

**DEPARTMENT OF STATE
PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 209(a) (26 Del.C. §209(a))

FINAL

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)

PSC Regulation Docket No. 15

**Reg. Docket No. 15; 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**

ORDER NO. 6873

AND NOW, this 14th day of March, 2006;

WHEREAS, on May 14, 2003, the Division of the Public Advocate ("DPA") filed a petition to re-open 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 Commission 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 Commission 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 re-open Regulation Docket No. 15; and

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

WHEREAS, over the course of many months, the Commission Staff 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 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, on December 7, 2004, the Commission issued Order No. 6538 in which it promulgated a proposed set of regulations prepared by Staff and designated William F. O'Brien as the Hearing Examiner to conduct further proceedings and make proposed findings and recommendations to the Commission; and

WHEREAS, on November 18, 2005, Senior Hearing Examiner O'Brien issued a Report containing his proposed findings and recommendations, in which he recommended adoption of a revised set of regulations proposed by Staff; and

WHEREAS, on December 20, 2005, the Commission conducted a public hearing at which it heard the

exceptions taken from the Hearing Examiner's Report and voted unanimously to adopt the Report and denied the exceptions that were filed; and

WHEREAS, on January 10, 2006, the Commission issued Order No. 6814 adopting the Hearing Examiner's Report, and directing that the proposed regulations be published in the *Delaware Register* for further comment; and

WHEREAS, on March 3, 2006, the Commission received and considered written comments from the Home Builders Association of Delaware, Inc. ("Home Builders") and written testimony submitted on behalf of The Reybold Group, ("Reybold"); and

WHEREAS, the Commission received and considered responses filed by the DPA and the Commission Staff to the March 3, 2006 submissions of the Home Builders and Reybold; and

WHEREAS, the Commission held a public hearing on March 14, 2006, to consider final adoption of the regulations as recommended by Senior Hearing Examiner O'Brien;

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

1. The Commission hereby adopts and incorporates by reference, in its entirety, its prior Order No. 6814 (Jan. 10, 2006). The Commission concludes that: (a) the March 3, 2006 submissions of the Home Builders and Reybold do not raise new issues; and (b) the issues raised in their March 3, 2006 submissions are rejected for the reasons set forth in Order No. 6814.

2. The Commission hereby adopts and approves the proposed *Regulations That Will Govern the Terms and Conditions Under which Water Utilities Require Advances and/or Contributions from Customers or Developers, and the Proper Ratemaking Treatment for such Contributions and Advances* attached hereto as Exhibit "A" (being the same Regulations that were approved and published pursuant to Order No. 6814 dated January 10, 2006). The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the *Delaware Register*, the exact text of the Regulations attached hereto as Exhibit "A" for publication on April 1, 2006.

3. The effective date of this Order shall be the later of April 10, 2006, or ten days after the date of publication in the *Delaware Register* of the Regulations attached hereto as Exhibit "A."

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:

Arnetta McRae, Chair
Joann T. Conaway, Commissioner
Jeffrey J. Clark, Commissioner
Dallas Winslow, Commissioner
Jaymes B. Lester, Commissioner

ATTEST: Karen J. Nickerson, Secretary

PROPOSED REGULATIONS

1.3.12 CONTRIBUTION IN-AID-OF CONSTRUCTION ("CIAC")

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 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")

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

1.3.14 FACILITIES EXTENSION

"Facilities Extension" means the extension of the water utility's Mains and appurtenances ("Facilities") for the provision of water service. As used in this definition, "appurtenances" include valves, hydrants, pumps, sampling equipment and other miscellaneous items appurtenant to a Main extension.

1.3.15 NEW SERVICES

"New Services" means the extension of pipe from the water utility's Mains to the customer's premises.

3.8 CONTRIBUTIONS IN-AID-OF CONSTRUCTION AND ADVANCES

A utility shall require CIAC for Facilities Extensions to the extent provided in §§3.8.1 and 3.8.2 herein below. Nothing contained herein shall prevent a utility from requiring CIAC, or Advances, or neither, for the provision of New Services. Nothing herein shall prevent any utility from paying for, and including in its rate base, the costs of New Services.

3.8.1 CIAC REQUIREMENT FOR FACILITIES EXTENSIONS

A utility shall require a CIAC when the request for a Facilities Extension will require the installation of pipe and/or associated utility plant. All charges henceforth to contractors, builders, developers, municipalities, homeowners, or other project sponsors, 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 as Category 1A, 1B and Category 2 costs, as computed under §§3.8.2 and 3.8.6, subject to true-up under §3.8.8.

3.8.2 COMPUTATION OF CIAC

Category 1A Costs.

