

**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) PSC REGULATION
CONSTRUCTION FROM CUSTOMERS OR) DOCKET NO. 15
DEVELOPERS, AND THE PROPER RATEMAKING)
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. 7621

AND NOW, this 4th day of August, 2009;

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 (the "Regulations");¹ and

¹Although 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*, 2007 WL 2199677 (Del.Supr. July 31, 2007).

WHEREAS, the Regulations, at Rule 3.8.9, provide:

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 Regulations was April 11, 2008;

WHEREAS, on April 8, 2008, by PSC Order No. 7375, the Commission reopened 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*; and

WHEREAS, the Commission Staff and the Division of the Public Advocate ("DPA") solicited from Class "A" water utilities accounting information and written comments relating to their implementation of the CIAC requirements under revised Rule 3.8, and sought written comments from interested persons regarding recommendations for modifications to the rule; and

WHEREAS, each of the five Class "A" water utilities provided information in response to requests from either the DPA or the Staff; and

WHEREAS, the DPA submitted a report by the Columbia Group, Inc., per James D. Cotton, dated March 1, 2009; and

WHEREAS, the Staff submitted a memorandum to the Commission dated May 26, 2009, and a report of Larkin & Associates, PLLC dated April 9, 2009, and;

WHEREAS, James D. Cotton, the DPA's expert consultant at the Columbia Group, in his report on behalf of the DPA determined that: a) "Regulation Docket No. 15 is performing well", b) while the Regulations alone may not have avoided any specific rate increase, there is ample data to confirm that millions of dollars of rate increases have been avoided both as a result and in anticipation of Regulation Docket No. 15; c) that the Regulations have reduced the size of water utility rate increases over time, and will continue to do so, d) the current CIAC Category 2 Costs should be maintained at their current level, and e) Regulation Docket No. 15 has been a success; and

WHEREAS, the Staff's consultant Larkin & Associates reported that: a) Regulation Docket No. 15 appears to be functioning as intended to lessen the impact upon existing customers resulting from growth related to expansion, b) the Regulations have not caused any undo hardship for any of the Class "A" water utilities, each of which appears to be complying with the Regulations, and c) there does not appear to be any compelling reason to revise Rule 3.8 at this time, or to change the existing \$1,500 amount for CIAC Category 2 Costs; and

WHEREAS, in the May 26, 2009 memorandum to the Commission, the Staff reported that: a) Section 3.8 of the Regulations has reduced the amount of rate increases being sought by Class "A" water utilities by millions of dollars, resulting in significant savings to rate payers, b) much of the cost of water system expansion has been shifted from existing customers back to builders and developers who create new commercial and residential real estate projects, c) there is no compelling reason to amend the CIAC Regulations at this time, and d) on the whole, the Regulations appear to be operating as intended; and

WHEREAS, the Staff, Larkin & Associates, and the Columbia Group, each reported that, since the adoption of the Regulations, Tidewater Utilities, Inc. ("Tidewater") has engaged in a practice of charging the \$1,500 fee for Category 2 Costs under Section 3.8.2 to individuals who purchased residential homes in a development, rather than collecting the fee from the developer or builder. Staff maintained that Tidewater's practice was inconsistent with the provisions of Section 3.8, and Tidewater advised Staff that it disagreed with Staff's position. Staff and Tidewater conferred about the matter, and Tidewater has entered into an agreement with Staff to settle the dispute. Pursuant to that agreement, on a going forward basis, Tidewater agreed that when a developer or builder seeks a Facilities Extension to serve a new residential development, Tidewater will collect the Category 2 Costs from the developer/builder, and will do so at the time it enters into a water service agreement. Staff agreed

that it would take no action with respect to Tidewater's collection of the \$1,500 Category 2 charges from homeowners pursuant to water service agreements entered into by Tidewater prior to the date of Tidewater's proposal to settle the dispute, which is June 25, 2009. Staff submits that the agreement with Tidewater is a satisfactory resolution of the dispute, is a just and reasonable outcome, will save the parties the attorneys' fees, costs, and resources that would otherwise be expended to resolve the matter, and will serve the public interest; and

WHEREAS, the Staff's May 26, 2009 memorandum to the Commission provides, in part:

Staff recommends that, for the next three years, each Class "A" water utility be required to file a report within 45 days after the end of the utility's fiscal year, which a) identifies the amount of CIAC collected in that fiscal year, itemized by Category 1A, Category 1B, and Category 2 costs, b) provides the historical data identifying the amount of CIAC collected since the Revised Regulations became effective, for purposes of comparison, c) states whether the utility has had any difficulties collecting CIAC, and the amount of CIAC that the utility has been unable to collect, d) provides a statement by the utility certifying that the utility is complying with the Revised Regulations, e) provides a narrative by the utility explaining whether the utility believes that Section 3.8 is accomplishing its purposes, and whether it needs amendment.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE VOTE OF
NOT FEWER THAN THREE COMMISSIONERS:**

1. The Commission concludes that 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* are not in need of revision at this time; and

2. For the next three years, each Class "A" water utility shall be required to file a report within 45 days after the end of the utility's fiscal year, which a) identifies the amount of CIAC collected in that fiscal year, itemized (to the extent feasible) by Category 1A, Category 1B, and Category 2 Costs, b) provides the historical data identifying the amount of CIAC collected since the Regulations became effective, for purposes of comparison, c) states whether the utility has had any difficulties collecting CIAC, and the amount of CIAC that the utility has been unable to collect, d) provides a statement by the utility certifying that the utility is complying with the Regulations, e) provides a narrative by the utility explaining whether the utility believes that Section 3.8 is accomplishing its purposes, and whether it needs amendment.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as it deems necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae _____
Chair

/s/ Joann T. Conaway _____
Commissioner

/s/ Jaymes B. Lester _____
Commissioner

/s/ Dallas Winslow _____
Commissioner

/s/ Jeffrey J. Clark _____
Commissioner

ATTEST:

/s/ Katie Rochester _____
Acting 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

3.8.2 COMPUTATION OF CIAC

Category 1A Costs.

All on-site Facilities costs that are directly assignable to a specific project are Category 1 A 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 detennining 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,

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:

- I 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

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.