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 PURSUANT TO 26 *DEL. C.* §203C (Filed November 29, 2017)	))))))	**PSC DOCKET NO. 17-1163**

Petitioner:

The Board of Public Works of the City of Lewes
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PETITION OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES FOR LEAVE TO INTERVENE IN THE MATTER OF THE APPLICATION OF TIDEWATER UTILITIES, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 *DEL. C.* §203C

The Board of Public Works of the City of Lewes (the "BPW") by and through its undersigned counsel hereby submits this Petition to Intervene (the "Petition") in the above-captioned matter (the "Proceeding") pending before the Public Service Commission (the "PSC"), and objects to the Application of Tidewater Utilities, Inc. for a Certificate of Public Convenience

and Necessity to Provide Water Services Pursuant to 26 *Del. C.* 203C (the "Application"). In support of this Petition, the BPW represents as follows:

BACKGROUND

1. The BPW operates public utilities for the City of Lewes, Delaware (the "City"), and has a principal place of business located at 107 Franklin Avenue, Lewes, Delaware 19958, and the following contact information: email: dgordon@lewesbpw.com, telephone: (302) 645-6228, and facsimile: (302) 645-6358.

2. The BPW was first chartered by the General Assembly of the State of Delaware in 1901. In 2009, the General Assembly reincorporated the BPW through An Act to Reincorporate the Charter of the Board of Public Works of the City of Lewes, 77 Del. Laws. c. 10 (2009) (as amended, the "BPW Charter").

3. Pursuant to the BPW Charter, the BPW is authorized and empowered to provide utility services, including water services, to the properties located within its "Service Area," which includes the corporate limits of the City, properties located within two (2) miles of the corporate limits of the City, and any franchised service areas. *See* BPW Charter, §§ 1.6 and 4.20.

4. Among other grants of authority, the General Assembly empowers the BPW to require any or all premises within the Service Area to connect to its utility systems. *See* BPW Charter, § 4.12.2.

5. On or about November 30, 2017, Tidewater Utilities, Inc. ("Tidewater") submitted the Application, commencing the Proceeding. Through the Application, Tidewater seeks a Certificate of Public Convenience and Necessity (the "CPCN") authorizing Tidewater to provide water utility services to the so-called "Land of R&K Partners," which is located on the northwest side of Route

9 in Sussex County, State of Delaware, and is further identified by Sussex County Tax Parcel Number 335-12.05-4.00 (the "Property").

6. The Property is located less than one mile outside of the City's corporate limits. *See* Exhibit A attached hereto. The Property is well within the two-mile radius beyond the City's corporate limits and is, therefore, included within the BPW's Service Area. In fact, the Property is located approximately a mere 2,200 feet from a BPW water main. Furthermore, the Property is included in the City of Lewes 2017 Comprehensive Plan's (the "Comprehensive Plan") recommended area for future annexation by the City. *See* Exhibit B attached hereto.

7. On December 20, 2017, Tidewater submitted a letter to the PSC admitting that Tidewater had failed to provide BPW with thirty (30) days'-notice prior to submission of the Application, as required by the PSC's regulations. *See* 26 *Del. Code Regs.* § 2002.6.3. In this December 20th letter, Tidewater acknowledges that the Property lies within the City's future annexation area.

8. Accordingly, because the Property lies within the Service Area and the City's future annexation area, the BPW objects to the Application.

RELIEF REQUESTED

9. By this Petition, the BPW seeks: (i) leave from the PSC to intervene in the Proceeding; and (ii) the denial of the Application.

BASIS FOR RELIEF

10. Pursuant to Rule 2.9 of the Rules of Practice and Procedure of the Delaware Public Service Commission, codified at 26 *Del. Code Regs.* §1001 (the "Rules"), the BPW seeks leave to intervene in this Proceeding. In the absence of the PSC granting the BPW leave to intervene, the BPW's interests will not be adequately represented by the parties to the Proceeding. Furthermore, granting the BPW leave to intervene is in the public interest.

11. The only other parties to the Proceeding are Tidewater and the Delaware Division of the Public Advocate (the "Public Advocate"). Because the BPW is objecting to the Application, there can be no question that the BPW's interests in this Proceeding are diametrically opposed to Tidewater's. Furthermore, while 29 *Del C.* § 8716(e) charges the Public Advocate with advancing consumers' rights with respect to utilities, the Public Advocate does not have a similar mandate to defend the rights of municipalities or municipal utilities in the face of proposed encroachment into their legislatively established service areas. Accordingly, leave from the PSC to intervene is necessary to ensure that the BPW's interests are adequately represented in the Proceeding.

12. Also, the General Assembly has expressly conferred upon the BPW with powers and authority over properties located in the Service Area, including the subject Property, and established mechanisms for municipalities like the City to annex territories adjoining such municipalities. Because of these grants of authority, the BPW's participation in the Proceeding is in the public interest.

13. The BPW Charter provides a distinct basis for denial of the Application because the Property is located firmly within the Service Area. Section 4.12.2 of the BPW Charter explicitly states "[t]he BPW shall have the authority to require any or all premises within the corporate limits of the City or Service Area, to be and to remain connected to the municipal utility systems." The issuance of a CPCN to Tidewater interferes with the BPW's authority under the BPW Charter and directly frustrates the General Assembly's directives.

14. Moreover, the Comprehensive Plan provides additional support for denial of the Application, because the Property is located in the future annexation area and the City retains the authority to annex the Property pursuant to 22 *Del. C.* § 101.

15. Notably, Tidewater failed to provide the BPW with the notice required by 26 *Del. Code Regs.* § 2002.6.3 before filing the Application. Accordingly, the BPW has not had the requisite time nor opportunity to consider Tidewater's request and position in advance of this Proceeding as the PSC and its regulations intend. Had Tidewater provided the required notice, such notice could have obviated any need for this Proceeding.

16. By denying the Application and refusing to issue a CPCN to Tidewater with respect to the Property, the Commission will preserve the BPW's rights and further the legislative goals of the General Assembly articulated through the BPW Charter and legislation surrounding municipalities and comprehensive plans.

WHEREFORE, the BPW respectfully requests that the Public Service Commission enter an order (i) granting the BPW leave to intervene in the Proceeding, (ii) denying the Application, and (iii) granting such other relief as is just and necessary.

Dated: January 2, 2018

TARABICOS GROSSO, LLP

s/ Thomas F. Driscoll III

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Attorneys for Petitioner

VERIFICATION

I, Darrin E. Gordon, General Manager of the Board of Public Works of the City of Lewes, being duly sworn, verify that I have read the foregoing petition, and the factual allegations contained therein are true and correct to the best of my knowledge, information, and belief.

Dated: 2 January 2018

Darrin E. Gordon

STATE OF DELAWARE :

:ss.

COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this 2nd day of ~~December, 2017,~~ January, 2018, personally, came before me, the Subscriber, a Notary Public for the State and County aforesaid Darrin E. Gordon, General Manager of the Board of Public Works of the City of Lewes, party to this foregoing Verification known to me personally to be such, and acknowledged said Verification to be his voluntary act and deed and the act and deed of said Board of Public Works.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

NOTARY PUBLIC

SUZANNE POWELL
Notary Public
State of Delaware
My Commission Expires on January 12, 2019

Suzanne Powell
Print Name

1-12-19
Date Commission Expires