

**DEPARTMENT OF ADMINISTRATIVE SERVICES
PUBLIC SERVICE COMMISSION
Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))**

PROPOSED

Reg. Docket No. 15, In the Matter of the Investigation, on Motion Of The Commission, Into The Terms And Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-of Construction from Customers Or Developers, and the Proper Ratemaking Treatment for Such Contributions And Advances (Opened March 24, 1987; Reopened September 24, 1996; and Reopened June 17, 2003)

ORDER NO. 6538

AND NOW, this 7th day of December, 2004;

WHEREAS, on May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition to reopen PSC Regulation Docket No. 15, which addresses the terms and conditions under which regulated water utilities require advances and/or Contributions In-Aid-Of Construction ("CIAC") from customers or developers; and

WHEREAS, in PSC Docket No. 02-109, a rate case proceeding filed by Artesian Water Company ("Artesian"), the DPA, the PSC Staff and Artesian entered into a stipulation stating that the DPA would petition the Commission to open a separate generic proceeding to consider the use of a "means test" for determining the amount of advances or CIACs; and

WHEREAS, in prior water utility rate cases, both the DPA and the PSC Staff have raised issues about whether the regulated water utility had determined and collected adequate advances or CIACs, so that existing customers did not bear the costs of expansion; and

WHEREAS, issues related to advances and CIACs may affect all regulated water utilities in Delaware; and

WHEREAS, the PSC Staff submitted a May 16, 2003 memorandum to the Commission in support of the DPA's petition to reopen Regulation Docket No. 15; and

WHEREAS, on June 17, 2003, the Commission determined that good reasons exist to reopen this regulation docket, and entered Order No. 6198 to that effect; and

WHEREAS, over the course of many months, the Commission Staff has received written comments on a proposed set of regulations from interested parties, including representatives of regulated water utilities, developers, and the DPA; and

WHEREAS, over the course of many months, the Commission Staff has met on numerous occasions with representatives of regulated water utilities, developers, and the DPA, engaged in teleconferences, and received further written and oral comments; and

WHEREAS, the Commission Staff has attempted to work cooperatively with all interested parties to create a proposed set of regulations that would be fair and reasonable and serve the public interest, and the common interests of regulated water utilities, their present and future customers, developers, and the public at-large; and

WHEREAS, in order to proceed more deliberately and expeditiously with the promulgation of proper regulations, the Commission deems it appropriate, advisable, and in the public interest to publish proposed regulations recommended by Staff in order to obtain additional public comment and facilitate the promulgation of final regulations; and

WHEREAS, the Commission has considered the proposed regulations prepared by the Commission's Staff that were developed after a lengthy period of comment by interested parties;

Now, therefore, **IT IS SO ORDERED:**

1. Pursuant to 26 **Del.C.** §209(a), and 29 **Del.C.** §10111 *et seq.*, the Commission promulgates proposed *Regulations Governing the Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of Construction From Customers or Developers and the Proper Ratemaking Treatment For Such Contributions and Advances* ("Regulations").

2. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register* the notice and the proposed Regulations attached hereto as Exhibits "A" and "B," respectively.

3. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be published in *The News Journal* and *Delaware State News* newspapers on or before Tuesday, December 21, 2004.

4. The Secretary of the Commission shall cause the notice attached hereto as Exhibit "A" to be sent by U.S. mail to all Water Utilities currently operating under a CPCN in Delaware and all persons who have made timely written requests for advance notice of the Commission's regulation-making proceedings.

5. William F. O'Brien is designated the Hearing Examiner for this matter pursuant to 26 **Del.C.** §502 and 29 **Del.C.** Ch. 101, and is authorized to organize, classify, and summarize all materials, evidence, and testimony filed in this docket, to conduct the public hearing contemplated under the attached notice, and to make proposed findings and recommendations to the Commission concerning Staff's proposed regulations on the basis of the materials, evidence, and testimony submitted. Hearing Examiner O'Brien is specifically authorized, in his discretion, to solicit additional comment and to conduct, on due notice, such public hearing(s) as may be required to develop further materials and evidence concerning any later submitted proposed regulations or amendments thereto.

