

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

IN THE MATTER OF THE APPLICATION OF )  
ARTESIAN WATER COMPANY, INC. FOR A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO PROVIDE WATER )  
SERVICES PURSUANT TO 26 DEL. C. ) PSC DOCKET NO. 15-0646  
§203C ("E.EUGENE BULLEN") )  
(SUBMITTED JANUARY 13, 2015; )  
FILED JANUARY 22, 2015; )  
AMENDED FEBRUARY 25, 2015; AMENDED )  
MARCH 18, 2015) )

**ORDER NO. 8726**

**AND NOW**, this 21<sup>st</sup> day of April, 2015, the Delaware Public Service Commission ("Commission") determines and orders the following:

**WHEREAS**, on January 13, 2015, Artesian Water Company, Inc. ("Artesian") submitted an application ("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 New Castle County, Delaware, referred to as the E. Eugene Bullen property (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 Artesian 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;<sup>1</sup> and

**WHEREAS**, in response to Staff's request for evidence of such publication, Artesian did, in fact, publish such notice in two newspapers on January 16, 2014, and February 10, 2015, and later provided Staff with evidence of such publications; and

**WHEREAS**, because Artesian failed to timely publish notice of the Application, it also filed on February 25, 2015, 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," Artesian 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**, Artesian also stated in the Amended Application that granting its waiver request would allow it to 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

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<sup>1</sup> 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**, Section 1.5 of the Regulations<sup>2</sup> allows the Commission to excuse any failure to comply with the Regulations that is not material to the Commission's decision; and

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

**WHEREAS**, the Application submitted on January 22, 2015, included evidence that the landowner notification sent to the landowner was unclaimed. Hence, Staff requested the required proof of mailing, and on March 18, 2015, Artesian provided proof that it had sent a second notice to the landowner via certified mail and that the landowner had signed for the notice; and

**WHEREAS**, Staff recommends that the Commission either grant a waiver of the publication requirement or excuse Artesian's failure to comply with such regulatory requirement because (i) Artesian 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 March 31, 2015, which confirms that the Amended Application meets all of the requirements

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<sup>2</sup> 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."

for granting Artesian 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 Artesian'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), a CPCN is hereby granted to Artesian to serve the Proposed Service Area more specifically identified by the New Castle County Tax Map Parcel Number 13-013.00-154. The Commission also excuses Artesian'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. Artesian 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. Artesian 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:

/s/ Dallas Winslow  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Harold B. Gray  
Commissioner

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Commissioner

ATTEST:

/s/ Donna Nickerson  
Secretary