

**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. 13-WW-001
WASTEWATER SERVICES PURSUANT TO 26) ("MILTON WW 031113")
DEL. C. §203D (FILED APRIL 9, 2013,)
AMENDED ON JUNE 21, 2011 AND AMENDED)
SEPTEMBER 6, 2013)

ORDER NO. 8483

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

This 5th day of December, 2013, the Delaware Public Service Commission (the "Commission") determines and Orders the following:

WHEREAS, 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)*. 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, Tidewater Environmental Services, Inc. ("TESI") is a public utility offering wastewater services and is subject to the regulatory oversight of the Commission. On April 9, 2013, TESI filed an application (the "Application") requesting a CPCN to provide wastewater services to seventeen parcels of land in 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 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 Tidewater's Application. A Sussex County Tax Map showing the location of the Proposed Service Area was also included with the Application; and

WHEREAS, as required by the Regulations, Staff requested written comment from the Division of Water Resources of the Department of Natural Resources and Environmental Control ("DNREC"). On April 16, 2013, DNREC responded stating it had no objection to the Application but indicated a concern about granting wastewater CPCNs for parcels or

areas where the respective County officials have not yet approved a subdivision or development and urged Staff to contact Sussex County Engineering Department (the "County"). Staff copied the County and the Delaware Office of State Planning (the "OSP") on its request for comment sent to DNREC.

WHEREAS, on April 23, 2013, the County filed an objection to the Application (the "County Objection") noting that the Proposed Service Area includes non-contiguous, scattered parcels in areas where County officials have not yet approved a subdivision or development and that approval of the Application would impact future County endeavors to provide regional wastewater service.

WHEREAS, on April 19, 2013, OSP filed a response which did not object to the Application, but merely provided the Commission with County investment level planning information with respect to the parcels included in the Proposed Service Area;; and

WHEREAS, on June 21, 2013, TESI amended its Application to remove five parcels of land from the Proposed Service Area (Sussex County Tax Map Parcel Numbers 235-25.00-11.05, 135-9.00-113.00, 135-11.00-2.02, 235-25.00-72.00 and 235-25.00-73.00); and

WHEREAS, On September 6, 2013, TESI further amended its Application to remove an additional five parcels of land from the Proposed Service Area (Sussex County Tax Map Parcel Numbers 235-7.00-155.00, 235-20.00-13.04, 235-20.00-1.00, 235-21.00-35.04 and 235-21.00-151.02); and

WHEREAS, Commission Staff ("Staff") has reviewed the Application and found no errors or omissions. Staff reports to the Commission in

its November 22, 2013, memorandum that the Application meets all applicable requirements for granting a CPCN pursuant to 26 *Del. C.* §203D and the Regulations; and,

WHEREAS, Staff recommends that the Commission overrule the County Objection on the basis that it is statutorily deficient. Pursuant to 26 *Del. C.* §203D(e), the Commission has authority to grant a Wastewater CPCN unless if it finds "that the applying wastewater utility is unwilling or unable to provide safe, adequate and reliable service to existing customers." The County's Objection makes no such assertion nor does it provide such evidence.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. Pursuant to the provisions of 26 *Del. C.* §203D(d)(2), the Application as amended is approved and the Commission hereby grants a Certificate of Public Convenience and Necessity to TESI to provide wastewater public utility services to the area more specifically identified by Sussex County Tax Map Parcel Numbers 135-7.00-11.04, 235-4.17-111.00, 235-19.00-9.00, 235-24.00-19.00, 135-10.00-28.00, 135-10.00-29.02, and 135-11.00-6.00.

2. The County Objection is overruled on the basis that it is statutorily deficient.

3. TESI 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.

4. 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/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary