

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

IN THE MATTER OF THE APPLICATION OF	)	
THE ASSOCIATION OF OWNERS OF GULL	)	
POINT CONDOMINIUM, INC. FOR A	)	
CERTIFICATE OF PUBLIC CONVENIENCE AND	)	PSC DOCKET NO. 12-WW-004
NECESSITY TO PROVIDE WASTEWATER	)	("GULL POINT CONDOMINIUM")
SERVICES PURSUANT TO 26 <i>DEL. C.</i> §203D	)	
(FILED FEBRUARY 15, 2012)	)	

**ORDER NO. 8287**

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

This 7<sup>th</sup> day of February, 2013, 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)(3), a wastewater utility may obtain a CPCN for an existing development, subdivision, or generally recognized unincorporated community if it submits 1 or more petitions requesting wastewater service from the applicant executed by the landowners of record of parcels and properties that constitute a

majority of the parcels or properties in the existing development, subdivision or unincorporated community; 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**, on June 29, 2007, via Order No. 7201, the Commission granted the Association of Owners of Gull Point Condominium, Inc. ("Gull Point") a temporary operating permit to provide wastewater services for one parcel of land located near Millsboro, Sussex County, Delaware (the "Proposed Service Area");<sup>1</sup> and

**WHEREAS**, subsequently, on April 27, 2011, Gull Point filed an application with the Commission requesting approval of a decrease in its rate for wastewater services in PSC Docket No. 11-230; and

**WHEREAS**, on May 24, 2011, the Commission suspended the requested rate reduction and ordered Gull Point to file an application for a CPCN no later than July 31, 2011;<sup>2</sup> and

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<sup>1</sup> Order No. 7201 was part of PSC Docket No. 06-WW-023. That docket involved Utility Systems, Inc.'s ("USI") failure to provide servicing to the wastewater system for Gull Point Condominiums for the same Proposed Service Area and Gull Point's resulting application for a temporary operating certificate to provide such services.

<sup>2</sup> See Order No. 7972 (May 24, 2011).

**WHEREAS**, on July 26, 2011, the Commission extended the time for a hearing on Gull Point's application for a rate reduction and also granted Gull Point additional time to file for a CPCN no later than September 20, 2011;<sup>3</sup> and

**WHEREAS**, on August 23, 2011, the Commission granted Gull Point's request for a reduction in its rates for wastewater services for the Proposed Service Area via Order No. 8013 and confirmed that the deadline for Gull Point to file a CPCN application was still September 20, 2011; and

**WHEREAS**, under 26 Del. C. §102(2), Gull Point is a public utility offering wastewater services and is subject to the regulatory oversight of this Commission. See 26 Del. C. §203D(a)(1); and

**WHEREAS**, on February 15, 2012, Gull Point filed an application with the Commission (the "Application") that requested a CPCN to provide wastewater services to the Proposed Service Area and requested a waiver of any notice requirements set forth in the Delaware Code or the Regulations because notice was previously given to the unit owners in the previously-filed rate case (PSC Docket No. 11-230);<sup>4</sup> and

**WHEREAS**, as required by 26 Del. C. §§203D(d)(3) and (f) and the Regulations, Gull Point included in its Application the

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<sup>3</sup> See Order No. 8006 (July 26, 2011).

<sup>4</sup> Because Gull Point had previously sent the unit owners in the Proposed Service Area notice of the application to reduce its wastewater service rates, Gull Point provided Staff with a revised notice to be sent to the unit owners.

following:<sup>5</sup> (a) A petition requesting wastewater services executed by Gull Point as the representative, under 25 *Del. C. ch. 22*, of the landowners of record (i.e., the unit holders) of parcels and properties that constitute a majority of the parcels or properties in the existing development, subdivision or unincorporated community (i.e., the Proposed Service Area); (b) certification signed by an authorized officer of the condominium unit that stated the officer of the condominium association was properly authorize to sign the petition for wastewater services; (c) evidence, in the form of an affidavit of mailing, showing that all of the landowners of record (i.e., the unit owners) were sent notice of the Application; (d) a copy of the notice provided to the unit owners; and (e) Sussex County tax maps showing the location of the Proposed Service Area. See 26 *Del. C. §§203D(d)(3)* and (f) and 26 *Del. Admin. C. §6001-3.1*; 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 Gull Point has been unwilling or unable to provide safe,

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<sup>5</sup> Under 26 *Del. C. §§203D(d)(3)* and (f), an applicant for a CPCN is deemed to be in compliance with the notice requirements in Section 203D with respect to condominium units (as defined in 26 *Del. C. ch. 22*) upon providing certification signed by an authorized officer of the condominium association that (i) the officer of the condominium association is properly authorized to sign the petition for wastewater service; and (ii) all unit owners have been provided notice of the application. In addition, a copy of the notice provided to the unit owners must accompany the certification.

adequate, and reliable wastewater services to its existing customers.<sup>6</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 reviewed the Application and found no errors or omissions. Staff reports to the Commission in its January 28, 2013 memorandum that Gull Point'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>6</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 the parcel in this application is located within Investment Level 2 according to the 2010 Strategies for State Policies and Spending. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. The County responded that it would like to have the option to provide service to this project in the future and that if a CPCN is issued the applicants would have to be willing to relinquish the CPCN at such time. The County further stated that it is not sure if it has an issue with the existing CPCN being transferred to the community. Staff notes that neither the Delaware Code nor the Regulations allow the Commission or Sussex County to require that an applicant be willing to relinquish the CPCN at a later time if the County wants to provide wastewater services to the Proposed Service Area at a later time. In addition, Staff notes that there was no transfer of a CPCN at any time from USI to Gull Point; rather, Gull Point was granted a temporary operating permit to provide wastewater services via Order No. 7201 (June 29, 2007). Gull Point is applying for a CPCN as a new applicant.

**WHEREAS**, for these reasons, the Commission finds that Gull Point has met the requirements for the granting of a CPCN and, therefore, the Commission shall approve the Application in PSC Docket No. 12-WW-004 as filed on February 15, 2012;

**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)(3), a Certificate of Public Convenience and Necessity is granted to the Association of Owners of Gull Point Condominium, Inc. to provide wastewater public utility services to the area more specifically identified by Sussex County Tax Map Parcel Number 234-34.00-300.00.

2. That the Association of Owners of Gull Point Condominium, 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, including any DNREC requirements.

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:

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Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jeffrey J. Clark  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

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Commissioner

ATTEST:

/s/ Alisa Carrow Bentley  
Secretary