

**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. 12-WW-007
WASTEWATER SERVICES PURSUANT TO 26	)	("EAST WANDENDALE 6112")
DEL. C. §203D (FILED JULY 3, 2012;	)	
AMENDED JANUARY 4, 2013)	)	

**ORDER NO. 8311**

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

This 5<sup>th</sup> day of March, 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)(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. §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 July 3, 2012, TESI filed an application with the Commission (the "Application") requesting a CPCN to provide its wastewater services to twenty-nine parcels of land located near Milton, 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 the parcels 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 as required by 26 Del. Admin. C. §§6001-7.1 and 7.2. 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 unwilling or unable to provide safe, adequate, and reliable wastewater

services to its existing customers.<sup>1</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**, on January 4, 2013, TESI amended its Application to remove 13 parcels where there were questions about whether the signing party had the authority to sign a petition for wastewater service., Thus, the amended Application contains 16 parcels of land; and

**WHEREAS**, the Commission Staff reviewed the amended Application and found no errors or omissions. Staff reports to the Commission in its January 23, 2013 memorandum that TESI's amended 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 as amended; and

**WHEREAS**, for these reasons, the Commission finds that TESI has met the requirements for the granting of a CPCN and, therefore, the

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<sup>1</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 except for parcel 235-22.00-19.00, which is partially in Level 3, all the parcels in this application are located within a Level 4 area according to the 2010 Strategies for State Policies and Spending. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4 areas. These areas are comprised of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved. The County responded that the parcels in this application are neither contiguous to each other nor a particular project and that the County questions the ability of TESI to serve the scattered parcels. The County stated that there needs to be a plan in place for service and a schedule of when service will be provided before CPCN's should be issued and that if there are no immediate plans or schedule for service, the County questioned why a CPCN should be granted at this time.

Commission shall approve the Application in PSC Docket No. 12-WW-007 filed on July 3, 2012, and amended on January 4, 2013;

**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 235-10.00-1.02, 235-16.00-10.00, 235-16.00-43.07, 235-10.00-16.00, 235-8.00-50.00, 235-16.00-5.00, 235-16.00-42.01, 235-10.10-44.00, 235-17.00-6.01, 234-21.00-211.00, 235-4.17-110.00, 235-10.00-11.00, 235-4.17-88.00, 235-4.13-111.00, 235-10.10-3.00, and 235-8.00-51.03.

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/ Dallas Winslow  
Chair

