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NASHVILLE MUSIC ROW
KNOXVILLE
MEMPHIS

May 23, 2003

***VIA HAND DELIVERY***

Ms. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

***Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 03-00118.***

Dear Chairman Kyle:

Enclosed please find the original and thirteen (13) copies of the following:

1. Copy of letter dated May 21, 2003 from Assistant Attorney General Chatterjee to us requesting certain additional information and responses

2. Our response letter dated May 23, 2003 to her letter request dated May 21, 2003 saying that we are responding to her request of May 21, 2003 which we received on May 22, 2003.

3. Our responses to the five requests as set out in the Attorney General's letter of May 21, 2003.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the telephone number listed above.

Very truly yours,

T.G. Pappas

TGP/sdt
Enclosures
cc: Certificate of Service List

Mr. William F. L'Ecuyer (via facsimile)
Mr. Michael Miller (via facsimile)
Mr. Roy Ferrell (via facsimile)
R. Dale Grimes, Esq.
George Masterson, Esq.

## CERTIFICATE OF SERVICE

I hereby certify (a) that a true and correct copy of Tennessee American Water Company's Responses to Questions 8, 10, 13 and 14 to the Second Discovery Requests of the Consumer Advocate and Protection Division Office of the Attorney General have been served, via the method(s) indicated, on this the 23rd day of May, 2003:

| | |
|---|---|
| [ ] Hand<br>[ ] Mail<br>[ ] Facsimile<br>[x] Overnight, UPS | Michael A. McMahan, Esq.<br>Phillip A. Noblett, Esq.<br>Lawrence W. Kelly, Esq.<br>Nelson, McMahan & Noblett<br>801 Broad Street, Suite 400<br>Chattanooga, TN 37402 |
| [x] Hand<br>[ ] Mail<br>[ ] Facsimile<br>[ ] Overnight, UPS | Vance L. Broemel, Esq.<br>Shilina B. Chatterjee, Esq.<br>Assistant Attorney General<br>Office of the Attorney General<br>Consumer Advocate and Protection Division<br>425 5th Avenue North, 2nd Floor<br>Nashville, TN 37243-0491 |
| [x] Hand<br>[ ] Mail<br>[ ] Facsimile<br>[ ] Overnight, UPS | Henry M. Walker, Esq.<br>Boult, Cummings, Conners & Berry, PLC<br>414 Union Street, Suite 1600<br>Nashville, TN 37219 |
| [ ] Hand<br>[ ] Mail<br>[ ] Facsimile<br>[x] Overnight, UPS | David C. Higney, Esq.<br>Grant, Konvalinka & Harrison, P.C.<br>633 Chestnut Street, 9th Floor<br>Chattanooga, TN 37450 |

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OTHER OFFICES:

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KNOXVILLE
MEMPHIS

May 23, 2003

**VIA HAND-DELIVERY TO:**

Honorable Shilina B. Chatterjee
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
425 – 5th Avenue, North, Second Floor
Nashville, Tennessee 37243-0491

***Re:*** ***Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges So As to Permit It to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful In Furnishing Water Service to Its Customers, Docket No. 03-00118.***

Dear General Chatterjee:

This is in response to your letter of May 21, 2003, which we received by facsimile on May 22, 2003, wherein you asked for additional information consisting of five (5) items.

We have communicated this request to our clients and they have sent their responses, which we are including herewith. If the additional information does not fully respond to your request of May 21, please do not hesitate to contact me at 742-6242.

Thanking you for your understanding in this matter, I remain

Sincerely yours,

T.G. Pappas

TGP:sdt
Enclosures

STATE OF TENNESSEE

# Office of the Attorney General

PAUL G. SUMMERS
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REPLY TO:
OFFICE OF THE ATTORNEY GENERAL
CONSUMER ADVOCATE AND PROTECTION DIVISION
P.O. BOX 20207
NASHVILLE, TENNESSEE 37202
FACSIMILE: (615) 532-2910

May 21, 2003

R. Dale Grimes, Esq.
T.G. Pappas, Esq.
Bass, Berry & Sims, P.L.C.
315 Deaderick Street, Suite 2700
Nashville, TN 37238-0002

**RE: In Re: Petition of Tennessee-American Water Company to Change and Increase Certain Rates and Charges So As to Permit it to Earn a Fair and Adequate Rate of Return on Its Property Used and Useful in Furnishing Water Service to Its Customers**
**Docket No. 03-00118**

Dear Dale and Ted:

We are in receipt of your prior responses and the additional information you provided to us today concerning Tennessee-American Water Company in the above referenced matter. Nevertheless, we have reviewed all the material and it appears that there are still several items that were non-responsive. Therefore, we require further information. The following is a list of the items that require further response and explains in detail the additional information we are seeking.

1. In the CAPD's First Set of Interrogatories and Request to Produce, Interrogatory No. 54.stated "Provide the capital structure of Tennessee-American's parent company, RWE, for the attrition year." We did not receive a complete response. TAWC responded "There are no debt issues included in the "provisions" section." As a result, we reiterated our request in our Second Discovery Request dated April 30, 2003, we supplemented Interrogatory No. 54 and asked our question again in Interrogatory No. 10 stated "Regarding the company's response to Item 54, the capital structure of RWE, for each item within the category of "Provisions," plea

provide: (a) description of the provision; (b)the amount; (c) the date the provision began; (d) the date the provision is expected to terminate; (e) the carrying cost and interest rate RWE assigns to carrying the provision on the company's books; and, (f) Indicate if RWE or any of its subsidiaries are fully or partially guaranteeing any debt or financial obligations not accounted for in its consolidated statement - and provide the amounts involved and the business organization receiving the guarantee." We did receive a response to 10(a). TAWC provided a description of "provisions." Please provide a complete response to Interrogatory No. 54 and No. 10 in our respective discovery requests.

2. In the CAPD's Second Discovery Request, Interrogatory No. 6 we requested that TAWC "Please produce a copy of all documents which relate or pertain to any factual information provided to, gathered by, utilized or relied upon by any of TAWC's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in this matter." A response was provided, however, not all information was provided. As of this date, we have only received a partial response. We are still awaiting additional material (Orders concerning DSIC/DSR from Pennsylvania American, Pennsylvania Suburban, Indiana, Illinois, Missouri, Ohio and any other orders, stipulations, agreements, state laws, having to do with any changes in customer charges in AWW's other service areas since 1997). It appears that this information is forthcoming and due to be sent to us by Monday, May 26, 2003. However, May 26, 2003 is a holiday and due to the impending deadline of the our filed testimony, we request that the material be sent to us by 12:00 p.m. on Friday, May 23, 2003.

3. In the CAPD's First Discovery Request, Interrogatory No. 53 we asked "Provide the capital structure of Tennessee-American's parent company, American Water Works, as of July 31, 2002." Although TAWC responded, we need further clarification. Please provide the interest rates payable to the noteholders and the ratings of long-term debt.

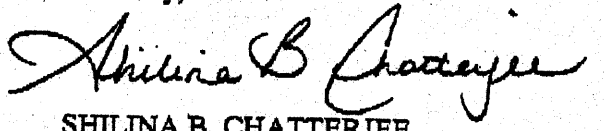
4. In the CAPD's Second Discovery Request, Interrogatory No. 14 was incomplete. We requested TAWC "Provide the location of all additional locations providing services to TAWC or affiliates in the Chattanooga area. Provide the functions (similar to (f) and (g) above in Request No. 3) performed from the location, number of square foot utilized, the number of personnel at 12/31/1997 vs. today, if the property is owned vs rented/leased." TAWC response dated May 9, 2003 indicated employees by facility. However, the response related to number of personnel presently employed. Therefore, kindly provide the number of personnel at 12/31/1997 and today. Additionally, kindly respond to these additional questions "What is the square footage of each facility?" and "Distinguish whether each property is owned or rented."

