

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF ARTESIAN WASTEWATER MANAGEMENT,)
INC., FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE WASTEWATER SERVICES TO TWO) PSC DOCKET NO. 07-WW-002
PARCELS OF LAND LOCATED NEAR THE) ("NORTH MILTON")
TOWN OF MILTON, SUSSEX COUNTY,)
DELAWARE)
(FILED JANUARY 7, 2007))

IN THE MATTER OF THE APPLICATION)
OF ARTESIAN WASTEWATER MANAGEMENT,)
INC., FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE WASTEWATER SERVICES TO) PSC DOCKET NO. 07-WW-006
FOUR PARCELS OF LAND LOCATED NEAR) ("NORTH MILTON")
THE TOWN OF MILTON, SUSSEX COUNTY,)
DELAWARE)
(FILED FEBRUARY 6, 2007))

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

DATED: MARCH 29, 2007

WILLIAM F. O'BRIEN
SENIOR HEARING EXAMINER

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William F. O'Brien, duly appointed Hearing Examiner in these Dockets pursuant to 26 *Del. C.* § 502 and 29 *Del. C.* ch. 101, by Commission Order No. 7134, dated February 27, 2007, reports to the Commission as follows:

I. PARTIES

Artesian Wastewater Management, Inc. (represented by Geoffrey Sawyer, III, Esquire and John Schreppler, Jr., Esquire);

Town of Milton (represented by Max Walton, Esquire, and Josiah Wolcott, Esquire);

Tidewater Environmental Services, Inc. (represented by Jeremy Homer, Esquire);

Sussex County (represented by Vincent Robertson, Esquire);

New Castle County (represented by Dorey Cole, Esquire);

North Milton Development Group, LLC (represented by John Paradee, Esquire);

Division of the Public Advocate: (represented by G. Arthur Padmore, Esquire);

Public Service Commission Staff (represented by Francis Murphy, Esquire).

II. BACKGROUND

1. On January 7, 2007, and February 6, 2007, Artesian Wastewater Management, Inc., ("Artesian") filed applications with the Delaware Public Service Commission ("Commission") seeking Certificates of Public Convenience and Necessity ("CPCNs") to expand its operations for wastewater services to six parcels of land located near the Town of Milton in Sussex County. On February 12, 2007, the Town of Milton ("Town") filed an objection to the CPCN applications on the ground that the six parcels are located within its existing service territory, as reflected in Commission records, and that Artesian failed to obtain the required consent from the Town to serve the parcels. The disputed six parcels include the area on which a residential planned community, currently known as the Villages at Elizabethtown, has been proposed.

2. On February 27, 2007, the Commission entered PSC Order No. 7134 appointing a Hearing Examiner to conduct any proceedings deemed appropriate in these dockets and to submit a recommended decision concerning the dispute to the Commission. The Commission also posed certain questions for consideration by the parties and, in

addition, extended the time for its consideration of the CPCN applications from sixty to ninety days, under 26 Del. C. § 203D(g)(1).

3. After a wide dissemination of notice of the proceedings to interested persons, the parties identified above requested, and were granted, leave to intervene. On March 9, 2007, Artesian and New Castle County ("NCC") requested a ruling that would exclude NCC from any effect that the Commission's decision in this docket may have as precedent in future proceedings involving NCC because of NCC's "unique" laws governing its provision of wastewater service. After I denied the request (by letter dated March 12, 2007), Artesian moved to strike the appearance of NCC as a party in the case on the ground that NCC had no direct interest in the Milton/Artesian dispute. By letter dated March 16, 2007, I denied Artesian's motion but limited NCC's participation in the case to legal argument and policy recommendations.

4. On March 16, 2007, the Town, Artesian, Tidewater Environmental Services Inc. ("Tidewater"), and NCC submitted initial comments.¹ The comments included responses to the questions posed by the Commission in its Order No. 7134, as well as statements of fact and legal argument. On March 20, 2007, the Town moved to exclude from the record a February 20, 2007 letter that Artesian included with its initial comments written by certain members of the General Assembly. Artesian responded to the Town's motion on March 26, 2007, and my ruling denying the motion appears below. On March 21, 2007, I conducted a teleconference to discuss the remaining procedural schedule and all parties agreed that I would make my recommendations

¹The initial comments will be cited as "[name of party] IC at ___."
... (footnote continued to next page.)

to the Commission based on the initial comments and without an evidentiary hearing. I have considered all of the initial comments submitted by the parties and, based thereon, I submit for the Commission's consideration these Findings and Recommendations.