All on-site Facilities costs that are directly assignable to a specific project are Category 1A costs and shall be designated by the utility and paid for by the contractor, builder, developer, municipality, homeowner, or other project sponsor, as CIAC, with no refunds. These costs include such items as Mains, hydrants, treatment plants, wells, pump stations, storage facilities, and shall include any other items that are necessary for the provision of utility water service. The cost of a Facilities Extension from the furthest point of the project site up to a point 100 feet beyond the boundary of the project (in the direction of the utility's existing Main) shall be considered a Category 1A Cost.

Category 1B Costs.

All off-site Facilities costs that are directly assignable to a specific project from such point 100 feet beyond the boundary of the project and continuing to the utility's existing Main are Category 1B Costs and shall be designated by the utility and funded by the contractor, builder, developer, municipality, homeowner, or other project sponsor, as a CIAC not subject to refund. These costs include such items as Mains, hydrants, treatment plants, wells, pump stations, storage facilities, and shall include any other items that are necessary for the provision of utility water service. Notwithstanding the foregoing, Category 1B Costs shall not include, and the utility shall be entitled to pay for and include in its rate base, any additional Facilities costs elected to be incurred by the utility in connection with the Facilities Extension for company betterment. In determining whether Category 1B Costs are directly assignable to a project, or elected as company betterment, the CIAC shall be calculated based on the cost of installing Mains using a minimum of 8 inch diameter pipe, *provided, however*, that where Mains of a larger diameter are required by applicable laws, building or fire codes, or engineering standards to provide water service to the project on a stand-alone basis, the CIAC shall be calculated based on the cost of installing Mains using such larger diameter pipe.

Category 2 Costs.

Category 2 Costs refer to transmission, supply, treatment and/or other utility, plant costs that are not directly assignable to a specific project or where the Category 1 costs have not included sufficient direct costs for transmission, supply, treatment, and/or other utility plant costs to supply water to the project. The contractor, builder, developer, municipality, homeowner or other project sponsor shall pay \$1,500 per single family residential water meter service for their portion of transmission, supply, treatment and/or other utility plant costs made available by the water utility. These costs will be contributed by the contractor, builder, developer, municipality, homeowner, or other project sponsor, as CIAC, with no refunds. Within one hundred and twenty (120) days following the effective date of these regulations, each water utility shall file with the Commission proposed tariff pages containing the charges it will impose for Category 2 costs for single family residential and other types of metered water service. Such charges shall be determined based on meter size or another objective factor. The

utility may account for such amounts by applying such amounts to pay for or offset any capital costs, including new and/or replacement plant, whether incurred in connection with the project or otherwise. The utility shall be entitled to hold amounts received as Category 2 Costs, and defer accounting for them as CIAC, until such amounts are actually used to fund capital improvements, at which time the utility shall be entitled to account for the Category 2 Costs as CIAC to the extent it is able to make offsetting entries to the utility's plant accounts.

3.8.3 ADVANCES

An Advance may consist of the following components:

1. An amount equal to the entire estimated cost (including reasonable overhead costs) of construction; plus
2. 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 based on a standard formula developed by the utility (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 un-refunded 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 not exceed five (5) 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(s) making the Advance.

3.8.6 GROSS UP OF CIAC

A CIAC will consist of an amount equal to the entire estimated cost, including the utility's standard overhead costs, of constructing the Facilities Extension. If any portion of property contributed by the contractor, builder, developer, municipality, homeowner, or other project sponsor is deemed taxable income to the utility, the utility shall be permitted to gross up the amount of the CIAC 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 TRUE-UP OF CONTRIBUTIONS AND ADVANCES

Where the estimated amount of the CIAC or Advance exceeds the finally determined cost of the Facilities Extension or New Services, that excess amount shall be returned to the person making the CIAC or Advance.

Where the estimated amount of the CIAC or Advance falls short of the finally determined cost of the Facilities Extension or New Services, that shortage amount shall be paid to the utility by the person making the CIAC or Advance.

3.8.9 MISCELLANEOUS; CLASS A WATER UTILITIES AFFECTED; PROSPECTIVE APPLICATION; REOPENING OF DOCKET

The regulations governing CIAC and Advances shall:

1. apply only to Class A Water Utilities, and
2. apply prospectively and therefore shall not affect or apply to circumstances where the water utility has already entered into a water service agreement with the contractor, builder, developer, municipality, homeowner, or other person, regarding the construction of water facilities.

PSC Regulation Docket 15 shall be reopened two years from the effective date of the revised regulations governing CIAC and Advances 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.

9 DE Reg. 1588 (04/01/06) (Final)