5. In the CAPD's Second Discovery Request, Interrogatory No. 9(d) was not properly answered by TAWC. We stated "Regarding the company's response to Item 54 of the CAPD's

first requests, provide the capital structure of RWE, for each bond or note held in the category "liabilities." (d) the note's interest rate payable to the note holder;" TAWC only indicated "fixed" or "floating." Kindly provide a proper response to 9(d).

As you know, direct testimony is required to be filed in this matter on May 30, 2003. Therefore, we would appreciate if you provided the information by 12:00 p.m. on Friday, May 23, 2003. If the information is not provided, we will have to file a Motion to Compel. If you have any questions, please feel free to contact me at (615) 532-3382. Thank you for your anticipated cooperation and attention in this matter.

Sincerely,



SHILINA B. CHATTERJEE
Assistant Attorney General
(615) 532-3382

65243

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, TO-WIT:

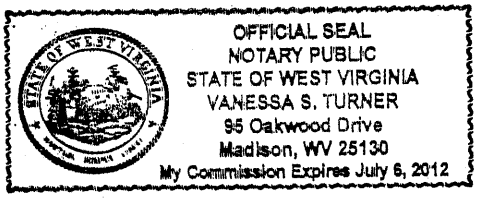
# AFFIDAVIT

I, Roy L. Ferrell, Director Rates & Planning, being first duly sworn, do hereby certify that the foregoing responses to the Data Requests from the Attorney General's Office were prepared by me or under my supervision and are true and accurate to the best of my knowledge and information.

Roy L. Ferrell

Taken, subscribed and sworn to before me this 22th day of May, 2003.

My commission expires July 6, 2012.




Notary Public

**Interrogatories and Requests for Production**
**Of Documents by the**
**Attorney General (Third Set)**
**To Tennessee-American Water Company**
**Rate Case No. 03-00118**

1. Q. In the CAPD's First Set of Interrogatories and Request to Produce, Interrogatory No. 54 stated "Provide the capital structure of Tennessee-American's parent company, RWE, for the attrition year." We did not receive a complete response. TAWC responded "There are not debt issues included in the "provisions" section." As a result, we reiterated our request in our Second Discovery Request dated April 30, 2003, we supplemented Interrogatory No. 54 and asked our question again in Interrogatory No. 10 stated "regarding the company's response to Item 54, the capital structure of RWE, for each item within the category of "Provisions," please provide: (a) description of the provision; (b) the amount (c) the date the provision began (d) the date the provision is expected to terminate: (e) the carrying cost and interest rate RWE assigns to carrying the provision on the company's books; and (f) indicate if RWE or any of its subsidiaries are fully or partially guaranteeing any debt or financial obligations not accounted for in its consolidated statement – and provide the amounts involved and the business organization receiving the guarantee." We did receive a response to 10(a). TAWC provided a description of "provisions." Please provide a complete response to Interrogatory No. 54 and No. 10 in our respective discovery requests.

Response: See Attached.

Further response to the Attorney General's Letter dated May 21, 2003, Item number 1. (Items a & b were provided in response to question number 10 on May 21, 2003.

(c) the date the provision is expected to terminate;

There is no exact date determinable, on which these provisions terminate. Pension obligations usually terminate opon death of an employee or when leaving the company. Nuclear provisions are used over a period of up to 80 years. Mining provisions are long-term provisions as well; the other provisions cover shorter periods.

(d) the carrying cost and interest rate RWE assigns to carrying the provision on the company's books;

The balance-sheet amount was outlined in response to item a of question number 10 provided on May 21, 2003. The interest rate for long-term provisions is 6%.

(e) indicate if RWE or any of its subsidiaries are fully or partially guaranteeing any debt or financial obligations not accounted for in its consolidated statement - and provide the amounts involved and the business organization receiving the guarantee.

RWE´s subsidiaries provide IAS financial statements; these alike US GAAP include the total debt of our companies. Our guidelines require all companies to fully comply with IAS. Contingent liabilities are disclosed in RWE´s financial statements; this requirement is similar to US GAAP.

**Interrogatories and Requests for Production**
**Of Documents by the**
**Attorney General (Third Set)**
**To Tennessee-American Water Company**
**Rate Case No. 03-00118**

2. Q. In the CAPD's Second Discovery Request, Interrogatory No. 6 we requested that TAWC "Please produce a copy of all documents which relate or pertain to any factual information provided to, gathered by, utilized or relied upon by any of TAWC's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in this matter." A response was provided, however, not all information was provided. As of this date, we have only received a partial response. We are still awaiting additional material (Orders concerning DSIC/DSR from Pennsylvania American, Pennsylvania Suburban, Indiana, Illinois, Missouri, Ohio and any other orders, stipulations, agreements, state laws, having to do with any changes in customer charges in AWW's other service areas since 1997). It appears that this information is forthcoming and due to be sent to us by Monday, May 26, 2003. However, May 26, 2003 is a holiday and due to the impending deadline of our filed testimony, we request that the material be sent to us by 12:00 p.m. on Friday, May 23, 2003.

Response: See Attached.

**Further response to the Attorney General's Letter dated May 21, 2003, Item number 2.**

**Attached are the following Orders related to DSIC/DSR:**

- **Order from the Illinois Commission**
- **Order from the Pennsylvania Commission (Order was issued naming Pennsylvania American but it also applies to Philadelphia Suburban.)**
- **Pending Legislation for Missouri**
- **Pending Legislation for Ohio**
- **Order for Indiana-American**

**PENNSYLVANIA**
**PUBLIC UTILITY COMMISSION**
**Harrisburg, PA 17105-3265**

Public Meeting held August 22, 1996

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger
Robert K. Bloom

Petition of Pennsylvania-American Water Company for Approval to Implement a Tariff Supplement Establishing a Distribution System Improvement Charge

Docket No. P-00961031

## OPINION AND ORDER

**BY THE COMMISSION:**

### I. Background

On March 15, 1996, the Pennsylvania-American Water Company (PAWC or company) filed the above-referenced petition with this Commission requesting regulatory approval to file and implement an automatic adjustment clause tariff that would establish a Distribution System Improvement Charge (DSIC or surcharge) pursuant to Section 1307(a) of the Public Utility Code. 66 Pa.C.S. §1307(a). Section 1307(a) provides statutory authority for a utility to establish, subject to Commission review and approval, a tariffed automatic adjustment clause mechanism designed to provide "a just and reasonable return on the rate base" of the public utility.

As proposed by PAWC, the DSIC would operate to recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing infrastructure rehabilitation projects completed and placed in service between Section 1308 base rate cases. The company maintains that the property additions eligible for the DSIC will be limited to revenue neutral infrastructure projects, consisting principally of replacement investments in so-called "mass property" accounts. The DSIC is designed to provide the company with the resources it needs to accelerate its investment in new utility plant to replace aging water distribution infrastructure, facilitating compliance with evolving regulatory requirements imposed by the Safe Drinking Water Act (SDWA) and the implementation of solutions to regional water supply problems.

To illustrate its point, the company states that it has 5,600 miles of mains, that it is currently rehabilitating between 25 and 30 miles of main each year, and that, at that pace, it would require between 185 and 225 years to make all of the needed improvements to existing facilities. The company also states that water service, more than any other utility service, is critical to maintaining public health as water is "a necessity of life and vital for public fire protection services." Petition at 3.

The company alleges that the DSIC may enable it to reduce the frequency of its base rate cases and place the company in a better position to absorb increases in other categories of costs for a longer period, particularly during times of relatively low interest rates. Any reduction in rate case filing frequency would generate costs savings which would inure to the benefit of customers and the Commission. In its petition, the company proposes certain

accounts for recovery, time-frames and other procedures to be followed in implementing the DSIC. The details of those procedures will be discussed below.

To begin with, the company proposes that the DSIC become effective for service rendered on and after July 1, 1996. The company also proposes that the initial charge to be calculated would recover the fixed costs of eligible plant additions that have not previously been reflected in the company's rate base and will have been placed in service between January 1, 1996 and May 31, 1996. Thereafter, the company proposes to update the DSIC on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Petition at 3-4.

As to its geographic applicability, the company states that the DSIC will not apply initially to customers located within the authorized service territory formerly served by the Pennsylvania Gas and Water Company (PG&W) that was acquired as of February 16, 1996. Likewise, the company's investment in infrastructure improvements made within the service territory acquired from PG&W are not included in the initial calculation of the surcharge under the DSIC. Petition at 1-2.

The company also proposes that the DSIC be capped at 5% of the amount billed to customers under otherwise applicable rates and charges, exclusive of amounts recovered under the State Tax Adjustment Surcharge (STAS). If the cap is reached, the company would not seek any additional increases. Petition at 4.

As with any Section 1307 automatic adjustment clause, the DSIC will be subject to an annual reconciliation, whereby the revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between such revenues and costs will be recouped or refunded to customers, as appropriate, in accordance with Section 1307(e). Petition at 5.

Lastly, in terms of procedures, the company proposes that the DSIC will be reset to zero as of the effective date of new Section 1308 base rates that provide for prospective recovery of the annual costs that had previously been recovered under the DSIC. Petition at 5. And to avoid over recovery of costs in the absence of a base rate case, the company also proposed that the DSIC will be reset to zero if, in any quarter, data filed with the Commission in the company's then most recent Annual or Quarterly Earnings Report shows that the company will earn a rate of return that would exceed the rate of return used to calculate its fixed costs under the DSIC. Petition at 5.

In terms of the legal issues raised by its petition, the company also states that its proposed automatic adjustment clause and procedures are lawful for a number of reasons found in statutory and case law. With regard to statutory law, PAWC states that Section 1307(a) of the Public Utility Code, 66 Pa. C.S. §1307(a), provides that a company may establish a sliding scale of rates or such other method for the automatic adjustment of the rates to recover a variety of costs. Petition at 19. Moreover, the company has cited circumstances in which the Commission has authorized the use of Section 1307 (a) automatic adjustment clauses to recover a wide array of expenses, depreciation and capital costs. See

Pennsylvania Industrial Energy Coalition v. Pa. P.U.C., 653 A.2d 1336 (Pa. Cmwlth. 1995) (PIEC) (recovery of electric utilities' demand-side management costs); 52 Pa. Code §69.181 (recovery of gas utilities' take or pay liabilities to pipeline suppliers); 52 Pa. Code §69.341(b) (recovery of gas utilities' gas supply realignment costs and stranded costs resulting from Federal Energy Regulatory Commission Order 636); and 52 Pa. Code §69.353 (recovery of water utilities' principal and interest due on PennVEST obligations). Petition at 20-21.

Answers were filed by the Office of Trial Staff (OTS) (Answer filed April 4, 1996), the Office of Small Business Advocate (OSBA) (Answer filed May 3, 1996), the Pennsylvania-American Water Large Users Group (PAWLUG) (Answer filed May 6, 1996), and the Office of Consumer Advocate (OCA) (Comments and testimony filed May 6, 1996). Protests to the petition were also filed by individual customers.

In its answer, the OTS requests that the Commission deny the company's petition based on legal and technical grounds. With regard to the legal objections, the OTS argues that, since the facilities are "new" facilities, the company is attempting to circumvent a base rate review through the use of a surcharge, in violation of the Court's decision in PIEC.

The OSBA's answer did not submit legal arguments opposing the implementation of the DSIC. Rather, the OSBA has requested that the Commission conduct a thorough investigation regarding the reasonableness and lawfulness of the proposed tariff supplement as they affect the company's various customer classes.

In its comments, the OCA argues against the implementation of the DSIC alleging that the company does not need the DSIC mechanism and that implementation of a DSIC mechanism would provide in excess of a fair return to the company. With regard to legal arguments, OCA challenges the legality of the surcharge based upon the same arguments outlined in OTS' answer based on its interpretation of Section 1307(a) and the PIEC decision.

On April 16 and May 30, 1996, the company filed replies with the Commission addressing the comments raised in the answers filed by OTS, OSBA, PAWLUG and OCA. In PAWC's reply to the various parties concerning the legality of the DSIC, the company continued to support the legality of a surcharge under Section 1307(a) of the Public Utility Code and the Commonwealth Court decision in PIEC, and supplied rebuttal arguments in support of its need for the DSIC and the legality of its proposal.

**II. Discussion**

At the outset of this discussion regarding the PAWC petition, we believe it necessary to clarify the Commission's view of the scope of this proceeding and the nature of the PAWC proposal. Because the PAWC petition requests regulatory approval to file and implement a certain type of automatic adjustment clause, we will not address, in this order, the specific factual issues that may be raised by the proposed tariff supplement and sample DSIC rate calculations submitted as Exhibits A and B to the petition. The Commission views these exhibits as no more than an illustration of how the company's proposal would operate. Indeed, as explained below, the specific tariff supplement proposed by PAWC will not be approved by this order.

Therefore, to the extent that parties have objections and/or complaints to the rates to be charged by means of an automatic adjustment clause that provides for the recovery of a water company's infrastructure improvement costs, those objections and/or complaints would be appropriately addressed to an actual PAWC tariff filing that contains specific rates to be charged to consumers based on specific distribution system improvement expenditures. A Section 701 complaint would be the appropriate procedural vehicle to challenge such a tariff filing and, provided that factual issues are raised, the filing of such a complaint will entitle the complainant to a hearing before an administrative law judge and an adjudication of the complaint.

Thus, the key issues raised by the PAWC petition, and to be resolved in this order, are generic threshold issues regarding (1) the legality of the type of automatic adjustment clause proposed by the company and (2) the appropriate general structure of such an automatic adjustment clause that conforms to the requirement of the statute and Pennsylvania case law. In other words, this proceeding will address the legal issue concerning the adoption of the surcharge pursuant to Section 1307(a) of the Code. In addition, the Commission will outline the general parameters of a surcharge mechanism that meets the requirement of the statute, that is consistent with the case law, that has adequate safeguards to protect consumers' interests and, therefore, constitutes a surcharge that is likely to receive regulatory approval when filed.

To begin with, we applaud companies who present this Commission with innovative ideas to address recurring problems for their respective industries. In the water industry,

companies are faced with the dual tasks of improving the quality of the water delivered to customers due to the new mandates of the SDWA and other governmental requirements and, at the same time, maintaining an aging water utility infrastructure. We recognize that, in recent years, PAWC and other Pennsylvania water companies have been required to make significant investments in new utility plant for projects such as: the filtration of surface water supplies; the replacement of aging water distribution plant; and, the implementation of meter replacement programs. In addition, water companies face the daunting challenge of rehabilitating their existing distribution infrastructure before the property reaches the end of its service life to avoid serious public health and safety risks.

In the Commission's judgement, the establishment of a DSIC along the lines proposed by PAWC can substantially aid the water company in meeting these challenges on behalf of the water consuming public. We agree with the company that the establishment of a DSIC would enable the company to address, in an orderly and comprehensive manner, the problems presented by its aging water distribution system, and would have a direct and positive effect upon water quality, water pressure and service reliability. For these reasons, we endorse the concept of using an automatic adjustment clause to address this regulatory problem for the water industry in Pennsylvania and, in particular, the type of DSIC proposed by PAWC.

A. Legal Issues

In Pennsylvania, utility costs are recovered from customers through Section 1308 base rates and through Section 1307 automatic adjustment clauses. The purpose of a Section 1307

automatic adjustment clause is to provide an automatic mechanism enabling utilities to recover specific costs not covered by general rates. Allegheny Ludlum Steel Corporation. v. Pa. P.U.C., 501 Pa. 71, 75 n.3, 459 A.2d 1218, 1220 n.3 (1983). Moreover, Section 1307(e), 66 Pa. C.S. §1307(e), provides that the automatic adjustment clause procedures shall include an annual report detailing the revenues collected and the expenses incurred under the automatic adjustment clause, followed by a public hearing to reconcile the amounts and to determine any refunds owed to customers or additional recovery due from customers.

Until recently, an automatic adjustment clause has usually been applied only to gas and electric companies. However, the Commission has provided for the recovery of capital costs in at least one instance to date, i.e., for PECO Energy's costs to convert oil-fired units to units which burn natural gas. Philadelphia Electric Co. ECR No. 3, Docket No. M-00920312 (Order adopted April 1, 1993). The Commission has also adopted a policy statement which encourages water companies to seek Section 1307(a) cost recovery for their PENNVEST debt costs, 52 Pa. Code §69.361, and policy statements approving Section 1307 cost recovery for certain FERC Order 636 stranded costs, 52 Pa. Code §69.341(b)(4), and electric utility coal uprating costs, 52 Pa. Code §57.124(a). Moreover, since 1970, the Commission has authorized all utilities to use an automatic adjustment clause mechanism to recover certain incremental changes in state tax rates. 52 Pa. Code §69.44.

Pennsylvania case law regarding the permissible scope of Section 1307 cost recovery, while not extensive, supports a broad interpretation of that section. In National Fuel Gas Distribution Corp. v. Pa. P.U.C., 473 A.2d 1109, 1121 (Pa. Cmwlth. 1984), the

Commonwealth Court held that the purpose of Section 1307 of the Code is to permit reflection in customer charges of changes in one component of a utility's cost of providing public service without the necessity of the "broad, costly and time-consuming inquiry" required in a Section 1308 base rate case. Moreover, under the 1995 PIEC decision, the Commonwealth Court adopted the Commission's legal position that its use of Section 1307 was not limited to fuel and purchased power costs. At the same time, the Commonwealth Court cautioned that Section 1307 should have limited application and should not override the traditional ratemaking process. PIEC at 1349. In determining whether DSM costs could be recovered through the Section 1307 mechanism, the Court wrote:

> Although we agree that Section 1307 should have limited application and the PUC should not use it to disassemble the traditional rate-making process, the General Assembly did not limit the allowance of automatic adjustment to only fuel costs and taxes which are generally beyond the control of the utility. Instead, the General Assembly specifically allowed the recovery of fuel costs and also allowed the PUC or the utilities to initiate the automatic adjustment of costs within specific procedures...In this case, Section 1319 of the Code specifically states that all prudent and reasonable costs should be recovered and sets forth requirements that the proposed programs be determined to be "prudent and cost-effective" by the PUC (or the Bureau of Conservation, Economics and Energy Planning as designated by the PUC), before any costs may be recovered through the surcharge mechanism.

PIEC at 1349 (emphasis added). The Court then concluded that the recovery of DSM costs under Section 1307 was lawful because the language of Section 1307 gives the Commission discretion to establish automatic adjustment clauses for the recovery of prudently incurred

costs, and because in Section 1319 the legislature specifically identified and provided for the recovery of prudent and reasonable costs for developing DSM programs.

Clearly, the Court in PIEC recognized the importance of the statute (Section 1319) in providing for the recovery of development costs of the DSM programs via Section 1307. However, the Court also recognized that the language of Section 1307 is not limited to a narrow set of costs (as advocated by the industrials), that whether the costs at issue should be recovered via an automatic adjustment clause is a matter of Commission discretion, and that the court "is not free to substitute its discretion for the discretion properly exercised by the PUC in establishing the surcharge method." PIEC at 1349.

Turning to the PAWC proposal to file and implement an automatic adjustment clause to recover its distribution system improvement costs, we find that the proposal is appropriately limited and narrowly tailored to recover a specific category of utility costs - the incremental fixed costs (depreciation and pre-tax return) associated with non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service between base rate cases. Recovery of this narrow set of costs is clearly permitted under Section 1307 (a) (which has no cost category limitation in its language) and Pennsylvania case law; and, in the Commission's judgment, this proposal is in no way a mechanism to "disassemble" the traditional ratemaking process for several reasons: first, the DSIC is designed to identify and recover the distribution system improvement costs incurred between rate cases; second, the costs to be recovered represent a narrow subset of the company's total cost of service; and third, the DSIC amount will be capped at a relatively

low level to prevent any long-term evasion of a base rate review of these plant costs. Indeed, the company's proposal recognizes that there will be a full review of these costs in a subsequent Section 1308 base rate proceeding. We also note that the DSIC is designed to reflect only the costs of the eligible plant additions that are actually placed in service during the 3-month periods ending one month prior to the effective date of each surcharge update; this key provision serves to avoid any potential violation of Section 1315 and this state's long-standing "used and useful" rule.

Additionally, we find that Sections 1307(d) and (e) provide broad auditing powers to the Commission and a formal reconciliation mechanism to carefully monitor the operation of such a surcharge. While admittedly Section 1307(d) is addressed to fuel cost adjustment audits, we do not view the Commission's auditing power over automatic adjustment clauses as limited to only fuel costs, given the broad auditing and investigative powers granted to the Commission via Sections 504, 505, 506, and 516 of the Public Utility Code. 66 Pa. C. S. §§504, 505, 506, 516. Nor would we be likely to approve a utility's request for approval of an automatic adjustment clause in the absence of its complete agreement that the Commission has such auditing powers. Moreover, Section 1307(e) provides for a mandatory annual reconciliation report regarding the revenues and expenses recovered via an automatic adjustment clause and a "public hearing on the substance of the report and any matters pertaining to the use by such public utility" of the automatic adjustment clause. As such, the costs to be recovered via the company's DSIC proposal will be subject to the Commission's auditing powers, an annual reconciliation report and public hearings.

B. General Tariff Parameters

The basic elements of a tariff supplement to implement a lawful DSIC mechanism include a statement of purpose and description of eligible property, a specification of its effective date and the dates of its subsequent quarterly updates, details regarding the computation methodology, and appropriate consumer safeguards. The proposed tariff supplement included with the PAWC petition, as Exhibit A, has no such details. Therefore, in order to provide guidance to PAWC and any other water utility that may need to implement a DSIC, the Commission has developed sample tariff language that, if used in a water utility's Section 1307 proposed tariff supplement, is likely to receive the Commission's approval. The sample tariff language is contained in Attachment A to this order.

A properly designed tariff supplement to establish a DSIC that meets the requirement of Section 1307 and contains adequate consumer safeguards should include the following features:

- specification of the eligible plant accounts by type and account number;
- elimination from eligibility of (a) the costs of extending facilities to serve new customers[1] and (b) the costs of projects funded by PENNVEST loans;

[1] For purposes of the DSIC surcharge, the existing customers of a newly-acquired water company are not "new customers" and, thus, the replacement of aging water distribution facilites by the acquiring water utility in order to maintain safe, reliable and adequate service to such customers would be eligible for DSIC recovery.

- include recovery of main extensions installed to eliminate dead ends and to implement solutions to regional water supply problems that have been documented as presenting a significant health and safety concern to existing customers;
- provision of a prospective January 1, 1997 effective date for the tariff supplement and the property eligible for the initial filing;
- if more than 2 years have elapsed since the utility's last base rate case, use of the equity return rate determined by staff and specified in the latest Quarterly Earnings Report released by the Commission;
- greater specification of the depreciation and pretax return elements in the formula to calculate the DSIC;
- added provision to provide interest to consumers for any over recoveries during operation of the DSIC; and
- provision for customer notice of any DSIC changes.

Thus, use of the sample tariff language will fully explain the DSIC computation, including a listing of DSIC eligible property and related account numbers, so that in future years the purpose and intent of the DSIC surcharge will be apparent from reading only the tariff supplement. Additionally, the inclusion of plant account numbers and descriptions of property eligible for DSIC cost recovery parallels the format used for other Section 1307 surcharges, such as the ECR for electric utilities, the GCR for gas distribution utilities and the SCR for steam heat companies.

With these key changes to PAWC's proposal, the eligible property, filing dates, calculation parameters, and consumer safeguards will be clearly specified. Moreover, we note here that the provisions (1) for resetting the DSIC to zero if the company's rate of return exceeds its allowable rate of return, and (2) for resetting the DSIC to zero as of the effective date of new Section 1308 base rates that provide for prospective recovery of the eligible plant costs both serve as effective and reliable rate mechanisms to insure that the DSIC automatic adjustment clause will not produce rates in excess of a fair return to the utility, as required by Section 1307(a). We also note that the provision of a 5% of billed revenues cap on the maximum amount of any DSIC insures that the surcharge mechanism will not evade the Section 1308 base rate process and its intensive top-to-bottom review of all company revenue, expense, rate base and return claims. See Attachment A, p.4. In other words, the 5% cap will insure that the surcharge will not allow the company to avoid a base rate review of the eligible property in perpetuity.

Accordingly, although we are denying the PAWC petition to the extent that it requests permission to file and implement a Section 1307(a) tariff supplement to implement a surcharge as set forth in its Exhibit A, we invite the company to file a new and more detailed tariff supplement consistent with the parameters outlined in the sample tariff language set forth in Attachment A to this order. The sample tariff language in Attachment A is identical to that recommended for the Philadelphia Suburban Water Company at Docket No. P-00961036 which has also requested permission to establish a DSIC surcharge.

As with other Section 1307 tariff filings, the new tariff supplement should provide for a notice period of no less than 60 days to allow sufficient time for staff review of the proposed tariff supplement and its initial rates for consistency with the sample tariff language and for accuracy of the plant account, depreciation, pre-tax return and other elements of the DSIC calculation. If recommended for approval by staff and formally approved by the Commission, the tariff supplement and initial rates to implement the DSIC will be permitted to go into effect, subject to the outcome of any timely filed complaints. Subsequent quarterly updates, however, may be filed on 10 days notice as originally proposed by the company.

**THEREFORE,**

**IT IS ORDERED:**

1. That the petition filed by the Pennsylvania American Water Company (PAWC) to file and implement a Section 1307(a) automatic adjustment clause tariff that would establish a Distribution System Improvement Charge (DSIC) is hereby approved in part and denied in part consistent with this order.

2. That all protests, answers and other objections filed with respect to the PAWC petition are hereby granted in part and denied in part consistent with this order.

3. That any complaints regarding the rates to be charged pursuant to a DSIC tariff supplement may be filed if and when PAWC files a tariff supplement with specific rates in accordance with the tariff parameters outlined by this order.

4. That the parameters set forth in the Appendix A are hereby adopted to serve as sample tariff language to be implemented for tariff supplements to establish a DSIC.

5. That the normal auditing, reconciliation, reporting and public hearing procedures applicable to all 1307(e) filings will likewise apply to all DSIC tariff supplements.

6. That this order be published in the Pennsylvania Bulletin.

7. That this order be served upon the Pennsylvania American Water Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the Pennsylvania-American Water Large Users Group, and the National Association of Water Companies.

BY THE COMMISSION,

John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: August 22, 1996

ORDER ENTERED: AUG 26 1996

**Attachment A**

## *Sample Tariff Language*

## DISTRIBUTION SYSTEM IMPROVEMENT CHARGE (DSIC)

### I. General Description

**Purpose:** To recover the fixed costs (depreciation and pre-tax return) of certain non-revenue producing, non-expense reducing distribution system improvement projects completed and placed in service and to be recorded in the individual accounts, as noted below, between base rate cases and to provide the Company with the resources to accelerate the replacement of aging water distribution infrastructure, to comply with evolving regulatory requirements imposed by the Safe Drinking Water Act and to develop and implement solutions to regional water supply problems. The costs of extending facilities to serve new customers are not recoverable through the DSIC. Also, Company projects receiving PENNVEST funding are not DSIC-eligible property.

**Eligible Property:** The DSIC-eligible property will consist of the following:

- services (account 323), meters (account 324) and hydrants (account 325) installed as in-kind replacements for customers;
- mains and valves (account 322) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or upgraded to meet Chapter 65 regulations of Title 52;
- main extensions (account 322) installed to eliminate dead ends and to implement solutions to regional water supply problems that have been documented as presenting a significant health and safety concern for customers currently receiving service from the Company or the acquired Company;
- main cleaning and relining (account 322) projects; and
- unreimbursed funds related to capital projects to relocate Company facilities due to highway relocations.

**Effective Date:** The DSIC will become effective for bills rendered on and after January 1,1997.

## II. Computation of the DSIC

**Calculation:** The initial charge, effective January 1, 1997, shall be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Company's rate base and will have been placed in service between September 1, 1996, and November 30,1996. Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

| Effective Date of Change | Date To Which DSIC-Eligible Plant Addition Reflected |
|---|---|
| April 1 | February 28 |
| July 1 | May 30 |
| October 1 | August 31 |
| January 1 | November 30 |

The fixed costs of eligible distribution system improvement projects will consist of depreciation and pre-tax return, calculated as follows:.

**Depreciation:** The depreciation expense will be calculated by applying to the original cost of DSIC-eligible property the annual accrual rates employed in the Company's last base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded.

**Pre-tax return:** The pre-tax return will be calculated using the state and federal income tax rates, the Company's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day of the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Company's last fully-litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission Staff in the latest Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission.

**DISC Surcharge Amount:** The charge will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer under the Company's otherwise applicable rates and charges, excluding amounts billed for public fire protection service and the State Tax Adjustment Surcharge (STAS). To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Company's projected revenue for sales of water for the quarterly period during which the charge will be collected, exclusive of revenues from public fire protection service and the STAS.

**Formula:** The formula for calculation of the DISC surcharge is as follows:

$$DSIC = \frac{(DSI \times PTRR) + Dep + e}{PQR}$$

***Where:***

DSI = the original cost of eligible distribution system improvement projects.

PTRR = the pre-tax return rate applicable to eligible distribution system improvement projects.

Dep = Depreciation expense related to eligible distribution system improvement projects.

e = the amount calculated under the annual reconciliation feature as described below.

PQR = Projected quarterly revenue including any revenue from acquired companies that are now being charged the rates of the acquiring company.

**Quarterly updates:** Supporting data for each quarterly update will be filed with the Commission and served upon the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the update.

## III. Safeguards

**Cap:** The DSIC will be capped at 5% of the amount billed to customers under otherwise applicable rates and charges.

**Audit/Reconciliation:** The DSIC will be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a reconciliation period consisting of the 12 months ending December 31 of each year. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307(e), over a one year period commencing on April 1 of each year. If DSIC revenues exceed DSIC-eligible costs, such overcollections will be refunded with interest. Interest on the overcollections will be calculated at the residential mortgage lending specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P. S. sec.101, et seq.) and will be refunded in the same manner as an overcollection.

**New Base Rates:** The charge will be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs that had theretofore been recovered under the DSIC.. Thereafter, only the fixed costs of new eligible plant additions, that have not previously been reflected in the Company's rate base, would be reflected in the quarterly updates of the DSIC.

**Earning Reports:** The charge will also be reset at zero if, in any quarter, data filed with the Commission in the Company's then most recent Annual or Quarterly Earnings reports show that the Company will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC as described in the Pre-tax return section.

**Customer Notice:** Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.

FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 208

## 92ND GENERAL ASSEMBLY

0941S.14T 2003

## AN ACT

To repeal sections 91.030, 386.050, 386.210, 386.756, 392.200, 393.110, and 393.310, RSMo, and to enact in lieu thereof sixteen new sections relating to the public service commission, with an emergency clause for certain sections.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 91.030, 386.050, 386.210, 386.756, 392.200, 393.110, and 393.310, RSMo, are repealed and sixteen new sections enacted in lieu thereof, to be known as sections 91.026, 91.030, 386.050, 386.135, 386.210, 386.756, 392.200, 393.110, 393.310, 393.1000, 393.1003, 393.1006, 393.1009, 393.1012, 393.1015, and 1, to read as follows:

**91.026. 1. As used in this section, the following terms mean:**

**(1) "Commission", the Missouri public service commission;**

**(2) "Aluminum smelting facility", a facility whose primary industry is the smelting of aluminum and primary metals, Standard Industrial Classification Code 3334, is located in a county of the second classification, which has used over three million megawatt hours of electricity during a calendar year, and has had electrical service provided to said facility in the past, in part or whole, by a municipally owned utility and, in part or whole, by an electric generating cooperative owned by rural electric cooperatives;**

**(3) "Delivery services", transmission, distribution, or metering of electric power and energy or services ancillary thereto or related services;**

**(4) "Municipally owned utility", a utility as defined in subdivision (1) of subsection 1 of section 91.025;**

**(5) "Local electric service utility", an electrical corporation engaged in the furnishing of local electric service to consumers under a certificate of convenience and necessity issued by the commission,**

any municipal electric distribution system or electric cooperative.

2. Notwithstanding any provisions of law to the contrary, any aluminum smelting facility shall have the right to purchase and contract to purchase electric power and energy and delivery services from any provider, wherever found or located, at whatever rates or charges as contracted for, and such periods or times as is needed or necessary or convenient for the operation of such aluminum smelting facility and for no other purpose, notwithstanding any past circumstances of supply. Any aluminum smelting facility purchasing or contracting to purchase electric power and energy pursuant to this section shall not resell such electric power and energy to any party except the original providers of such electric power and energy.

3. Notwithstanding the provisions of section 91.025, section 393.106, RSMo, and section 394.315, RSMo, to the contrary, any provider of such electric power and energy and delivery services, whether or not otherwise under Missouri regulatory jurisdiction, shall have the right to transact for and sell electric power and energy and delivery services to an aluminum smelting facility. Any transactions or contracts pursuant to this section for electric power and energy and delivery services shall not be subject to the jurisdiction of the commission with regard to the determination of rates.

4. When current electric power and energy is being supplied in part or in whole by a municipally owned utility and in part or whole by an electric generating cooperative owned by rural electric cooperatives and not under any contract authorized pursuant to this section, a replacement contract pursuant to the provisions of subsections 2 and 3 of this section shall provide for all of the electric power and energy and delivery services requirements of the aluminum smelter and shall meet the following criteria:

(1) The aluminum smelting facility's change of supplier shall have no negative financial impact on any past supplier or suppliers or to other electricity customers of such supplier or suppliers;

(2) The supply arrangements made by the aluminum smelting facility when operated in coordination with the local electric infrastructure shall not reduce the reliability of service to other customers or the safety of any person;

(3) The aluminum smelting facility's change of electric supplier shall not cause a reduction in tax revenue to the state of Missouri or any political subdivision;

(4) No billing or metering functions of any municipally owned utility will be changed or affected as a result of a change of electric supplier by such aluminum smelting facility.

5. No local electric service utility provider of electric power and energy or delivery services shall have any obligation to supply or deliver backup, peaking or emergency power to a aluminum smelting facility exercising its rights under this section, nor liability for inability or failure to provide such power, except as may be established by written contract.

6. Once an aluminum smelting facility has purchased electric power pursuant to its rights pursuant to this section, no past supplier of energy and related services shall have any obligation to provide electric power and energy and delivery services to such aluminum smelting facility except as

**may be established by written contract.**

**7. The provisions of this section recognize highly unique circumstances of aluminum smelting facilities and are not to be interpreted as condoning or conceding the suitability of retail electric restructuring for any customer or class of customers in the state of Missouri.**

91.030. Any city, town or village in this state, having authority to maintain and operate an electric light and power plant, may procure electric current **and ancillary services** for that purpose from any other city, owning and operating such plant, **or other lawful supplier** and to that end may enter into a contract therefor with such city **or other supplier** having such plant **for such period and upon such terms as may be agreed by the contracting parties solely on the approval by the governing board or council of such municipality owned or operated electric power system or by its duly authorized representative without further regulatory or public approval, notwithstanding any provisions of law to the contrary.**

386.050. **1.** The commission shall consist of five members who shall be appointed by the governor, with the advice and consent of the senate, and one of whom shall be designated by the governor to be [chairman] **chair** of [said] **the** commission. Each commissioner, at the time of [his] **the commissioner's** appointment and qualification, shall be a resident of the state of Missouri, and shall have resided in [said] **the** state for a period of at least five years next preceding [his] **the** appointment and qualification, and [he] shall also be a qualified voter therein and not less than twenty-five years of age. Upon the expiration of each of the terms of office of the first commissioners, the term of office of each commissioner thereafter appointed shall be six years from the time of [his] **the commissioner's** appointment and qualification and until his successor shall qualify. Vacancies in [said] **the** commission shall be filled by the governor for the unexpired term.

**386.135. 1. The commission shall have an independent technical advisory staff of up to six full time employees. The advisory staff shall have expertise in accounting, economics, finance, engineering/utility operations, law, or public policy.**

**2. In addition, each commissioner shall also have the authority to retain one personal advisor, who shall be deemed a member of the technical advisory staff. The personal advisors will serve at the pleasure of the individual commissioner whom they serve and shall possess expertise in one or more of the following fields: accounting, economics, finance, engineering/utility operations, law, or public policy.**

**3. The commission shall only hire technical advisory staff pursuant to subsections 1 and 2 of this section if there is a corresponding elimination in comparable staff positions for commission staff to offset the hiring of such technical advisory staff on a cost neutral basis. Such technical advisory staff shall be hired on or before July 1, 2005.**

**4. It shall be the duty of the technical advisory staff to render advice and assistance to the commissioners and the commission's hearing officers on technical matters within their respective areas of expertise that may arise during the course of proceedings before the commission.**

**5. The technical advisory staff shall also update the commission and the commission's hearing officers periodically on developments and trends in public utility regulation, including updates**

**comparing the use, nature, and effect of various regulatory practices and procedures as employed by the commission and public utility commissions in other jurisdictions.**

**6. Each member of the technical advisory staff shall be subject to any applicable ex parte or conflict of interest requirements in the same manner and to the same degree as any commissioner, provided that neither any person regulated by, appearing before, or employed by the commission shall be permitted to offer such member a different appointment or position during that member's tenure on the technical advisory staff.**

**7. No employee of a company or corporation regulated by the public service commission, no employee of the office of public counsel or the public counsel, and no staff members of either the utility operations division or utility services division, who, were an employee or staff member on, during the two years immediately preceding, or anytime after August 28, 2003, may be a member of the commission's technical advisory staff for two years following the termination of their employment with the corporation, office of public counsel or commission staff member.**

**8. The technical advisory staff shall never be a party to any case before the commission.**

386.210. 1. The commission may confer in person, or by correspondence, by attending conventions, or in any other way, with the members of **the public,** any public utility or similar commission of **this and** other states and the United States of America, or any official, agency or instrumentality thereof, on any matter relating to the performance of its duties.