III. THE TOWN'S MOTION IN LIMINE

5. With its initial comments, Artesian submitted a copy of a February 20, 2007 letter from the two prime sponsors of the wastewater legislation to the Chair of the Commission. In the letter, the legislators stated their intent regarding the definition of § 203D(b)'s "existing service territory." On March 20, 2007, the Town moved to exclude from the record the February 20, 2007 letter, arguing that under well settled law *post hoc* statements of intent by individual legislators are inadmissible because, among other reasons, other legislators may not agree with the statements. In its March 26, 2007 response, Artesian argues, and I agree, that the Commission is not bound by the rules of evidence and that the Commission should accept the letter into the record and give it whatever weight it deserves. The Town's motion is therefore denied. However, given that the plain meaning of statutory language governs its construction and given that the statement was made by only two of 62 legislators, almost three years after enactment of the legislation, and without the benefit of cross-examination, I recommend that the Commission give the letter minimal weight, if any.

IV. SUMMARY OF THE POSITIONS

6. **Artesian Wastewater Management.** Artesian filed its CPCN applications without first obtaining consent from the Town to serve

the six parcels because it believes that the parcels are not located within the Town's wastewater service territory and, therefore, no consent is required. Although the Town drew its "existing service territory" to include the parcels when it filed its map with the Commission in 2004, the Town misconstrued the meaning of "existing service territory" and improperly included the disputed parcels, according to Artesian. Artesian IC at 5. Artesian argues that, under the plain meaning of "existing service territory," the Town's service territory does not include the six parcels because the parcels fall outside the Town limits, the Town has no wastewater facilities in the disputed territory, and the Town has never provided service to anyone in the territory. *Id.* Artesian supports the definition of "existing service territory" that was provided in a February 20, 2007 letter from the two prime sponsors of the wastewater legislation. That letter asserts that "existing service territory" refers to the "territories where the municipality was already providing service to existing customers." *Id.* at Exhibit 2.

7. Artesian also argues that to interpret "existing service territory" in a manner that would allow municipalities to unilaterally impose its service on private property would work "a terrible mischief" because the municipality could charge the landowners whatever fees it ordained and then sell the service rights to a private utility. *Id.* at 6. As part of the CPCN application process, Artesian obtained signatures from the owners of the six parcels indicating that they desired wastewater service from Artesian. Artesian asserts that it would be "unjust and an abuse of discretion for the Commission to overrule the expressed desire of the land owners

to be served by Artesian and subject them to Milton's unregulated service." *Id.* at 8.

8. In addition, Artesian notes that when the Commission issued its rules governing wastewater CPCNs, in Regulation Docket No. 54, it specifically declined to include a municipality's growth area as part of its "existing service territory" in order to prevent municipalities from reserving future service territory without first considering the interests of ratepayers or competing wastewater utilities. *Id.* at 4.² According to Artesian, the Town is now attempting to reserve its growth area as service territory in contradiction to the Commission's stated policy when it adopted the wastewater CPCN rules.

9. **Town of Milton.** The Town objects to the CPCN applications on the ground that Artesian failed to obtain its consent to serve the six parcels, in accordance with 26 Del. C. § 203D(b). Town IC at 5, 17. The parcels fall within the area it designated as its existing service territory in its September 17, 2004 filing with the Commission, as required by § 203D(b). According to the Town, under § 203D(b), the parcels are within its service territory because it designated the area as its service territory in its § 203D(b) filing and because it is capable of providing service to the designated territory. *Id.* at 12, 19.

10. The Town recommends that the Commission apply a three-part test, on a case-by-case basis, to determine whether a municipality has the right to serve territory outside its municipal boundaries. *Id.* at 7-12. First, does the local planning authority (in this case

² In its initial comments, Artesian incorporated by reference its January 25, 2007 letter to Gary Myers, Deputy Attorney General, in which it quoted the ... (footnote continued to next page.)