6. Francis J. Murphy, Esquire, is designated Staff Counsel for this matter.

7. The Class "A" water utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.

8. 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:

Arnetta McRae, Chair
Joshua M. Twilley, Vice Chair
Joann T. Conaway, Commissioner
Jaymes B. Lester, Commissioner

ATTEST: Norma J. Sherwood, Acting Secretary

EXHIBIT "A"
PUBLIC NOTICE

**SOLICITING COMMENTS CONCERNING
REVISIONS TO RULES**

On May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition with the Public Service Commission ("the Commission") asking the Commission to make revisions and amendments to its rules and regulations concerning the *Terms and Conditions Under Which Water Utilities Require Advances and/or Contributions In-Aid-Of Construction From Customers or Developers and the Proper Ratemaking Treatment for Such Contributions and Advances* ("the Regulations"). These Regulations were originally adopted in PSC Order No. 2928 (Mar. 15, 1988) and revised in PSC Order No. 4310 (Sept. 24, 1996).

In PSC Order No. 6198 (June 16, 2003), the Commission accepted the DPA's petition to reopen those earlier Regulations. The Commission agreed to consider revisions proposed by the DPA which would modify the Regulations to adopt and implement a "means test" for determining the amount of Advances In-Aid-Of Construction and Contributions In-Aid-Of Construction.

As the first step in the process, the Commission's Staff, with the assistance of the DPA, proposed textual amendments and revisions to the present Regulations for the Commission's consideration. The Commission Staff has since met with representatives of the DPA and interested parties, received written comments, conducted meetings and workshops, and the Staff has developed proposed changes to the existing regulations.

The new regulations will address the following: (a) the definitions of Contributions In-Aid-Of Construction ("CIAC") and advances; (b) the computation of CIAC, including costs categories; (c) the nature of advances; (d) refunds of advances; (e) the ratemaking treatment of advances; (f) the ratemaking treatment of CIAC; (g) interest on excess CIAC and advances; and (h) matters necessarily related to the foregoing. The Commission proposes that its Order promulgating the final version of the new regulations will provide that the regulations (and the related docket) will be reopened two years from the effective date of the new regulations to review the new rate-making methodology, and to assess its effectiveness, the CIAC computation, and related costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications of the regulations.

Copies of the present Regulations and the DPA's petition to reopen are available for public inspection at the Commission's address set out below during normal business hours:

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §209(a) and 29 **Del.C.** §10111 et seq.

The Commission hereby solicits written comments, suggestions, and compilations of data, briefs, or other written materials concerning the proposed regulations. Ten (10) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware, 19904. All such materials shall be filed with the Commission on or before February 4, 2005. Persons who wish to participate in the proceedings, but who do not wish to file written materials, are asked to send a letter informing the Commission of their intention to participate on or before February 4, 2005.

The regulations and the materials submitted in connection therewith will be available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations may also be reviewed, by appointment during normal business hours, at the office of the Division of the Public Advocate located at the Carvel State Office Building, 4th Floor, 820 North French Street, Wilmington, Delaware 19801, and will also be available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, by telephone, or otherwise. The Commission's toll-free telephone number (in Delaware) is (800) 282-8574. Any person with questions may also contact the Commission Staff at (302) 739-4247 or by Text Telephone at (302) 739-4333. Inquiries can also be sent by Internet e-mail to karen.nickerson@state.de.us.

EXHIBIT "B"

DEFINITIONS:

Main Extension: The extension of the water utility's mains for the provision of water service.

New Services: The extension of pipe from the water utility's mains to the customer's premises.

1.2.12 CONTRIBUTIONS IN-AID-OF CONSTRUCTION ("CIAC") -DEFINITION.

Cash, services, funds, property or other value received from State, municipal, or other governmental agencies, individuals, contractors, or others for the purpose of constructing or aiding in the construction of utility plant for Main Extensions and which represent a permanent infusion of capital from sources other than utility bondholders or stockholders.

1.3.13 ADVANCES FOR CONSTRUCTION OF SERVICES ("ADVANCES") - DEFINITION.

Cash, services, funds, property or other value received by the utility which would be a CIAC but for an agreement by the utility to refund in whole or in part the amount received for New Services so that the Advances initially represent a temporary infusion of capital from sources other than utility bondholders or stockholders.

3.8 CONTRIBUTIONS IN-AID-OF CONSTRUCTION AND ADVANCES.

Nothing contained herein shall prevent a utility from accepting either non-refundable Contributions or refundable Advances, as defined in §§1.2.12 and 1.3.13, for the construction of Main Extensions or the provision of New Services.

