to impose reasonable restrictions on the number of properties that can be included in any one application.

27. At times, the Commission has received CPCN applications which encompassed hundreds of parcels of land that were not contiguous and instead were scattered throughout different parts of a county.[8] Section 10.6 of the proposed

[8] *See* Report pp. 75-6.

regulations, to which no utility objected, requires a utility to publish notice of a CPCN application, which must include a description of the Proposed Service Area. The publication of this information allows landowners in or near a proposed service territory to learn about a pending application and offer input to the Commission, including information about the quality of service afforded to existing customers of the applying utility. Under 26 *Del. C.* § 203C(f), a CPCN will not be granted if the Commission finds that the utility is failing to provide safe, adequate and reliable service to its existing customers. By limiting the number of Proposed Service Areas, published notices will be more clear and readily understood by the public.

28. While the Report recommends the adoption of the Section 3.13 Plan of Service requirement, it fails to acknowledge that Sections 3.13, 3.2 and 7.4 are interrelated and interdependent provisions. The new Plan of Service requirement will be far less meaningful if there are large numbers of non-contiguous and widely-dispersed properties encompassed within a single CPCN application.

29. The Report recommends the rejection of Section 3.2 on the ground that it might increase advertising expenses for Artesian and Tidewater, as the public must receive published notice of the CPCN application in two newspapers of general circulation. In addition, Artesian and Tidewater complain that they are charged a $300 filing fee for each CPCN application and that placing limitations on the properties that can be

encompassed by a CPCN application might compel them to file more applications and pay more filing fees than would be required under the current regulations.

30. Staff presented evidence that CPCN applications are typically published in the *News Journal* and the *Delaware State News*. Staff established that, in the case of legal notices, the *News Journal* charges per line, and the *Delaware State News* charges per column inch. Accordingly, there is no reason to conclude, for example, that the cost of publishing two CPCN applications which encompass five Proposed Service Areas, will be materially greater than one application which covers ten Proposed Service Areas.

31. Furthermore, the Commission observes that Sections 3.2 and 7.4 do not place a strict numerical limit on the number of parcels that may be included in a Proposed Service Area. Rather, under Section 7.4, each Proposed Service Area can include multiple parcels of land, provided that they are contiguous. Given that Section 3.2 allows as many as five Proposed Service Areas per CPCN application, it is still possible for a utility that focuses upon contiguous properties to include relatively large tracts of land within a single CPCN application. Carrying this point to its logical conclusion, a water utility might include five non-contiguous residential developments in a single CPCN application. Under all of the circumstances, and considering all of the evidence of record and the arguments made by the parties both pro and con, it is reasonable to conclude

that the publication costs and $300 filing fee do not impose a burden on the utility.

32. For the reasons set forth above, the Commission is satisfied that Sections 3.2 and 7.4 will not result in the imposition of unfair or burdensome advertising costs or filing fees on the utilities.

33. More importantly, any incremental increase in costs associated with the adoption of Sections 3.2 and 7.4 must be balanced against the need for fair notice to the public. Because of the large number of parcels that have been included in CPCN applications in the past, the published notices have, at times, not been adequate to inform the public about the nature and extent of a CPCN application and its possible effects on nearby landowners and utility customers. And the Commission takes note of and adopts the findings in the Report that a) the property descriptions employed by Artesian and Tidewater in the past are "not descriptive enough,"[9] b) Delaware residents should receive "improved notice of CPCN Applications,"[10] and c) "notice by publication must be as specific as possible as to where the property is located."[11]

34. The Commission concludes that the limit of five Proposed Service Areas strikes a reasonable balance between the public's right to know and the potential for additional costs. The award of a CPCN involves governmental action which affects

[9] Report p. 77.
[10] Report p. 76.
[11] Report p. 78.

not only the landowners whose properties fall within the proposed CPCN territory, but surrounding landowners, other customers of the utility, and potentially the public at large. These important public interests outweigh the additional incremental costs that might be incurred by the adoption of Section 3.2 and 7.4.

35. The Report made the following recommendation on pages 76-7 about the published notice of each CPCN application:

> [I]n 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 (sic) 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.

None of the parties took exception to this recommendation and the Commission adopts it because it is just and reasonable and supported by substantial evidence as reflected in the Report.

D. Sections 10.0 and 11.0 of the Proposed Regulations

36. **Approval of the Form of Notices and Related Documents.** The Report recommended that the Commission not adopt Section 10.1 to the extent it provided that the notice to landowners required by Section 10.0 "shall be in a form approved by Staff." Report

pp. 97-8. Staff did not intend the quoted language to mean that Staff would have unfettered discretion over the form of notice and pointed out that any such language would be subject to review and approval by the Commission as a matter of course. However, in order to avoid any further dispute about the subject, Staff agreed to change the quoted language of 10.1 to read "shall be in a form approved by the Commission." The Staff made the same revision to Sections 10.4, 10.5, and 10.7 by changing the word "Staff" to "the Commission." The Commission approves those changes, which fairly resolve the complaints of Artesian and Tidewater.

37. **Clarification Regarding Section 10.0 Opt-Out Notice.** At the March 2, 2010 hearing before the Commission, Staff also agreed to add a new provision to address a request by Tidewater and Artesian that the regulations expressly state that water utilities are not required to send the Section 10.0 opt-out notice with a solicitation notice sent pursuant to Section 8.0. The Report recommended that the Commission adopt the utilities' request. Report p. 100. Staff has added the new provision as Section 10.6, and the Commission approves its addition to the regulations as a reasonable clarification of the practice to be followed under the regulations.

38. **Sections 10.0 and 11.0 Related to Notice of the Right to Make Objections.** The Report recommends that the Commission reject the provisions in proposed Sections 10.0 and 11.0 which i) require utilities to give landowners notice of their rights to

object to CPCN applications, and ii) address the rights of other interested parties, besides landowners, to object to CPCN applications. Report pp. 98-100. Artesian and Tidewater argued that the objection provisions are obsolete in light of the amendment of § 203C(i) by the General Assembly, which removed a portion of the language therein referring to objections.

39. However, the amendments to § 203C, including § 203C(i), did not eliminate all references to the right to object to a CPCN application, thereby demonstrating that the General Assembly did not intend to eliminate such objections. In addition, § 203C(e)(1)b.3. still contains a majority rule provision, and a landowner's right to object to a CPCN application would be implicated under those circumstances. Therefore, the current statutory language supports the inclusion of proposed Sections 10.3 and 11.3.

40. The Commission finds it significant that utility customers have a statutory right to object to a CPCN application under § 203C(f), if they are not receiving adequate water service. Section 11.2 recognizes that right and provides a process for customers to file such objections. The Commission also notes that its current regulations contain essentially the same objection provisions, the utilities have not demonstrated that the existing provisions have created unfair or unnecessary difficulties, and the Commission is unaware of any such difficulties. The current objection provisions were adopted with the 2001 Rules after an appropriate period of public comment. In

addition, the Commission Staff conducted a series of public workshops before the 2001 Rules were approved and all Class A water utilities were invited to participate. None of the Class A water utilities took exception to the objection provisions at that time, and have not lodged any complaints about them prior to the reopening of this docket.

41. For all of the aforesaid reasons, the Commission unanimously rejects the Report's recommendation that the Commission refuse to adopt the objection provisions in Sections 10.0 and 11.0. Furthermore, the Commission unanimously adopts proposed Sections 10.0 and 11.0 with the modifications reflected above.

E. The Sections of the Proposed Regulations Which Were Agreed Upon or to Which No Party Filed Exceptions.

42. Given that the parties either agreed that the Commission should adopt the following rules, or did not take exception to the recommendations in the Report that they be adopted, the Commission hereby adopts Sections 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, 9.0, 10.0, 11.0, 13.0 (which will be renumbered as Section 12.0), and 14.0 (which will be renumbered as Section 13.0), subject to the Commission's determinations in Sections II. A through D above. And except as otherwise determined in Sections II. A through D above, the Commission adopts the findings and recommendations in the Report which support the adoption of these uncontested regulations, and concludes that the uncontested regulations are just and

reasonable and supported by substantial evidence. *See* 26 *Del. C.* § 209(a)(1) and 29 *Del. C.* § 10118.