**2. Such communications may address any issue that at the time of such communication is not the subject of a case that has been filed with the commission.**

**3. Such communications may also address substantive or procedural matters that are the subject of a pending filing or case in which no evidentiary hearing has been scheduled, provided that the communication:**

**(1) Is made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision;**

**(2) Is made at a forum where representatives of the public utility affected thereby, the office of public counsel, and any other party to the case are present; or**

**(3) If made outside such agenda meeting or forum, is subsequently disclosed to the public utility, the office of the public counsel, and any other party to the case in accordance with the following procedure:**

**(a) If the communication is written, the person or party making the communication shall no later than the next business day following the communication, file a copy of the written communication in the official case file of the pending filing or case and serve it upon all parties of record;**

**(b) If the communication is oral, the party making the oral communication shall no later than the next business day following the communication file a memorandum in the official case file of the pending case disclosing the communication and serve such memorandum on all parties of record. The memorandum must contain a summary of the substance of the communication and not merely a listing**

**of the subjects covered.**

**4. Nothing in this section or any other provision of law shall be construed as imposing any limitation on the free exchange of ideas, views, and information between any person and the commission or any commissioner, provided that such communications relate to matters of general regulatory policy and do not address the merits of the specific facts, evidence, claims, or positions presented or taken in a pending case unless such communications comply with the provisions of subsection 3 of this section.**

**5. The commission and any commissioner may also advise any member of the general assembly or other governmental official of the issues or factual allegations that are the subject of a pending case, provided that the commission or commissioner does not express an opinion as to the merits of such issues or allegations, and may discuss in a public agenda meeting with parties to a case in which an evidentiary hearing has been scheduled, any procedural matter in such case or any matter relating to a unanimous stipulation or agreement resolving all of the issues in such case.**

[2.] **6.** The commission may enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof, or any public utility or similar commission of other states, that are proper, expedient, fair and equitable and in the interest of the state of Missouri and the citizens thereof, for the purpose of carrying out its duties [under] **pursuant to** section 386.250 as limited and supplemented by section 386.030 and to that end the commission may receive and disburse any contributions, grants or other financial assistance as a result of or pursuant to such agreements or contracts. Any contributions, grants or other financial assistance so received shall be deposited in the public service commission utility fund or the state highway commission fund depending upon the purposes for which they are received.

[3.] **7.** The commission may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with any railroad, public utility or similar commission, of other states or the United States of America, or any official, agency or any instrumentality thereof, except that in the holding of such investigations or hearings, or in the making of such orders, the commission shall function under agreements or contracts between states or under the concurrent power of states to regulate interstate commerce, or as an agent of the United States of America, or any official, agency or instrumentality thereof, or otherwise.

386.756. 1. Except by an affiliate, a utility may not engage in HVAC services, unless otherwise provided in subsection 7 or subsection 8 of this section.

2. No affiliate or utility contractor may use any vehicles, service tools, instruments, employees, or any other utility assets, the cost of which are recoverable in the regulated rates for utility service, to engage in HVAC services unless the utility is compensated for the use of such assets at cost to the utility.

3. A utility may not use or allow any affiliate or utility contractor to use the name of such utility to engage in HVAC services unless the utility, affiliate or utility contractor discloses, in plain view and in bold type on the same page as the name is used on all advertisements or in plain audible language during all

solicitations of such services, a disclaimer that states the services provided are not regulated by the public service commission.

4. A utility may not engage in or assist any affiliate or utility contractor in engaging in HVAC services in a manner which subsidizes the activities of such utility, affiliate or utility contractor to the extent of changing the rates or charges for the utility's regulated services above or below the rates or charges that would be in effect if the utility were not engaged in or assisting any affiliate or utility contractor in engaging in such activities.

5. Any affiliates or utility contractors engaged in HVAC services shall maintain accounts, books and records separate and distinct from the utility.

6. The provisions of this section shall apply to any affiliate or utility contractor engaged in HVAC services that is owned, controlled or under common control with a utility providing regulated utility service in this state or any other state.

7. A utility engaging in HVAC services in this state five years prior to August 28, 1998, may continue providing, to existing as well as new customers, the same type of services as those provided by the utility five years prior to August 28, 1998. **The provisions of this section only apply to the area of service which the utility was actually supplying service to on a regular basis prior to August 28, 1993. The provisions of this section shall not apply to any subsequently expanded areas of service made by a utility through either existing affiliates or subsidiaries or through affiliates or subsidiaries purchased after August 28, 1993, unless such services were being provided in the expanded area prior to August 28, 1993.**

8. The provisions of this section shall not be construed to prohibit a utility from providing emergency service, providing any service required by law or providing a program pursuant to an existing tariff, rule or order of the public service commission.

9. A utility that violates any provision of this section is guilty of a civil offense and may be subject to a civil penalty of up to twelve thousand five hundred dollars for each violation. **The attorney general may enforce the provisions of this section pursuant to any powers granted to him or her pursuant to any relevant provisions provided by Missouri statutes or the Missouri Constitution.**

**10. Any utility claiming an exemption as provided in subsection 7 of this section shall comply with all applicable state and local laws, ordinances or regulations relating to the installation or maintenance of HVAC systems including all permit requirements. A continuing pattern of failure to comply with said requirements shall provide the basis for a finding by any court of competent jurisdiction or the public service commission that the utility has waived its claim of exemption pursuant to subsection 7 of this section.**

392.200. 1. Every telecommunications company shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable. All charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for any such service or in

connection therewith or in excess of that allowed by law or by order or decision of the commission is prohibited and declared to be unlawful.

2. No telecommunications company shall directly or indirectly or by any special rate, rebate, drawback or other device or method charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions. Promotional programs for telecommunications services may be offered by telecommunications companies for periods of time so long as the offer is otherwise consistent with the provisions of this chapter and approved by the commission. Neither this subsection nor subsection 3 of this section shall be construed to prohibit an economy rate telephone service offering. This section and section 392.220 to the contrary notwithstanding, the commission is authorized to approve tariffs filed by local exchange telecommunications companies which elect to provide reduced charges for residential telecommunications connection services pursuant to the lifeline connection assistance plan as promulgated by the federal communications commission. Eligible subscribers for such connection services shall be those as defined by participating local exchange telecommunications company tariffs.

3. No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable, and different rates may be charged for the different classes of messages.

4. (1) No telecommunications company may define a telecommunications service as a different telecommunications service based on the geographic area or other market segmentation within which such telecommunications service is offered or provided, unless the telecommunications company makes application and files a tariff or tariffs which propose relief from this subsection. Any such tariff shall be subject to the provisions of sections 392.220 and 392.230 and in any hearing thereon the burden shall be on the telecommunications company to show, by clear and convincing evidence, that the definition of such service based on the geographic area or other market within which such service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

(2) It is the intent of this act to bring the benefits of competition to all customers and to ensure that incumbent and alternative local exchange telecommunications companies have the opportunity to price and market telecommunications services to all prospective customers in any geographic area in which they compete. To promote the goals of the federal Telecommunications Act of 1996, for an incumbent local exchange telecommunications company in any exchange where an alternative local exchange telecommunications company has been certified and is providing basic local telecommunications services or switched exchange access services, or for an alternative local exchange telecommunications company, the

commission shall review and approve or reject, within forty-five days of filing, tariffs for proposed different services as follows:

(a) For services proposed on an exchange-wide basis, it shall be presumed that a tariff which defines and establishes prices for a local exchange telecommunications service or exchange access service as a different telecommunications service in the geographic area, no smaller than an exchange, within which such local exchange telecommunications service or exchange access service is offered is reasonably necessary to promote the public interest and the purposes and policies of this chapter;