Sussex County) allow third parties to provide wastewater service within its jurisdiction? Second, has the local planning authority (*i.e.*, Sussex County in this case) designated the area in question as within its own wastewater service territory? Third, has the municipality (in this case, the Town of Milton) designated the area as within its wastewater service territory? If all three parts of the test are answered in the affirmative, and the municipality is capable of providing the service, then private utilities must obtain consent from the municipality before obtaining a CPCN from the Commission. *Id.* at 12.

11. The Town also argues that the plain meaning of "existing service territory" under § 203D includes areas outside of municipal boundaries because: (1) the statute does not expressly exclude areas outside the municipality and (2) the General Assembly has manifested a clear legislative intent to permit municipal extensions beyond the boundaries by authorizing several municipalities (such as the Town of Milton) to do so, under their municipal charters. *Id.* at 13-14. According to the Town, the plain meaning of "existing service territory" is that area described in the municipality's submission to the Commission under § 203D(b). *Id.* at 15.

12. The Town contends that the Commission's decision (when it adopted its wastewater CPCN rules) to decline defining "existing service territory" to include a municipality's growth area -- as stated in its comprehensive plan -- has no bearing on the issues in this case because the Town is not relying on its comprehensive plan to establish its service territory. *Id.* at 14-15. In fact, the Town

Hearing Examiner's Report in PSC Regulation Docket No. 54, which was adopted ... (footnote continued to next page.)

supports the Commission's decision in that case because the rejected definition would have provided a municipality wastewater control over territory outside the municipality even if the municipality could not provide the service. *Id.* at 16-17.

13. In addition, the Town argues that in situations where a private wastewater service provider and a municipal wastewater service provider seek to serve the same territory, and have the same ability to serve, the municipal authority should have the primary right to provide the service. *Id.* at 21. To reduce point source discharges and the number of treatment facilities, municipalities should be encouraged to build wastewater treatment facilities large enough to accommodate future growth and expansion, according to the Town. If a municipality makes expenditures to modernize and enlarge its facilities, a private facility should not be permitted to undercut these expansion efforts (and potential territories to be served) simply by filing an application with the Commission slightly in advance of the finalization of the municipal program. *Id.*

14. **Tidewater Environmental Services.** Tidewater proposes that "existing service territory" under § 203D be defined as "the area described by municipalities or other governmental bodies pursuant to Section 203D(b), but [not to] include those areas so described to the extent the facts demonstrate there is no intention to serve them within a time frame that meets the public convenience and necessity." Tidewater IC at 4.

15. Tidewater argues that this construction reflects the General Assembly's intent because the General Assembly has delegated to

by the Commission in PSC Order No. 6573, dated February 22, 2005.

municipal and county governments prominent roles in planning for and regulating growth. Tidewater also contends that "existing service territory" does not equate to "territory where service is existing" because service territories exist whether there is present service or not. *Id.* at 3. It notes that for water service territories, the General Assembly contemplated that there would be areas within service territories that are not being served when it provided, in § 233C(b), that water utilities need not obtain additional certification to expand its operations within a service territory for which a certificate has already been obtained. Conversely, a municipality may not extend service into a CPCN territory, without Commission approval, even in areas where there is no existing service. In addition, according to Tidewater, there may be compelling reasons to allow governmental bodies to define a service territory to encompass certain areas not currently being served. For example, a municipality may size a treatment plant to handle future customers in a growth zone in order to realize economies of scale once that expansion occurs. *Id.* at 3-4.

16. On the other hand, Tidewater argues that the General Assembly could not have intended to place no limits on where a municipality could designate as its "existing service territory." Consequently, Tidewater recommended that "existing service territory" be limited to where the municipality has the intention to provide service within a time frame that meets the public convenience and necessity. *Id.* at 4.

17. Tidewater notes that it has contracted with the Town to provide wastewater services within the Town and within its comprehensive plan area and that the contract contemplates

construction of a central treatment plant capable of accommodating existing and future growth needs. *Id.* at 7. According to Tidewater, the new plant will be able to meet anticipated DNREC requirements (which would be doubtful under the existing plant) and will meet both the short-term and long-term needs of the Town's customers. The plant will allow for timely service because nearly all of the initial design work has been completed and the existing plant now has excess capacity that can be used until the new plant is complete. Due to economies of scale, Tidewater expects that the customers will receive competitive rates for service. *Id.*

18. Tidewater also addressed the Commission's earlier decision, in Regulation Docket No. 54, where the Commission declined to define "existing service territory" to include a municipality's growth area. Tidewater asserts that the Town's objection to the CPCN applications in this case falls within the scope of the Commission's earlier decision because in that docket the Commission chose to decide on a case-by-case basis whether to grant a CPCN when faced with an objection by a governmental body. *Id.* at 2.

