

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

IN THE MATTER OF ARTESIAN WATER)
COMPANY, INC.'S SUBMISSION, PURSUANT)
TO 26 DEL. C. §1404, OF A WATER CON-)
SERVATION PLAN FOR 2009-2012 AND A) PSC DOCKET NO. 09-284
CERTIFICATION OF ADEQUATE WATER)
(FILED JUNE 30, 2009))

ORDER NO. 7785

AND NOW, this 1st day of June, 2010:

WHEREAS, this Order addresses a Water Conservation Plan (the "Conservation Plan" or the "Plan") and Supply Capacity Certification (the "Supply Certification" or "Certification") filed by Artesian Water Company, Inc. ("Artesian" or the "Company") on June 30, 2009. Artesian filed its Plan and Certification pursuant to the Water Supply Self-Sufficiency Act of 2003, 26 Del. C. §§1401-1408 (the "Act"), which requires that regulated water utilities serving northern New Castle County file conservation plans and supply certifications every three years. See 26 Del. C. §1404(a)(1)-(2) and 1402(8).

WHEREAS, the conservation plan required by the Act must describe, for a projected three-year period, how the utility will make its customers aware of (i) the benefits arising from efficient water use, (ii) the utility's water conservation rate structure, (iii) the existence of new and retrofitted consumer equipment, and (iv) the costs arising from the loss of water through leakage in consumer water systems. 26 Del. C. §1404(b)(1). Conservation plans filed after an initial plan must

also evaluate the effectiveness of prior plans in informing consumers of methods to improve the efficient use of the water supply. *Id.* at §1404(b)(2). The Commission is required to review and "acknowledge" each plan within 120 days. *Id.* at §1404(c). The Commission may suggest modifications to conservation plans, but the utilities are under no obligation to implement them. *See id.* (providing that a water utility "may accept or reject the suggested modifications.")

WHEREAS, with respect to the supply certification, the Act requires that the covered water utilities certify that they have sufficient sources of water to provide adequate supply to meet a "projected demand" in the area north of the Chesapeake and the Delaware Canal, the "drought sensitive area", for the following "projected year," the third year following reporting year. 26 *Del. C.* §§1404(a) and 1402. The "projected demand" is the anticipated demand for water supply in the drought sensitive area during a "drought of record" in the projected year as determined for each utility by the Water Supply Coordinating Council (the "WSCC"). 26 *Del. C.* §1402(7)-(8). The "drought of record" is defined as "a period of 75 days of climatological, streamflow and groundwater conditions similar to those that prevailed in northern New Castle County during the drought emergency of 2002, or as defined by the [WSCC]". *See id.* at 1402(3).

WHEREAS, the Act requires that the utilities support their certifications with materials and documents that update information previously supplied to the Commission and identify

each source of supply and the volume of water available from each source. *Id.* The submissions must demonstrate that, for the projected year, the volume of supply from the utility's sources will be adequate to meet or exceed the projected demand. *Id.* The Act further requires that, beginning in reporting year 2009, each utility also certify that its sources of supply for use during a drought of record are not reliant on contracts with out-of-state water authorities or utilities, except for certain minimum purchase obligations under contracts predating April 2003. *Id.* at § 1404(e).

WHEREAS, the Commission is required to review and investigate each certification. *Id.* at §1404(f). If, following its review, the Commission finds that the utility's submissions justify the certification, the Commission is required to "accept" the certification. *Id.* at §1404(g). On the other hand, if the submissions do not support the certification or the Commission finds that the utility will not have an adequate supply to meet the projected demand, the Commission must reject the certification, at which point the utility may file an amended certification with additional sources of supply. *Id.* at § 1404(h).

WHEREAS, as stated above, Artesian timely submitted its Plan and Certification for 2009.¹ To assist Staff in reviewing

¹ Artesian's initial conservation plan and certification were submitted in June 2006. Following an investigation by Commission staff ("Staff") and a public hearing, and upon Staff's recommendation, the Commission accepted the certification, while acknowledging certain cautions identified by a consultant retained by Commission staff. See PSC Order

Artesian's Plan and Certification, Staff retained Leggette, Brashears & Graham, Inc. ("LBG"), a professional groundwater and environmental engineering consulting firm. Following an investigation, LBG issued two reports, one regarding the Plan entitled Assessment of the June 30, 2009 Water Conservation Plan Filing of Artesian Water Company Under the Delaware Water Supply Self-Sufficiency Act, dated October 16, 2009 (the "Conservation Plan Report"), and second regarding the Certification entitled the "Assessment of the June 30, 2009 Filing of Artesian Water Company Under the Delaware Water Supply Self-Sufficiency Act, dated May 12, 2010 (the "Supply Certification Report"). The Commission addresses each, starting with the latter report.

WHEREAS, as set forth in the Supply Certification Report, LBG concluded that Artesian has sufficient sources of water to provide adequate supply to meet the projected demand - 22.9 million gallons per day ("MGD") - for projected year 2012. Based upon its investigation, LBG concluded that Artesian is capable of producing 23.79 MGD from its 53 wells located in 17 wellfields. (Supply Certification Report, p. 3-3). LBG also concluded that an estimated additional 3.7 MGD are available from Artesian's several interconnections with other water utilities.² (*Id.*). As such, the total water available to Artesian from all sources

No. 7233 (July 24, 2007). The Commission also urged Artesian to consider certain recommendations made by Staff and its consultant regarding Artesian's conservation education initiatives. See *id.*; see also PSC Order No. 7051 (Oct. 17, 2006).

² The estimated 3.7 MGD are derived from interconnections arrangements that predate April 2003, as required by the Act. See 26 Del. C. § 1404(e).

during the drought-of-record, according to LBG, is reasonably estimated at 27.49 MGD. (*Id.* at 3-3 and 4-1). Thus, even when LBG reduces this amount by a "standard factor of safety of 10% (to 24.74 MGD)," Artesian's supply still exceeds the projected demand. (*Id.*, pp. 3-3 to 3-4). Accordingly, both Staff and LBG recommend that the Commission accept Artesian's Supply Certification.³

WHEREAS, Staff and LBG report that the Artesian Conservation Plan meets the four statutory requisites set forth in 26 *Del. C.* §1404(b)(1). (See Conservation Plan Report at pp. 4-5). The Plan (i) includes various methods employed by Artesian to make consumers aware of the benefits of efficient water use, (ii) adequately informs consumers of Artesian's inclining block rate structure, (iii) makes its customers aware of new and

³ As set forth in further detail in Staff's memorandum, there were certain issues raised by Staff and LBG regarding the Supply Certification. Those issues were identified in a draft LBG report and provided to Artesian. The parties exchanged information, met and conferred and worked out several of the disputes. There is one lingering disagreement. LBG concluded that the full .77 MGD claimed by Artesian for Artesian's wellfield at the Wilmington Airport should not be accepted, but should be reduced based upon data provided to LBG. Artesian disagrees with this reduction, but because LBG concluded that Artesian's total supply meets or exceeds the projected demand, it is unnecessary to resolve this dispute at this time.

Further, both Staff and LBG discuss a report from the U.S. Army Corp of Engineers ("ACE") that apparently raises questions regarding the long-term sustainability of groundwater supplies in New Castle County. Artesian disputes conclusions reached in this report. However, because LBG concludes that nothing in the ACE report raises any immediate concerns, and certainly no concerns for Artesian's reporting period, 2009-2012, there is no need for the Commission to hold an evidentiary hearing to litigate issues that may be raised by the ACE report. The Commission also notes that the ACE report was also the subject of dispute during Artesian's last supply certification. See PSC Order No. 7233, pp. 4-6 (7/24/07). As was the case with Artesian's last certification, the discussion regarding the ACE report has not resulted in the Commission rejecting Artesian's Supply Certification.

retrofitted equipment through its partnership in the EPA WaterSense program, and (iv) adequately informs customers of costs from water loss through leakage by communicating with consumers who show considerable increases in water usage in a billing period. (*Id.*).

WHEREAS, as required by the Act, LBG evaluated the effectiveness of Artesian's 2006 conservation plan. LBG calculated a 3.5% overall decrease in water usage between 2006 and 2008 and an average decrease of 2.8% in per customer water demand for residential customers (who comprise 80% of Artesian's total demand). (See Conservation Plan Report, pp. 6-8). Both Staff and LBG noted that although this data indicates a general reduction in water usage, there was no analysis presented linking this reduced usage to Artesian's 2006 plan. (*Id.* at 7). However, as noted by Staff, while certainly the goal of conservation efforts is to reduce water usage, the Act does not actually require proof that changes in consumption habits are directly linked to conservation efforts.

WHEREAS, LBG also observed that Artesian is subject to conservation plans requirements under Department of Natural Resources and Environmental Control ("DNREC") regulations and Delaware River Basin Commission ("DRBC") regulations. LBG and Staff believe that Artesian should consider combining conservation plans required by the Act with requirements under these DNREC and DRBC regulations.

WHEREAS, at its regular meeting on October 29, 2009, the Commission acknowledged the filing of Artesian's Conservation Plan. At the time, Staff and its consultant's review had not been completed; however, the Commission acknowledged the Plan in order to comply with the 120 day statutory deadline, understanding that it would later enter an order, which may or may not make recommendations to the Plan.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That, for the reasons set forth above, the Commission accepts the Supply Capacity Certification filed by Artesian Water Company, Inc. on June 30, 2009, in accordance with 26 *Del. C.* §1404(g).

2. That, for the reasons set forth above, the Commission acknowledges the Water Conservation Plan filed by Artesian Water Company, Inc. on June 30, 2009, in accordance with 26 *Del. C.* §1404(c).

3. That for the reasons set forth in the Assessment of the June 30, 2010 Water Conservation Plan Filing of Artesian Water Company Under the Delaware Water Supply Self-Sufficiency Act, dated October 16, 2009, filed by Leggette, Brashears & Graham, Inc., the Commission recommends that Artesian Water Company, Inc. in the future consider development of a comprehensive water conservation plan that not only takes into consideration the requirements of the Water Supply Self-

Sufficiency Act of 2003, 26 Del. C. §§1401-1408, but also all other applicable water conservation requirements and regulations.

4. That the Secretary shall serve a copy of this Order upon (i) Artesian Water Company, Inc., (ii) the Division of the Public Advocate, (iii) Water Supply Coordinating Council, and (iv) the Department of Natural Resources and Environmental Control.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

/s/ Arnetta McRae_____
Chair

/s/ Joann T Conaway_____
Commissioner

/s/ Jaymes B Lester_____
Commissioner

/s/ Dallas Winslow_____
Commissioner

/s/ Jeffrey Clark_____
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley_____
Secretary