




STATE OF DELAWARE

PUBLIC SERVICE COMMISSION
861 SILVER LAKE BLVD.
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Lisa B. Driggins, Regulatory Policy Administrator 

DATE: September 6, 2023

SUBJECT: IN THE MATTER OF THE JOINT PETITION OF VEOLIA WATER DELAWARE, INC. AND THE CITY OF NEWARK PURSUANT TO 26 DEL. C. SECTION 215 TO TRANSFER VEOLIA WATER DELAWARE, INC.'S RIGHTS UNDER ITS CPCN TO THE CITY OF NEWARK TO PROVIDE WATER SERVICE TO CERTAIN PROPERTIES (FILED AUGUST 31, 2023) – DOCKET NO. 23-1165

Application:

On August 31, 2023, Veolia Water Delaware, Inc. ("Veolia"), and the City of Newark ("Newark" or "City") (together, the "Applicants") filed an application (the "Application") pursuant to 26 *Del. C.* § 215(a)(1) and (d), seeking approval by the Delaware Public Service Commission ("Commission") to transfer the rights of Veolia under its certificate of public convenience and necessity's ("CPCN(s)") as it relates to certain properties (the "Properties")¹, as further described herein, to the City of Newark, and to revise the official maps reflecting the Company's service territory to reflect that Veolia will no longer have the right to serve or provide water service to certain properties.

26 *Del. C.* § 215(a)(1) provides:

"No public utility, without having first obtained the approval of the Commission, shall [d]irectly or indirectly merge or consolidate with any other person or company, or sell, lease, assign, or mortgage except by supplemental indenture in accordance with the terms

¹ See PSC Docket 23-1165 Application, Exhibit "C." for a list of Properties for which the Application requests the rights to provide water service be transferred from Veolia to Newark.

of a mortgage outstanding September 1, 1949, or otherwise dispose of or encumber any essential part of its franchises, plant, equipment or other property, necessary or useful in the performance of its duty to the public;”

26 *Del. C.* § 215(d) provides:

“The Commission shall approve any such proposed merger, mortgage, transfer, issue, assumption or acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The Commission may make such investigation and hold such hearings in the matter as it deems necessary, and thereafter may grant any application under this section in whole or in part and with such modification and upon such terms and conditions as it deems necessary or appropriate. The Commission shall grant, modify, refuse or prescribe appropriate terms and conditions with respect to every such application within 30 days after the filing of the application therefor, except that with respect to any application filed under subsection (b) hereof, if the Commission gives notice to the parties of a hearing to be held by the Commission with respect to the application and the hearing is commenced within such 30 days or on a date mutually acceptable to the Commission and the parties, the Commission shall have 30 days after the submission of the hearing examiner's report or recommended decision within which to render its decision. In the absence of any such action within such period of time, any such proposed merger, mortgage, transfer, issue, assumption or acquisition shall be deemed to be approved.”

Applicants:

Veolia Water Delaware, Inc. (formerly Suez Water Delaware, Inc.)

Veolia is a public utility² that has provided water service in the State of Delaware for twenty-seven (27) years pursuant to a CPCN issued in 1995 for its entire service territory.

City of Newark

The City of Newark is a municipal corporation of the State of Delaware that provides water service within and outside of the municipal limits of Newark through its Department of Public

² 26 *Del. C.* § 102(2) provides, in relevant part, that a “public utility includes every individual, partnership, association, corporation, joint stock company, agency or department of the State ... their lessees, trustees or receivers appointed by any court whatsoever, that now operates or hereafter may operate for public use within this State... any ... water ... service, system, plant or equipment.”

Works and Water Resources as a municipal public utility pursuant to the City of Newark Charter and applicable law.

Background:

By way of background, Newark, via act of the General Assembly, has maintained the authority to provide water service to customers residing outside of its municipal boundaries since 1925.³ By amendment of its municipal Charter⁴ (“the Charter”) in 1955, Newark obtained the right to provide water service to properties located within ten (10) miles outside of its municipal boundaries.⁵

In the 1950s and 1960s, the Delaware Public Service Commission (“Commission”) had the authority to issue CPCN’s for water service. That responsibility was later transferred to the Delaware Department of Natural Resources and Environmental Control (“DNREC”) in the 1970s, and back to the Commission in 2001. At all times relevant thereto, Newark (and all other municipal water service providers) were not and are not subject to the jurisdiction of the DNREC or the PSC for municipal water service territories. As such, Newark was not required – at any time - to file and request a CPCN for its water service territory with the PSC or with DNREC.

In 1995, when Veolia’s predecessor obtained a CPCN for the Properties outside of the City, Newark already provided water service to certain of those Properties within the area of the CPCNs granted to Veolia via the Charter. Newark nonetheless continued to serve those Properties without objection but did not expand its service to other properties within the area covered by Veolia’s CPCN. As such, Veolia and Newark have each provided water service to Properties located inside and outside of the municipal limits of the City of Newark within the service territory covered by Veolia’s CPCN.

