

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

IN THE MATTER OF THE APPLICATION OF)
CAMDEN WYOMING SEWER AND WATER)
AUTHORITY FOR A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY TO)
PROVIDE WATER SERVICES PURSUANT TO) PSC DOCKET NO. 10-CPCN-28
26 *DEL. C.* §203C (FILED SEPTEMBER)
30, 2010; AMENDED MAY 18, 2011;)
AMENDED APRIL 3, 2012))

ORDER NO. 8587

AND NOW, this 23th day of July, 2014, 2014, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on September 21, 2010, Camden-Wyoming Sewer and Water Authority ("CWSWA") sent an application ("Application") to the Commission Staff ("Staff") and requested an informal review as allowed by 26 *Del. Admin. C.* §2002-5.1;¹ and

WHEREAS, Staff responded by letter on September 30, 2010, with a list of issues that needed to be resolved and also processed the fee for the Application as of that date; and

WHEREAS, pursuant to 26 *Del. C.* §203C(e), CWSWA's Application seeks a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to twelve parcels of land in Kent County, Delaware (the "Proposed Service Area"); and

WHEREAS, CWSWA alleged there was a mapping error which excluded from its service territory the twelve parcels of land and alleged its

¹ 26 *Del. Admin. C.* §2002-5.1 provides as follows: "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."

intent in filing the Application was as a house-keeping measure to confirm its proper legal right to continue serving the twelve parcels with water utility services; and

WHEREAS, on May 18, 2011, CWS&WA amended its Application (the "Amended Application") to remove nine parcels of land from the Proposed Service Area so that there are now three parcels of land: The Hartz property, the Vaina property, and the Langford Bay property; and

WHEREAS, according to the Application, the landowners of the Hartz property, the Vaina property, and the Langford Bay property all requested water utility services from CWSWA; however, all three of the parcels were within the service territory of Tidewater Utilities, Inc. ("TUI") at that time. Because of this, CWSWA requested (on behalf of the landowners) that TUI abandon its CPCN for these parcels; and

WHEREAS, the Application includes correspondence which indicates that TUI agreed to abandon its CPCN for all three of the parcels. Thereafter, CWSWA has been providing water utility services to these three parcels since 2008, 2009, and 2010, respectively; and

WHEREAS, in response to a March 23, 2012 letter from Staff, CWSWA amended its Application on April 5, 2012, and requested a waiver of the landowner notification required by both 26 *Del. C.* §203C(d)(1)² and 26 *Del. Admin. C.* §2002-3.5.1. CWSWA's waiver request is based on the "special circumstances surrounding CWSWA's Application, including, but not limited to, the filing of the Application at a time when the legal requirements pertaining to opt-out notices, signed petitions,

² This citation should be to 26 *Del. C.* §203C (e) (1) a.

landowner notifications, etc., were changing...." In addition, CWSWA's requested waiver is "based on the timing of the filing of the Application as well as the special circumstances" explained in a letter to Staff dated May 18, 2011; and

WHEREAS, after further review of the Amended Application, Staff later noticed that CWSWA failed to publish the required public notices within 10 days of filing the Application and/or Amended Application in accordance 26 *Del. Admin. C.* §2002-10.7;³ and

WHEREAS, based on the length of time spent processing the Amended Application and given that CWSWA has been providing water services to the landowners of the three parcels included in the Amended Application, Staff recommends that the Commission excuse this regulatory requirement pursuant to 26 *Del. Admin. C.* §2002-1.5.⁴ Staff notes that the landowners in the Proposed Service Area have been receiving water services from CWSWA since before 2010, and two of the three parcels have been annexed into the service territory of the Town of Camden. Furthermore, because the landowners have been customers of CWSWA for at least four years and already know who their water service provider is, published notice of the Amended Application seems unnecessary at this time; and

WHEREAS, Staff has completed its review of the Amended Application to ensure compliance with the provisions of 26 *Del. C.*

³ 26 *Del. Admin. C.* §2002-10.7 requires, in pertinent part, that within ten days of the filing of an application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application.

⁴ 26 *Del. Admin. C.* §2002-1.5 provides as follows: "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."

§203C and 26 *Del. Admin. C.* §2002. Staff submitted a memorandum to the Commission dated July 14, 2014, which confirms that the Amended Application meets all of the statutory and regulatory requirements for granting CWSWA a CPCN except for:

(i) the landowner notification required by 26 *Del. C.* §203C (e) (1) a. and 26 *Del. Admin. C.* §2002-3.5.1, both of which CWSWA has requested the Commission waive, and

(ii) publication in two newspapers of CWSWA's Application as required by 26 *Del. Admin. C.* §2002-10.7, which Staff recommends the Commission excuse.

Accordingly, Staff recommends that the Commission grant CWSWA a CPCN as requested in the Amended Application, grant CWSWA's requested waiver of the required landowner notification, and excuse the regulatory requirement that a notice of the Amended Application be published in two newspapers;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* §203C(e), the Commission grants to CWSWA a CPCN to serve the Proposed Service Area more specifically identified by the Kent County Tax Map Parcel Numbers NM00-103.06-01-81.00, NM02-103.00-01-10.00 and NM02-103.00-01-11.00.

2. The Commission grants CWSWA a waiver of the statutory and regulatory landowner notice requirement set forth in 26 *Del. C.* §203C (e) (1) a. and 26 *Del. Admin. C.* §2002-3.5.1 based on special circumstances regarding the timing of the filing and review of the Application as well as CWSWA's existing, long-standing provision of water utility services to the landowners in the Proposed Service Area.

3. The Commission also excuses, pursuant to 26 *Del. Admin. C.* §2002-1.5, the requirement that CWSWA publish a notice of the Application and/or Amended Application in two newspapers as required by 26 *Del. Admin. C.* §2002-10.7. The Commission finds that this regulatory requirement is unnecessary at this time, such requirement is not statutory, and such published notice is not material to the granting of the Amended Application.

4. CWSWA shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this CPCN.

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

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Harold B. Gray
Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary