

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

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES) PSC DOCKET NO. 14-0494
PURSUANT TO 26 DEL. C. §203C)
("OVERBROOK ACRES") (SUBMITTED OCTOBER)
28, 2014; FILED DECEMBER 22, 2014;)
AMENDED DECEMBER 23, 2014))

ORDER NO. 8699

AND NOW, this 6th day of January, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on October 28, 2014, 2014, Tidewater Utilities, Inc. ("Tidewater") submitted an application with the Commission pursuant to 26 Del. C. §203C (e) (1) b. seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations to provide water services to one parcel of land in Sussex County, Delaware, referred to as the Overbrook Acres (the "Proposed Service Area"); and

WHEREAS, the Commission Staff ("Staff") reviewed the Application to ensure compliance with the statutory provisions of 26 Del. C. §203C and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 Del. C. §2002 (the "Regulations"); and

WHEREAS, after further review, Staff found that the Application included evidence that Tidewater had mailed notice of the Application as well as the options available to all landowners of record in the Proposed Service Area, but failed to include evidence that notice of

the Application had been published in two newspapers as required by Section 10.7 of the Regulations;¹ and

WHEREAS, in response to Staff's request for evidence of such publication, Tidewater did, in fact, publish such notice in two newspapers on December 22, 2014, and later provided Staff with evidence of such publications; and

WHEREAS, because Tidewater failed to timely publish notice of the Application, it also filed on December 23, 2014, an amendment to the Application (the "Amended Application") which requested a waiver of the publication notice requirement as set forth in 26 *Del. Admin. C.* §2002-10.7. In support thereof and as "good cause," Tidewater stated that the failure to publish the public notices "was an inadvertent omission" and that the Commission could waive the publishing requirement as allowed by Section 1.5 of the Regulations; and

WHEREAS, Tidewater also stated in the Amended Application that granting its waiver request would allow it extend water services to the landowner as soon as possible, would not harm or degrade its ability to provide safe, reliable water service to its other present customers, would be in the public interest, and would be "an administratively effective use of resources;" and

WHEREAS, Section 1.5 of the Regulations² allows the Commission to excuse any failure to comply with the Regulations that is not material to the Commission's decision; and

¹ 26 *Del. Admin. C.* §2002-10.7 provides as follows: "Within ten days of the filing of the application, the applicant shall also publish in two newspapers of general circulation a form of public notice of its application. The Commission shall approve a form of such public notice. The applicant shall promptly file proof of such publication with the Commission."

WHEREAS, the Commission has received no comments regarding Tidewater or the Amended Application in response to the published notice; and

WHEREAS, Staff recommends that the Commission either grant a waiver of the publication requirement or excuse Tidewater's failure to comply with such regulatory requirement because (i) Tidewater published notice of the Amended Application, although it was untimely per the Regulations, and (ii) such timing requirement is not a statutory requirement, nor is it material to the Commission's decision given that the notice was published and no public responses were received by the Commission; and

WHEREAS, after its final review of the Amended Application, Staff submitted a memorandum to the Commission dated December 23, 2014, which confirms that the Amended Application meets all of the requirements for granting Tidewater a CPCN pursuant to Delaware law and the Regulations. Accordingly, Staff recommends that the Commission approve the CPCN requested in the Amended Application and excuse Tidewater's failure to follow Section 10.7 of the Regulations for the reasons set forth above;

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NO FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 Del. C. §203C(e), the Commission grants a CPCN to Tidewater to serve the Proposed Service Area more specifically identified by the Sussex County Tax Map Parcel Number 235-23.00-1.00.

² 26 Del. Admin. C. §2002-1.5 provides as follows: "The Commission may by Order, and for good cause, waive any obligation under these regulations that is not required by statute and may, in an individual application, excuse any failure to comply with these regulations that is not material to the Commission's decision."

The Commission also excuses Tidewater's failure to follow Section 10.7 of the Regulations and determines that such failure to follow this regulatory requirement is not material to its decision to grant or deny the Amended Application given that notice of the Amended Application was published, although untimely, and no public comments were received in response to the published notice.

2. Tidewater 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 water utility services provided to the service territory granted by this CPCN.

3. Tidewater is hereby placed on notice that the costs of the proceedings will be charged to it under the provisions of 26 Del. C. §114(b) (1).

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

Commissioner

/s/ Jaymes B. Lester
Commissioner

/s/ Jeffrey J. Clark
Commissioner

/s/ Harold B. Gray
Commissioner

ATTEST:

/s/ Donna Nickerson
Acting Secretary