

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

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 ) PSC REGULATION DOCKET  
DEVELOPERS, AND THE PROPER RATEMAKING ) NO. 15  
TREATMENT FOR SUCH CONTRIBUTIONS AND )  
ADVANCES (OPENED MARCH 24, 1987; REOPENED )  
SEPTEMBER 24, 1996; JUNE 17, 2003; )  
JANUARY 10, 2006; AND APRIL 8, 2008) )

**ORDER NO. 7375**

**AND NOW**, this 8<sup>th</sup> day of April, 2008;

**WHEREAS**, on March 14, 2006, by PSC Order No. 6873, the Public Service Commission ("Commission") approved and adopted certain amendments to the Commission's *Minimum Standards Governing Service Provided by Public Water Utilities* relating to the terms and conditions under which Class "A" water utilities collect Advances and/or Contributions In-Aid-Of Construction ("CIAC") from customers or developers (attached hereto as Exhibit "A"), which amendments became effective on April 11, 2006;<sup>1</sup> and

**WHEREAS**, the amended regulation, at Rule 3.8.9, provides:

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<sup>1</sup>Although Reybold Group appealed PSC Order No. 6873 to the Superior Court, the Court did not stay the Commission's Order pending the appeal and the effective date for the new rules therefore remained as April 11, 2006. More specifically, Reybold challenged the requirement under Rule 3.8.2 that water utilities collect \$1,500 from developers for each residential connection in a new development in order to recover off-site, common capital costs attributable to expansion of the system. On July 31, 2007, the Superior Court affirmed Order No. 6873, Reybold Group further appealed and, on February 6, 2008, the Delaware Supreme Court affirmed the Superior Court's decision. *Reybold Group v. Public Service Com'n*, 2008 WL 323410 (Table) (Del. Supr. Feb. 6, 2008); *Reybold Group v. Public Service Com'n*, 2007 WL 2199677 (Del.Super. July 31, 2007).

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;

and

**WHEREAS**, two years from the effective date of the revised regulation is April 11, 2008;

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

1. The Commission hereby reopens PSC Regulation Docket No. 15 to review and evaluate the extension methodology and Contributions In-Aid-Of Construction requirements under Rule 3.8 of the Commission's *Minimum Standards Governing Service Provided by Public Water Utilities*.

2. Commission Staff shall solicit from Class "A" water utilities accounting information and written comments relating to their implementation of the CIAC requirements under revised Rule 3.8; conduct such informal workshops as Staff deems necessary; seek written comments as necessary from interested persons regarding recommendations for modifications to the rule; and thereafter submit to the Commission a report regarding the effectiveness of the revised rule, including any proposed revisions to Rule 3.8. If Staff recommends any such revisions, the Commission may then decide to propose the amended rules for adoption under the procedures set forth in 29 Del. C. §§ 1133 and 10115-10118.

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

4. The Secretary of the Commission shall cause this Order to be sent by U.S. mail to all participants in the last Regulation Docket No. 15 proceeding, including the Division of the Public Advocate, United Water Delaware Inc., Artesian Water Company, Inc., Tidewater Utilities Inc., Homebuilders Association of Delaware, Inc., Reybold Group ("Reybold"), Knollwood Development Corporation, Blenheim Bayberry LLC and Sussex Shores Water Company, as well as any other 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. The public water utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 Del. C. § 114.

6. 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:

/s/ Arnetta McRae  
Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

PSC Regulation Docket No. 15,  
Order No. 7375 Cont'd.

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Commissioner

/s/ Jeffrey J. Clark  
Commissioner

ATTEST:

/s/ Karen J. Nickerson  
Secretary

E X H I B I T    "A"

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.