In 2021, an issue arose as to whether Veolia or Newark provided water service to a certain property located at 1364 Marrows Road, Newark, Delaware (the “Property”), as both the Company and Newark claimed that they had provided water service to some portion of the Property at various points in time.

On August 26, 2021, Veolia’s predecessor filed an informal complaint with the Commission claiming a right to provide water service to the Property, which Newark opposed.

³ See PSC Docket 23-1165 Application, Exhibit “A.” for pertinent provisions of the 1925 General Assembly authorization.

⁴ See PSC Docket 23-1165 Application, Exhibit “B.” for pertinent provisions of the City of Newark’s 1955 Charter Amendment.

⁵ See Newark City Charter § 405.

On September 8, 2021, Newark filed an action against Veolia's predecessor in the Court of Chancery pertaining to the provision of water service to the Property.

Veolia and Newark ultimately settled the matter regarding water service to the Property, and both the informal complaint filed with the Commission and the Chancery Court action were dismissed.

As part of the settlement, Veolia and Newark agreed to address which utility provided water service to other properties located within or outside the City of Newark municipal boundary (which was also located within the area of the Veolia CPCN) and, upon making such determination, to formalize this arrangement through the Commission so that the official maps for water service kept by the Commission could be properly modified and the rights to service those properties already served by the City would be transferred to the City.

Veolia and Newark agree that Newark will provide water service to the Property and that any rights that Veolia may have to service the Property pursuant to Veolia's CPCN should be transferred to Newark.

After further research of the issue, Veolia and Newark determined that the Properties, located within Veolia's service territory, are located both inside and outside the municipal limits of the City of Newark, but Newark has provided water service prior to the issuance of Veolia's 1995 CPCN through its Charter, and to which Newark continues to provide water service. As such, Veolia desires to transfer its rights to the Properties pursuant to 26 *Del. C.* §215 (a)(1) and (d), as it relates to the provision of water services to the Properties, to the City of Newark. As a result of such transfer of rights, Veolia's CPCN would be modified accordingly to remove the Properties from Veolia's service territory and the associated maps on record with the Commission shall reflect that water service is provided to the Properties by Newark.

Public Interest:

The Applicants asserts that the public interest will be served and that the agreement is in accordance with the law and is for a proper purpose. According to the Applicants, Newark has been providing water service to a portion of the Property and exclusive water service to the Properties prior to the issuance of Veolia's 1995 CPCN, has the necessary infrastructure in place to continue to provide water service to the Property and the Properties, and it does not make economic sense to terminate Newark's existing service to the Property and the Properties.

Staff's Recommendation:

The Applicants are public utilities in the State of Delaware. The Commission regulates Veolia, and while it does not regulate Newark, the Commission nonetheless keeps an official territory map for the State of Delaware, to which all public utilities, regulated by the Commission

or not, should update with the Commission at least annually.⁶ Applications seeking an asset transfer approval involving public utilities come under the provisions of 26 *Del. C.* § 215 because the Applicants are public utilities. Pursuant to 26 *Del. C.* § 215(d), Staff believes the transfer of Veolia's CPCN rights to Newark is in accordance with law, is for a proper purpose and is in the public interest, and recommends that the Commission approve the Application.

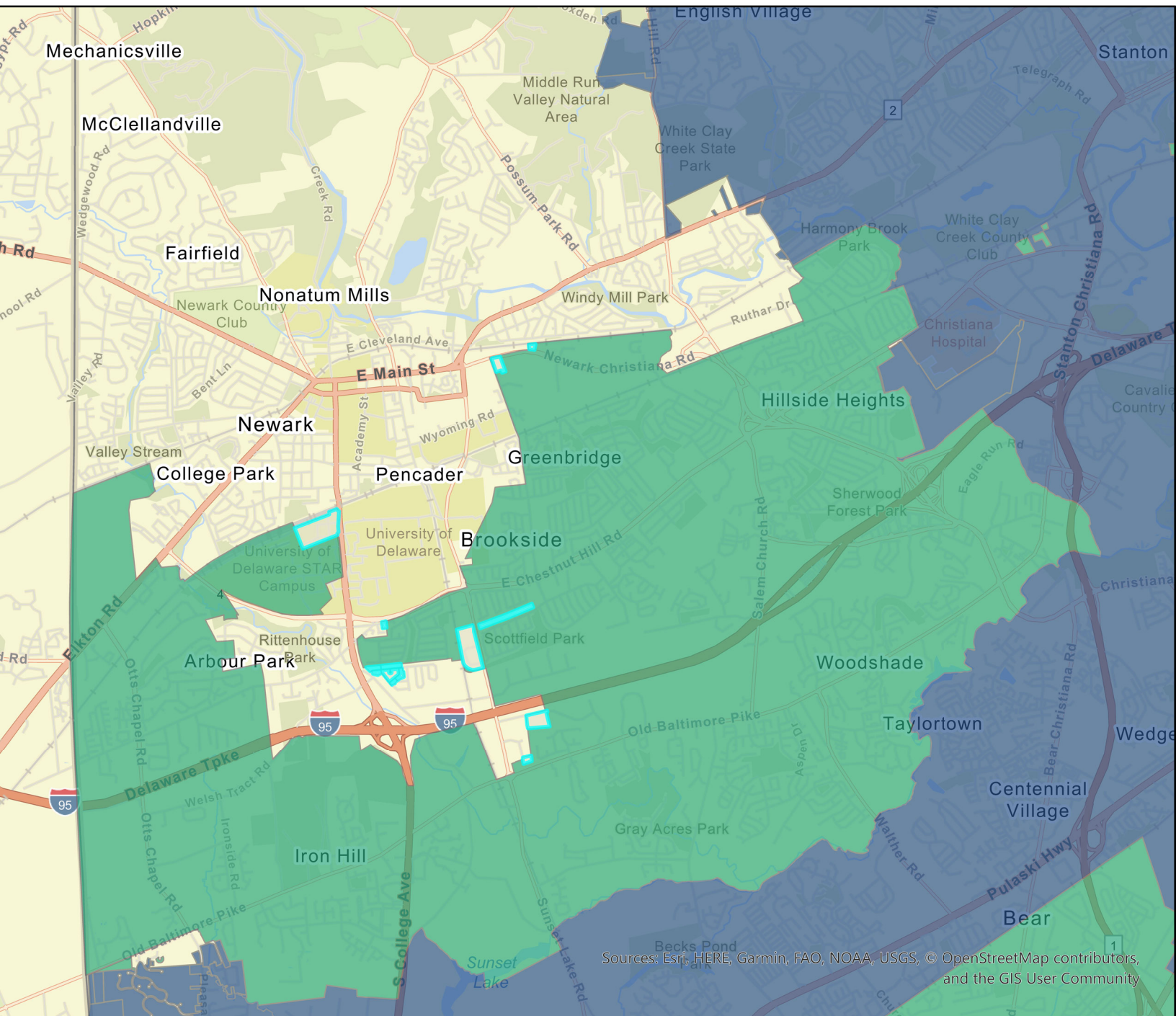
Additionally, as noted above, while the Commission does not regulate Newark, Staff recommends to the Commission that Newark be noticed to continue to update its territory maps pursuant to 26 *Del. Admin. C.* § 2001-2.4 with the Commission so that the Commission is aware of the Newark's territory and this circumstance may be avoided in the future.

⁶ 26 *Del. Admin. C.* § 2001-2.4.4 provides that information to be filed with the Commission includes public utilities system map(s), "Each utility shall file with the Commission a map showing the utility's water system, scale 1" = 1 mile or less, e.g. 1" = 2000 feet. *Such map shall be revised annually unless such revision is unnecessary in which event the utility shall notify the Commission that the map on file is current.* The map should show: 2.4.4.1 the location of pumping stations, treatment plants, and sources of supply; 2.4.4.2 storage facilities; 2.4.4.3 mains 8 inches or larger; 2.4.4.4 service area." (emphasis added)

City of Newark/Veolia Water Delaware, Inc.

Docket No. 23-1165 "215 filing"

September 13, 2023



Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Water CPCN			
	<Null>, Yes		CITY OF DELAWARE CITY, Yes
	Abandoned, Yes		TOWN OF DELMAR, Yes
	ARTESIAN WATER COMPANY, No		CITY OF DOVER, Yes
	ARTESIAN WATER COMPANY, Yes		TOWN OF FELTON, Yes
	TOWN OF BETHANY BEACH, Yes		TOWN OF FRANKFORD, Yes
	TOWN OF BLADES, Yes		TOWN OF FREDERICA, Yes
	TOWN OF BRIDGEVILLE, Yes		TOWN OF GEORGETOWN, Yes
	CAMDEN-WYOMING SEWER, Yes		TOWN OF GREENWOOD, Yes
	TOWN OF CLAYTON, Yes		CITY OF HARRINGTON, Yes
	TOWN OF DAGSBORO, Yes		J.H. WILKERSON & SON, Yes
			TOWN OF LAUREL, Yes
			LEWES BOARD OF PUBLIC WORKS, Yes
			LONG NECK WATER COMPANY, Yes
			TOWN OF MAGNOLIA, Yes
			TOWN OF MIDDLETOWN, Yes
			CITY OF MILFORD, Yes
			TOWN OF MILLSBORO, Yes
			TOWN OF MILTON, Yes
			NCC WATER & LIGHT COMPANY, Yes
			TOWN OF OCEAN VIEW, Yes
			PICKERING BEACH WATER WR, Yes
			PUBLIC WATER SUPPLY COMPANY INC., Yes
			CITY OF REHOBOTH, Yes
			CITY OF SEAFORD, Yes
			TOWN OF SELBYVILLE, Yes
			TOWN OF SMYRNA, Yes
			SOUTHERN SHORES WATER COMPANY, Yes
			SUSSEX COUNTY, Yes
			SUSSEX SHORES WATER COMPANY, Yes
			TIDEWATER UTILITIES, No
			TIDEWATER UTILITIES, Yes
			UNITED WATER DELAWARE, Yes
			CITY OF WILMINGTON, Yes
			<all other values>