3.8.1 COMPUTATION OF CIAC.

A utility shall require a CIAC when the request for a Main Extension will require the installation of pipe and associated utility plant. All charges henceforth to contractors, builders, developers, municipalities, homeowners, etc., seeking the construction of water facilities from a water utility company shall be in the form of a CIAC to be paid to the water utility for Category 1 and 2 facilities' costs.

Category 1 Costs.

All on-site facility costs that are directly assignable to a specific project are Category 1 Costs and shall be designated by the utility and paid for by the contractor, builder, developer, municipality, homeowner, etc., as CIAC, with no refunds. These costs include such items as mains, services, hydrants, treatment plants, wells, storage facilities, and shall include any other items that are deemed necessary by the Delaware Public Service Commission for the provision of utility water service. The cost of a main extension from the furthest point of the project site up to 100 feet beyond the boundary of the project shall be considered a Category 1 Cost. However, if the main is installed only to accommodate a specific project and there appears to be little chance that any additional customers would be added due to this expansion, then the utility can include the cost of installation beyond the 100 feet.

Category 2 Costs.

Category 2 Costs refer to supply and treatment plant costs that are not directly assignable to a specific project and the Category 1 Costs have not included any significant direct costs for supply and treatment plant. The contractor, builder, developer, municipality, or homeowner shall pay \$1,500 per residential water meter service for their portion of supply and treatment facilities already provided by the water utility. These costs will be contributed by the contractor, builder, developer, municipality, homeowner, etc., as CIAC, with no refunds. It is the water utility's responsibility to compute the appropriate charge for non-residential water meter service, however, the utility must be able to justify such charges if challenged in a dispute or complaint investigation.

3.8.3 ADVANCES.

An Advance may consist of the following components:

- a. An amount equal to the entire estimated cost (including reasonable overhead costs) of constructing New Services; plus
- b. Any applicable Federal income taxes, and applicable State taxes, that may be generated to the account of the utility as a result of the Advance.

3.8.4 REFUNDS OF ADVANCES.

By April 30th of each year, the utility will refund a portion of the Advance representing each additional customer connected during the previous calendar year or an agreed upon percentage of the utility's net revenue generated by the new service to which the Advance relates, or pursuant to such other methodology as may be established by agreement of the parties (the "net refund amount") plus the tax savings, if any, which the utility receives from deducting the Advance refund payment (the sum of which is referred to as the "gross refund amount"). In no event shall the total amount refunded by a utility (the sum of the gross refund amounts) exceed the amount received by such utility as an Advance (as finally determined by the utility after compliance with Rule 3.8.8). At the end of the negotiated refund period, no further refunds or payments will be made. If, at the end of such refund period, an Advance has not been fully refunded, the remaining unrefunded Advance will be considered a CIAC and will be treated for accounting and ratemaking purposes as a CIAC. The utility and the person(s) making the Advance shall determine the period in which the refund of the Advance may occur, but such period shall be at least twenty (20) years unless the approval of the Commission is obtained to employ a shorter period, except that a utility may agree to a full refund in less than twenty (20) years.

3.8.5 RATEMAKING TREATMENT OF ADVANCES.

An Advance will be considered as a non-taxable transaction for ratemaking purposes since the income taxes, if required, will be provided by the person making the Advance.

3.8.6 CIAC COMPONENT.

A CIAC will consist of an amount equal to the entire actual cost, including the utility's standard overhead costs of constructing the Main Extension. If any of the portion of property contributed by the contractor, builder, developer, municipality, homeowner, etc. is deemed taxable income to the utility, the utility shall be permitted to gross up the amount of the contribution to include such tax liability.

3.8.7 RATEMAKING TREATMENT OF CIAC.

The Federal and State income taxes, if required, associated with the CIAC and paid by the utility receiving the CIAC, may be added to rate base at which time the utility will have an opportunity to earn a fair return on this amount.

3.8.8 INTEREST ON EXCESS CONTRIBUTIONS AND ADVANCES.

Where the estimated amount of an Advance or Contribution exceeds the finally determined cost of the Main Extension Or New Services, that excess amount shall be returned with interest, at the same rate as authorized by § 6.1.8 herein, to the person making the Advance or Contribution.

Miscellaneous: This docket will be reopened two years from the effective date of these Rules to review the extension methodology and to assess its effectiveness, and the CIAC computation and costs categories. After such review and assessment, the Commission may, if deemed appropriate, consider further modifications.