III. Additional Conclusions and Implementing Provisions.

43. Except as otherwise set forth herein, the exceptions of the Staff and the Public Advocate are denied.

44. The Commission concludes that the rules proposed for adoption in this order reflect substantive changes from the earlier published rules and therefore constitute a new proposal within the meaning of 29 *Del. C.* § 10118(c). A copy of the proposed regulations, which the Commission approves and intends to publish for final comment, are attached hereto as Exhibit "2".[12]

45. For the reasons set forth in Section I, II, and III of this Order, and pursuant to 26 *Del. C.* § 10118(a), the Commission herby withdraws the notice of repeal and rule revisions proposed by PSC Order No. 7254 (Sept. 4, 2007), and published as proposed regulations at 11 *Delaware Register of Regulations* 465-484 (Oct. 1, 2007). The Commission requests that the Register of Regulations publish notice of such withdrawal in the *Delaware Register of Regulations*.

46. For the reasons set forth in Sections I, II, and III of this Order, and pursuant to 26 *Del. C.* §§ 209(a)(1) & 203(c) and 29 *Del. C.* § 10113(a), the Commission now again proposes to

[12] The revised Regulations attached hereto as Exhibit 2 also contain non-substantive, editorial corrections, so that they will, for example, comport with changes in the numbering and lettering of the current version of § 203C in the Delaware Code.

repeal its "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" (adopted by PSC Order No. 5730 (June 5, 2001)), and to adopt as a replacement for such earlier rules the "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities," attached to this Order as Exhibit "3."

47. Pursuant to 29 *Del. C.* §§ 10113 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the *Delaware Register of Regulations* a copy of this Order; a copy of the current "Regulations Governing Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" (Exhibit "4") (now proposed to be repealed); and a copy of the now proposed "Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities" (Exhibit "3").

48. In addition, the Secretary shall transmit the Notice of Proposed Rule-Making to the Registrar of Regulation for publication in the *Delaware Register of Regulations* attached as Exhibit "5". In addition, the Secretary shall cause such Notice of Proposed Rule-Making to be published in *the News Journal* and the *Delaware State News* newspapers on or before May 8, 2010. The Secretary shall include proof of such publication in the docket file before the public hearing in this matter. Further, the Secretary shall serve (by regular mail or electronic e-mail) a

copy of such Notice on: (a) the Division of the Public Advocate; (b) the Department of Natural Resources and Environmental Control; (c) the State Fire Marshall; (d) the Division of Public Health; (e) the State Planning Office; (f) each person or entity who has made a timely request for advance notice of regulation-making proceedings; (g) each water utility currently subject to the regulatory jurisdiction of the Commission; and (h) each municipal water utility, governmental water district, or municipal water and sewer authority that has previously applied for a Certificate of Public Convenience and Necessity from this Commission.

49. Pursuant to 29 *Del. C.* §§ 10115(a) and 10116, persons or entities may file written comments, suggestions, compilations of data, briefs, or other written materials, on or before June 30, 2010. The Commission will conduct a public hearing on the proposed new regulations on July 22, 2010 beginning at 1:00 P.M. The comments, documents, briefs, testimony, evidence, exhibits, and data received in response to the revised rules proposed by PSC Order Nos. 7142 (Mar. 20, 2007) (now withdrawn) and 7254 (Sept. 4, 2007) (now withdrawn) shall be incorporated into the record in this proceeding and shall be considered by the Commission.

50. The public utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 *Del. C.* § 114.

51. The Commission retains the jurisdiction and authority to enter such further orders in this matter as the Commission deems necessary or appropriate.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary