

**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)
CONVENIENCE AND NECESSITY TO PROVIDE) PSC DOCKET NO. 11-WW-006
WASTEWATER SERVICES PURSUANT TO 26) ("LANDIS-TECCE PROPERTIES")
DEL. C. §203D (FILED APRIL 15, 2011))
)

ORDER NO. 8065

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

This 28th day of October, 2011, the Commission determines and Orders the following:

WHEREAS, the Delaware Public Service Commission (the "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)(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; 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. §6001, (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 April 15, 2011, TESI filed an application with the Commission requesting a CPCN to provide wastewater services to two parcels of land east of Georgetown, Sussex, 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 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 Environmental Control ("DNREC") as to whether there were any outstanding issues with that agency that would indicate TESI has been

¹Prior to June 28, 2007, 26 Del. C. §203D(d)(2) required a 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.

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, the Commission Staff has reviewed the Application and found no errors or omissions. Staff reports to the Commission in its October 11, 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-006 on April 15, 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

²Under the Regulations, TESI 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 the parcels in the Proposed Service Area are within Investment Level 4, where the State intends to invest in preservation as well as natural resource protection, and new development activities are not supported. The County stated that the parcels in the Proposed Service Area are in their North Coastal Planning Area (NCPA). However, they currently have no plans or schedule to serve the area, and therefore have no objection to a CPCN being granted for these parcels.

Tidewater Environmental Services, Inc. to provide wastewater public utility services to the area more specifically identified by Sussex County Tax Map Parcel Numbers 234-9.00-47.00 and 234-15.00-28.00.

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:

Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary