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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 these regulations, 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)b.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)b.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; and

3.4.4.4 For a request premised on 26 Del. C. § 203C(e)(1)b.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)b.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)b.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)b.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)b.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)b.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)b.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)b.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)b.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)b.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)b.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 Section 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)b.2. or 26 Del. C. § 203C(e)(1)b.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;

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

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)b.2. or 26 Del. C. § 203C(e)(1)b.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)b.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)b.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)b.1., or 26 Del. C. § 203C(e)(1)b.4. shall be in a form approved by the Commission.

10.2 If the request is premised on 26 Del. C. § 203C(e)(1)b.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 description of the proposed service territory]*.

[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, 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 *the proposed service territory* 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.

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 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)b.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 name and description of existing development, existing subdivision, or existing unincorporated community]*.

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.

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 the Commission) 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 the Commission) to alert the landowner of the importance of the notice.

10.6 The applicant is not required to send the Section 10.0 opt-out notice with a solicitation notice sent pursuant to Section 8.0 of these regulations.

10.7 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 Commission shall approve a form of such public notice. The applicant shall promptly file proof of such publication with the Commission. 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 ID 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.

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 Section 10.7.

11.3 In an application premised on 26 Del. C. § 203C(e)(1)b.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)b.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 <u>Suspension or Revocation of CPCN for Good Cause</u>

12.1 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:

12.1.1 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;

12.1.2 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

12.1.3 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.

12.2 In addition to the factors required by Sections 12.1.1, 12.1.2, and 12.1.3, the Commission may also consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

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

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

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

12.2.4 persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by Section 12.1.1 above; or

12.2.5 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

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

13.0 Proceedings to Suspend or Revoke a CPCN for Good Cause

13.1 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.

13.2 Unless the Commission finds, pursuant to proceedings conducted in accordance with Section 13.1 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.