19. **New Castle County.** Artesian is seeking to obtain permission from the Commission to provide wastewater services in an area that has been designated as existing service territory by a government entity, which NCC states is not permitted. IC (NCC) at 3. NCC notes that it is involved in this proceeding because it wants to enforce its sovereign right to plan and make decisions about the provision of public services, including wastewater utilities, within its boundaries. It also agrees, however, that the scope of this proceeding does not include interpretation or application of NCC's ordinances or rules pertaining to its wastewater services.

20. Citing § 38.02.007(D) of the *New Castle County Code*, NCC asserts that it, unlike Sussex County, has governing laws that prohibit a private company or any other entity from providing wastewater service within its boundaries without the express permission of NCC. NCC also notes that it has recently begun construction on a multi-million dollar project to further expand its wastewater service in the unincorporated portion of New Castle County south of the C&D Canal. It expects to spend approximately \$20 million to complete the first phase of the project.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

21. The Commission has jurisdiction over this matter pursuant to 26 Del. C. §§ 202(a) and 203D. Generally, the Commission does not have regulatory authority over municipally-owned wastewater utilities. However, § 202(a) provides the Commission with jurisdiction over municipalities "as may be necessary to implement § 203C and § 203D." The instant dispute relates to the Town's § 203D(b) filing with the Commission in 2004 and to whether Artesian must obtain approval from the Town to serve the disputed territory before requesting CPCNs from the Commission, pursuant to § 203D(b). The Commission, therefore, has jurisdiction over this matter.

22. In July of 2004, the General Assembly enacted wastewater legislation that required municipal wastewater providers to submit a map of their "existing service territory" to the Commission by October 4, 2004. § 203D(b). On September 17, 2004, the Town submitted a map to the Commission purporting to depict its "existing service territory." The designated territory included areas outside the Town's corporate limits which were not at that time (or now) being served by the Town. As with all other § 203D(b) submissions from

municipalities or other governmental bodies, Commission Staff filed the Town's map in its records without any review or approval of the designated service territory.

23. In February of 2005, the Commission adopted wastewater CPCN rules,³ without providing a definition for a municipality's § 203D(b) "existing service territory." In fact, the Commission specifically declined to accept a recommendation from the State Office of Planning Coordination to define a municipality's "existing service territory" to encompass areas a municipal or other governmental system is planning to serve consistent with its "growth area" as reflected in its most recent comprehensive planning efforts. Instead, the Commission left "existing service territory" undefined and decided to resolve territorial disputes between private wastewater utilities and municipalities as they arose, on a case-by-case basis. Two years later, the Commission now has its first such case.

24. On January 7, 2007, and February 6, 2007, Artesian filed applications seeking CPCNs to expand its operations for wastewater services to six parcels of land located within the area designated by the Town as its service territory in its § 203D(b) filing. On February 12, 2007, the Town filed objections to the CPCN applications on the ground that Artesian failed to obtain consent from the Town to serve the parcels, as required by § 203D(b) and the Commission's wastewater CPCN rules. As mentioned above, the disputed six parcels include the area on which a residential planned community, currently known as the Villages at Elizabethtown, has been proposed.

³"Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide . . . (footnote continued to next page.)

25. According to Artesian, the Town's designated service territory improperly includes the disputed area in light of the Commission's holding in the wastewater CPCN rules docket that prohibits a municipality from reserving territory outside the area it was actually serving in October of 2004. I agree with the Town and Tidewater, however, that the Commission made no such holding in that docket. First, this is not the case where a municipality is arguing that its "growth area" should be automatically reserved, which would have been the effect of adopting the proposed definition of "existing service territory" in the earlier case. Rather, the disputed parcels actually fall within the territory the Town designated as its "existing service territory" in the map submitted to the Commission. Second, the Commission chose to resolve any territorial disputes involving the filed maps on a case-by-case basis so that it could consider the facts and circumstances particular to each dispute before rendering a decision. As such, the Commission anticipated hearing cases such as this one and its earlier decision in no way pre-sets its decision in this case.

