

**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. 11-WW-005
CONVENIENCE AND NECESSITY TO PROVIDE	)	("SUSSEX WASTEWATER 022811
WASTEWATER SERVICES PURSUANT TO 26	)	PART 3")
DEL. C. §203D (FILED APRIL 13, 2011)	)	

**ORDER NO. 8020**

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

This 6<sup>th</sup> day of September, 2011, the Commission determines and Orders the following:

**WHEREAS**, this Commission exercises regulatory oversight over non-governmental wastewater public utilities that serve fifty or more 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 April 13, 2011, Artesian filed an application with the Commission (the "Application") requesting a CPCN to provide its wastewater services to thirty-seven 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 all of the landowners of record were sent notice of Artesian's Application.<sup>1</sup> 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

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<sup>1</sup>Prior 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.<sup>2</sup> 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**, the Commission Staff has reviewed the Application and found no errors or omissions. Staff reports to the Commission in its August 11, 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

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<sup>2</sup>Under 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 135-16.00-24.01 is within Investment Level 2, where growth is anticipated by local, county, and State plans in the near term future and State investments will support growth in these areas. Parcels 135-16.00-4.00 and a portion of 135-15.00-140.01 are within Investment Level 2 and 3. Investment Level 3 is where growth is anticipated by local, county, and State plans in the long-term future, or may have environmental or other constraints to development. Parcels 135-16.00-11.00, 135-16.00-12.00, 135-16.00-13.01, 334-4.00-36.05, 334-4.00-65.00, 334-4.00-66.00, 334-4.00-78.00, 334-10.00-60.13, 334-10.00-224.00, 334-10.00-225.00, and a portion of 334-10.00-30.13 are located in Investment Level 3. 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. The County stated that Sussex County Tax Map Parcel 135-10.00-49.00 is in the Growth and Annexation area for the Town of Georgetown. Parcel 334-11.00-1.01 is partially in the Angola Neck Planning Area and could receive service from Sussex County in the future. Thus, the County believes that these parcels should be excluded from the Application. The County also expressed its concern with Artesian's ability to serve scattered parcels. Further, the County questioned why a CPCN should be granted at this time when there are no immediate plans or schedules to provide service to the Proposed Service Area.

**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 as it was filed in PSC Docket No. 11-WW-005 on April 13, 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/ Dallas Winslow  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ William O'Brien  
Executive Director

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. 11-WW-005**

**SUSSEX COUNTY TAX MAP PARCEL NUMBERS**

135-10.00-17.00	135-16.00-13.01	334-10.00-23.03
135-10.00-49.00	135-16.00-24.01	334-10.00-23.06
135-10.00-203.00	135-16.00-43.01	334-10.00-30.13
135-11.00-9.00	135-16.00-43.05	334-10.00-60.10
135-11.00-88.00	135-16.00-43.16	334-10.00-60.23
135-11.00-146.00	135-16.00-55.00	334-10.00-60.24
135-11.00-149.00	135-16.00-74.00	334-10.00-192.00
135-11.00-150.00	135-17.00-8.00	334-10.00-193.00
135-15.00-140.01	334-4.00-36.05	334-10.00-224.00
135-16.00-4.00	334-4.00-65.00	334-10.00-225.00
135-16.00-11.00	334-4.00-66.00	334-10.00-60.13
135-16.00-12.00	334-4.00-78.00	334-11.00-1.01
	334-10.00-23.02	