

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES,)
INC. FOR A CERTIFICATE OF PUBLIC) PSC DOCKET NO. 11-WW-002
CONVENIENCE AND NECESSITY TO PROVIDE) ("MILTON-TRUSSUM-WANDENDALE")
WASTEWATER SERVICES PURSUANT TO 26)
DEL. C. §203D (FILED MARCH 3, 2011))

ORDER NO. 7997

**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) (1)... 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. 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 proposed territory to be served.

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, Tidewater Environmental Services, Inc. ("TESI") is a public utility offering wastewater services and is subject to the regulatory oversight of this Commission. On March 3, 2011, TESI filed an application with the Commission (the "Application") requesting a CPCN to provide its wastewater services to one parcel of land southeast of Laurel, three parcels of land in Milton, and one parcel of land north of Millsboro, Sussex County, Delaware (the "Proposed Service Area"); and

WHEREAS, as required by 26 Del. C. §203D (d) (2) and the Regulations, TESI included in its Application: (a) petitions requesting wastewater service signed by the landowners of record of each parcel or property to be 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 TESI'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

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.

Environmental Control ("DNREC") as to whether there were any outstanding issues with that agency that would indicate TESI 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.

WHEREAS, the Commission Staff has reviewed the Application and found no errors or omissions. Staff reports to the Commission in its June 8, 2011, memorandum that TESI'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 TESI has met the requirements for the granting of a CPCN and, therefore, the Commission shall approve the Application as filed in PSC Docket No. 11-WW-002 on March 3, 2011.

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 Sussex County Engineering Department ("the County") and the OSP the opportunity to offer their views. The County expressed their concern with Tidewater's ability to serve scattered parcels. Further, the County questioned whether a CPCN should be granted at this time given that there are no immediate plans or schedules to provide service to the Proposed Service Area. OSP indicated that Sussex County Tax Map Parcel Numbers 235-7.00-21.00 and 235-21.00-48.00 are within Investment Level 3 where growth is anticipated by local, county, and State plans in the long-term future, or may have environmental or other constraints to development. The remaining parcels are within Investment Level 4 where the State intends to invest in preservation as well as those industries which support agricultural and forestry-based industries, and new development activities are not supported.

**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 Tidewater Environmental Services, Inc. to provide wastewater public utility services to the area more specifically identified by Sussex County Tax Map Parcel Numbers 235-7.00-21.00, 235-7.00-21.01, 235-21.00-48.00, 234-15.00-38.02, and 331-4.00-71.04.

2. That Tidewater Environmental 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