

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

IN THE MATTER OF THE APPLICATION OF)
ARTESIAN WASTEWATER MANAGEMENT, INC.)
FOR A CERTIFICATE OF PUBLIC) PSC DOCKET NO. 10-WW-009
CONVENIENCE AND NECESSITY TO PROVIDE) ("STONEWATER EAST")
WASTEWATER SERVICES PURSUANT TO 26)
DEL. C. §203D (FILED DECEMBER 3,)
2010, AND AMENDED ON MAY 6, 2011))

ORDER NO. 7995

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE WASTEWATER SERVICES**

This 21st day of June, 2011, the Commission determines and Orders the following:

WHEREAS, this Commission exercises regulatory oversight over non-governmental wastewater public utilities that serve more than fifty customers. See 26 *Del. C. §§102(2) and 203D (a)*. That regulatory oversight includes the authority to grant Certificates of Public Convenience and Necessity ("CPCN") to enable an entity to begin the business of a wastewater public utility or to permit an existing wastewater public utility to extend its system and operations. See 26 *Del. C. §203D (a)*. Under such statutory regime, and specifically 26 *Del. C. §203D(d)(2)*, a wastewater utility may obtain a CPCN for a new service territory if it submits petitions requesting the utility's wastewater services executed by the landowners of record of each parcel or property to be encompassed within such new proposed service area; and

WHEREAS, on April 1, 2005, the Commission adopted final *Regulations Concerning the Jurisdiction of the Public Service*

Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services, 26 Del. Admin. C. §6002 (the "Regulations"). These Regulations implement the CPCN regime for public wastewater utilities; and

WHEREAS, Artesian Wastewater Management, Inc. ("Artesian") is a public utility offering wastewater services and is subject to the regulatory oversight of this Commission. On December 3, 2010, Artesian filed an application with the Commission (the "Application") requesting a CPCN to provide its wastewater services to forty-two parcels of land in Eastern Sussex County, Delaware (the "Proposed Service Area"); and

WHEREAS, as required by 26 *Del. C. §203D (d) (2)* and the Regulations, Artesian included in its application: (a) petitions requesting wastewater service signed by the landowners of record of each parcel or property encompassed within the Proposed Service Area; and (b) evidence, in the form of signed United States Postal Service certified mail receipts, showing that the landowners were sent notice of Artesian's Application.¹ A Sussex County Tax Map showing the location of the Proposed Service Area was also included with the Application; and

WHEREAS, pursuant to the Regulations, Commission Staff requested written comment from the Delaware Department of Natural Resources and Environmental Control ("DNREC") as to whether there were any

¹Prior to June 28, 2007, 26 *Del. C. §203D (d) (2)* required the utility to provide notice to affected landowners of its application for a wastewater CPCN. That statutory requirement of notice was not carried forward in the June and July 2007 amendments to §203D (d) (2); however, the Regulations continue to require notice to affected landowners.

outstanding issues with that agency that would indicate Artesian has been unwilling or unable to provide safe, adequate, and reliable wastewater services to its existing customers.² In its reply, DNREC reported that it had no objection to the Commission granting the requested CPCN to provide wastewater treatment and disposal services to the Proposed Service Area; and

WHEREAS, on May 6, 2011, Artesian amended its Application by removing from the Proposed Service Area one parcel of land, more specifically identified by Sussex County Tax Map Parcel Number 234-15.00-28.00. Thus, there are now forty-one parcels of land in the Proposed Service Area;

²Under the Regulations, the utility was required to submit a copy of its application to DNREC; the Office of State Planning ("OSP"); and "a) any county within whose boundaries the proposed service territory would be located; and b) any municipality, town or local authority: i) whose boundaries are adjacent to the proposed service territory; or ii) within whose boundaries or existing wastewater service territory the proposed service territory would be located." Here, Staff solicited comments from DNREC and, by copy, also gave both the OSP and the Sussex County Engineering Department ("the County") the opportunity to offer their views. OSP indicated that Sussex County Tax Map Parcel Number 234-20.00-7.00 is located within a Level 3 area, according to the "Strategies for State Policies and Spending" where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. Parcel Numbers 234-20.00-25.00 and 234-20.00-73.00 are located within the Environmentally Sensitive Developing Area ("ESDA") but are within a Level 4 area according to the Strategies for State Policies and Spending. OSP states that because it is within the ESDA area, the Commission should determine if the County is planning to provide sewer services in this area. The remainder of the parcels are located in a Level 4 area where new development activities and suburban development are not supported. The County stated Sussex County Tax Map Parcel Numbers 234-2.00-7.00, 234-2.00-25.00, 234-2.00-73.00, 234-2.00-25.06, 234-2.00-29.02 and portions of parcels 234-11.00-45.02 and 234-11.00-45.03 are located in a Sussex County Planning Area. The County states it does not have an immediate schedule to serve this area. However, the County requests that if Artesian cannot guarantee service to these parcels within the next five (5) years, then these parcels should be removed from this Application. Otherwise, the County has no objection to a CPCN being granted for the remainder of the parcels.

WHEREAS, the Commission Staff has reviewed the Application and found no errors or omissions. Staff reports to the Commission in its June 10, 2011, memorandum that Artesian's Application meets all of the requirements for the granting of a CPCN under 26 *Del. C.* §203D and the Regulations and thus recommends approval of the Application; and

WHEREAS, for these reasons, the Commission finds that Artesian has met the requirements for the granting of a CPCN and, therefore, the Commission shall approve the Application was filed in PSC Docket No. 10-WW-009 on December 3, 2010, and amended on May 6, 2011.

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

1. That, pursuant to the provisions of 26 *Del. C.* §203D(d)(2), a Certificate of Public Convenience and Necessity is granted to Artesian Wastewater Management, Inc. to provide wastewater public utility services to the area more specifically identified by Sussex County Tax Map Parcel Numbers shown in the attached Exhibit "A" of this Order.

2. That Artesian Wastewater Services, Inc. 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 wastewater utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. That 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/ 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

E X H I B I T "A"

**APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

**ARTESIAN WASTEWATER MANAGEMENT, INC.
PSC DOCKET NO. 10-WW-009**

SUSSEX COUNTY TAX MAP PARCEL NUMBERS

| | | |
|----------------|------------------|------------------|
| 234-2.00-7.00 | 234-6.00-40.00 | 234-11.00-429.00 |
| 234-2.00-9.00 | 234-6.00-41.00 | 234-11.00-435.00 |
| 234-2.00-10.00 | 234-6.00-45.00 | 234-11.00-436.00 |
| 234-2.00-25.00 | 234-6.00-46.01 | 234-11.00-437.00 |
| 234-2.00-73.00 | 234-6.00-59.16 | 234-15.00-23.00 |
| 234-2.00-25.06 | 234-11.00-42.00 | 234-15.00-23.02 |
| 234-6.00-13.02 | 234-11.00-44.14 | 234-15.00-27.01 |
| 234-2.00-29.02 | 234-11.00-45.02 | 234-15.00-30.01 |
| 234-6.00-11.01 | 234-11.00-45.03 | 234-21.00-134.01 |
| 234-6.00-27.00 | 234-11.00-65.00 | 234-21.00-145.01 |
| 234-6.00-59.01 | 234-11.00-79.00 | 234-21.00-213.00 |
| 234-6.00-59.18 | 234-11.00-96.01 | 234-22.00-3.13 |
| 234-6.00-29.00 | 234-11.00-422.00 | 234-22.00-4.04 |
| 234-6.00-37.00 | 234-11.00-427.00 | |