26. Artesian also argues that § 203D's "existing service territory" must be defined as the area actually being served, in accordance with the plain meaning of the term.⁴ I agree with the Town and Tidewater, however, that the plain meaning of "existing service territory," within the context of service territory rights, leads to no such definition. Private wastewater utilities in Delaware

Wastewater Services," as adopted by PSC Order No. 6573 (Feb. 22, 2005) ("Order No. 6573").

⁴ If statutory language is unambiguous, then the plain meaning of the language controls the construction of that statute. *Cantina v. Fontana*, 884 A.2d 468, 471 (Del. 2005).

... (footnote continued to next page.)

currently hold rights to serve vast amounts of land in which they do not serve customers but which is still considered the utilities' existing service territory. In addition, the General Assembly recognized in § 233C(b) that there are areas within valid service territories that are not actually being served when it provided that water utilities need not obtain additional certification to expand its operations within a service territory for which a certificate has already been obtained. If, for municipal wastewater providers, the General Assembly intended to make an exception and limit service territories to those parcels actually served, it could have expressed that in the legislation.

27. Moreover, if "existing service territory" were limited to customers actually served, there would be no reason for the General Assembly to include the § 203D(b) requirement that a wastewater utility obtain approval from a municipality before extending its service into the municipality's service territory. A wastewater utility would have no reason to extend into the municipality's service territory if that territory included only those parcels already being served by the municipality. The General Assembly must have envisioned, therefore, that municipalities would have service rights to un-served areas.

28. Furthermore, to define "existing service territory" to include only those parcels currently served would lead to gross inefficiencies, which the General Assembly could not have intended. To simply cap a municipality's wastewater system at the point where actual customers are located would strand wastewater facilities that

were sized and constructed to serve anticipated growth. It also would be unfair to the municipality that built its system to handle future capacity if it were prevented from reaching the future development only because a private wastewater utility that has yet to build any facilities was able to acquire signatures from the landowner/developers of the property. In addition, under Artesian's proposal, if a municipality's territory were disputed, the administrative burden on Commission Staff of verifying where the municipality has put pipes in the ground and actually serves customers would be substantial.

29. Artesian also argues that it would be "unjust and an abuse of discretion for the Commission to overrule the expressed desire of the landowners to be served by Artesian." Artesian IC at 8. If the landowners' parcels are within the Town's service territory, however, the Commission is bound by § 203D(b) to deny Artesian's applications unless Artesian obtained approval to serve those parcels from the Town. Whenever a landowner wishes to be served by a wastewater utility other than the one that holds the rights to his or her property, that landowner will be "overruled," unless the utility that holds the service rights agrees to relinquish them. Therefore, if the Town properly established its service territory under § 203D(b), then the landowners within that territory can select another utility only if that utility obtains approval from the Town. In addition, the General Assembly chose not to require a municipality to obtain signatures from landowners to establish its initial service territory or to extend its service territory into new areas under § 203D(b). In the context of municipal service territories, therefore, the landowners' preferences are not determinative.

30. I also agree with the parties, however, that "existing service territory" should not be defined to include any and all areas that were designated by the municipality in its § 203D(b) filing. Certainly, if the municipality's charter does not permit service outside its corporate limits or the local planning authority prohibits service from third parties within its jurisdiction, then the municipality's "existing service territory" must be limited accordingly. Furthermore, although the Commission has no authority over land use planning, it does address issues affecting ratepayers' access to adequate utility services. Consequently, the Commission should also consider whether the municipality is able and willing to serve the designated area within a reasonable timeframe, so as not to strand potential customers.

31. Rather than create a "reasonableness" standard regarding the timeframe, however, I agree with Tidewater that the criterion that should be used to evaluate the timeframe in which the governmental body must be willing and able to serve the disputed territory should be that which "serves the public convenience and necessity." This terminology is widely used in the wastewater statute and by the Commission in the context of granting rights to service territories and is, therefore, appropriate in this instance.

32. In the case at hand, it is undisputed that the Town's charter permits the Town to serve outside its corporate limits and that the local planning authority (*i.e.*, Sussex County) allows service from third parties within its jurisdiction. In addition, there should be no dispute that the Town has demonstrated a capability and willingness to serve the disputed area within a timeframe that serves

the public convenience and necessity.⁵ The Town already has a contract for the provision of wastewater service with a private utility that is well-known to the Commission (*i.e.*, Tidewater). The Town's existing treatment plant has excess capacity and the Town has planned the construction of a replacement plant large enough to serve the development planned in the disputed area. In addition, the Town has already completed the state's Preliminary Land Use Service ("PLUS") review process, which provides for state agency review of major land use proposals.

33. I also agree with the Town that, even if the Commission decides to re-draw the Town's "existing service territory" to encompass only those parcels it was actually serving in October of 2004 (as proposed by Artesian), then the Town would likely be entitled to serve the disputed area anyway. Under § 203D(b), a municipality may extend its wastewater service territory into an area where it desires to serve by promptly notifying the Commission of its intention and providing a description of the new wastewater service territory to the Commission. Section 203(b) provides:

Although municipalities... engaging in *or desiring to engage in* the business of a wastewater utility are not required to obtain a certificate of public convenience and necessity from the Commission for any existing *or new service territory*, these entities shall supply to the Commission a description of any existing service territory for wastewater service no later than October 4, 2004, *and shall promptly give notice and a description of any extension of wastewater territory or new wastewater service territory* to the Commission.

⁵ I advised the parties, by letter dated March 22, 2007, that if I relied on any facts that they wish to dispute, they should raise the issue in their written exceptions and propose some procedure for development of an evidentiary record on that issue.

(Emphasis added.)

34. In its initial comments (and constructively through its February 12, 2007 objection in this case), the Town notified the Commission of its desire to serve the disputed area and has described the disputed area as an extension of its service territory, in the event the Commission finds that it is not part of the Town's "existing service territory." Town IC at 20. If Artesian were to object to the extension, based on the fact that Artesian filed its CPCN application before the Town notified the Commission, then the Town could easily defend the timing of its notification as reasonable under the circumstances. After all, the Town had no reason to believe that its designated service territory, on record with the Commission, had been challenged until Artesian filed its CPCN applications.⁶ In fact, in July of 2006, the Delaware Office of State Planning Coordination advised the Town, through the PLUS review process (and after consultation with Commission Staff) that the Town holds the rights to serve the disputed territory, subject only to its own refusal to serve the territory or to a Commission decision to grant a CPCN for the area to a private wastewater utility. *Id.* at Exhibit D, pp. 29-30. In other words, the Town held a reasonable belief that it did not need to apply for an extension of its service territory in order to serve the disputed territory, and therefore any delay in filing for the

⁶ It is understandable that the Town failed to anticipate Artesian's challenge, particularly after Artesian had submitted a contract proposal to the Town to serve the disputed area. One could argue that by submitting its contract proposal, Artesian must have agreed at that time that the Town had the right to serve the disputed area; otherwise the contract would have been meaningless with respect to that area.

extension until after its "existing service territory" had been challenged was also reasonable.

35. Again, that is not to say that a municipality has automatic rights to extend its service territory to wherever it pleases, simply by notifying the Commission. As discussed above, once a service territory (existing or new) is challenged by a CPCN applicant (or otherwise), then the municipality must show the Commission that it is authorized to serve the area under its charter and by the local planning authority and that it has the capability and willingness to serve the territory within a timeframe that meets the public convenience and necessity.

VI. RECOMMENDATIONS

36. In summary, and for all of the above reasons, I recommend the following:

- A) That the Commission hold that a municipality has properly defined its § 203D(b) "existing service territory," including areas outside its corporate limits, if it shows (once challenged) that it is authorized to serve the area under its charter and by the local planning authority and that it has the capability and willingness to serve the territory within a timeframe that serves the public convenience and necessity.
- B) That the Commission find that the Town of Milton has met the test recommended above for the six disputed parcels and that it therefore properly identified its § 203D(b) "existing service territory" regarding those parcels in its September 17, 2004 filing.
- C) That the Commission deny Artesian's two CPCN applications for six parcels within the Town of Milton's service territory, because Artesian did not gain approval from the Town of Milton before submitting its applications, as required by 26 Del. C. § 203D(b) and Rule 3.4 of the Commission's wastewater CPCN regulations.

Respectfully submitted,

William F. O'Brien
Senior Hearing Examiner

Dated: March 29, 2007