(b) For services proposed in a geographic area smaller than an exchange or other market segmentation within which or to whom such telecommunications service is proposed to be offered, a local exchange telecommunications company may petition the commission to define and establish a local exchange telecommunications service or exchange access service as a different local exchange telecommunications service or exchange access service. The commission shall approve such a proposal if it finds, based upon clear and convincing evidence, that such service in a smaller geographic area or such other market segmentation is in the public interest and is reasonably necessary to promote competition and the purposes of this chapter. Upon approval of such a smaller geographic area or such other market segmentation for a different service for one local exchange telecommunications company, all other local exchange telecommunications companies certified to provide service in that exchange may file a tariff to use such smaller geographic area or such other market segmentation to provide that service;

(c) For proposed different services described in paragraphs (a) and (b) of this subdivision, the local exchange telecommunications company which files a tariff to provide such service shall provide the service to all similarly situated customers, upon request in accordance with that company's approved tariff, in the exchange or geographic area smaller than an exchange or such other market segmentation for which the tariff was filed, and no price proposed for such service by an incumbent local exchange telecommunications company, other than for a competitive service, shall be lower than its long run incremental cost, as defined in section 386.020, RSMo;

(3) The commission, on its own motion or upon motion of the public counsel, may by order, after notice and hearing, define a telecommunications service offered or provided by a telecommunications company as a different telecommunications service dependent upon the geographic area or other market within which such telecommunications service is offered or provided and apply different service classifications to such service only upon a finding, based on clear and convincing evidence, that such different treatment is reasonably necessary to promote the public interest and the purposes and policies of this chapter.

5. No telecommunications company may charge a different price per minute or other unit of measure for the same, substitutable, or equivalent interexchange telecommunications service provided over the same or equivalent distance between two points without filing a tariff for the offer or provision of such service pursuant to sections 392.220 and 392.230. In any proceeding under sections 392.220 and 392.230 wherein a telecommunications company seeks to charge a different price per minute or other unit of measure for the

same, substitutable, or equivalent interexchange service, the burden shall be on the subject telecommunications company to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. The commission may modify or prohibit such charges if the subject telecommunications company fails to show that such charges are in the public interest and consistent with the provisions and purposes of this chapter. This subsection shall not apply to reasonable price discounts based on the volume of service provided, so long as such discounts are nondiscriminatory and offered under the same rates, terms, and conditions throughout a telecommunications company's certificated or service area.

6. Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.

7. The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge.

8. Customer specific pricing is authorized for dedicated, nonswitched, private line and special access services and for central office-based switching systems which substitute for customer premise, private branch exchange (PBX) services, provided such customer specific pricing shall be equally available to incumbent and alternative local exchange telecommunications companies.

9. This act shall not be construed to prohibit the commission, upon determining that it is in the public interest, from altering local exchange boundaries, provided that the incumbent local exchange telecommunications company or companies serving each exchange for which the boundaries are altered provide notice to the commission that the companies approve the alteration of exchange boundaries.

**10. Notwithstanding any other provision of this section, every telecommunications company is authorized to offer term agreements of up to five years on any of its telecommunications services.**

**11. Notwithstanding any other provision of this section, every telecommunications company is authorized to offer discounted rates or other special promotions on any of its telecommunications services to any new and/or former customers.**

393.110. **1.** Sections 393.110 to 393.285 shall apply to the manufacture and furnishing of gas for light, heat or power and the furnishing of natural gas for light, heat or power, and the generation, furnishing and transmission of electricity for light, heat or power, the supplying and distributing of water for any purpose whatsoever, and the furnishing of a sewer system for the collection, carriage, treatment or disposal of sewage for municipal, domestic or other beneficial or necessary purpose.

**2. Notwithstanding any provision in chapter 386, RSMo, or this chapter to the contrary, the public service commission shall not have jurisdiction over the rates, financing, accounting, or management of any electrical corporation which is required by its bylaws to operate on the not-for-profit cooperative business plan, with its consumers who receive service as the stockholders of such corporation, and which holds a certificate of public convenience and necessity to serve a majority of its consumer-owners in counties of the third classification as of August 28, 2003. Nothing in this section shall be construed as amending or superseding the commission's authority granted in subsection 1 of**

**section 386.310, RSMo, in section 393.106, and sections 386.800 and 394.312,RSMo.**

393.310. 1. This section shall only apply to gas corporations as defined in section 386.020, RSMo. This section shall not affect any existing laws and shall only apply to the program established pursuant to this section.

2. As used in this section, the following terms mean:

(1) "Aggregate", the combination of natural gas supply and transportation services, including storage, requirements of eligible school entities served through a Missouri gas corporation's delivery system;

(2) "Commission", the Missouri public service commission; and

(3) "Eligible school entity" shall include any seven-director, urban or metropolitan school district as defined pursuant to section 160.011, RSMo, and shall also include, one year after July 11, 2002, and thereafter, any school for elementary or secondary education situated in this state, whether a charter, private, or parochial school or school district.

3. Each Missouri gas corporation shall file with the commission, by August 1, 2002, a set of experimental tariffs applicable the first year to public school districts and applicable to all school districts, whether charter, private, public, or parochial, thereafter.

4. The tariffs required pursuant to subsection 3 of this section shall, at a minimum:

(1) Provide for the aggregate purchasing of natural gas supplies and pipeline transportation services on behalf of eligible school entities in accordance with aggregate purchasing contracts negotiated by and through a not-for-profit school association;

(2) Provide for the resale of such natural gas supplies, including related transportation service costs, to the eligible school entities at the gas corporation's cost of purchasing of such gas supplies and transportation, plus all applicable distribution costs, plus an aggregation and balancing fee to be determined by the commission, not to exceed four- tenths of one cent per therm delivered during the first year; and

(3) Not require telemetry or special metering, except for individual school meters over one hundred thousand therms annually.

5. The commission may suspend the tariff as required pursuant to subsection 3 of this section for a period ending no later than November 1, 2002, and shall approve such tariffs upon finding that implementation of the aggregation program set forth in such tariffs will not have any negative financial impact on the gas corporation, its other customers or local taxing authorities, and that the aggregation charge is sufficient to generate revenue at least equal to all incremental costs caused by the experimental aggregation program. **Except as may be mutually agreed by the gas corporation and eligible school entities and approved by the commission, such tariffs shall not require eligible school entities to be responsible for pipeline capacity charges for longer than is required by the gas corporation's tariff for large industrial or commercial basic transportation customers.**

6. The commission **shall treat the gas corporation's pipeline capacity costs for associated eligible school entities in the same manner as for large industrial or commercial basic transportation customers, which shall not be considered a negative financial impact on the gas corporation, its other**

**customers, or local taxing authorities, and the commission** may adopt by order such other procedures not inconsistent with this section which the commission determines are reasonable or necessary to administer the experimental program.

7. This section shall terminate June 30, 2005.

**393.1000. As used in sections 393.1000 to 393.1006, the following terms mean:**

**(1) " Appropriate p retax r evenues", t he r evenues n ecessary t o p roduce n et operating income equal to:**

**(a) The water corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS; and**

**(b) Recover state, federal, and local income or excise taxes applicable to such income; and**

**(c) Recover all other ISRS costs;**

**(2) "Commission", the Missouri public service commission;**

**(3) "Eligible infrastructure system replacements", water utility plant projects that:**

**(a) Replace or extend the useful life of existing infrastructure;**

**(b) Are in service and used and useful;**

**(c) Do not increase revenues by directly connecting the infrastructure replacement to new customers; and**

**(d) Were not included in the water corporation's rate base in its most recent general rate case;**

**(4) "ISRS", infrastructure system replacement surcharge;**

**(5) "ISRS costs", depreciation expenses, and property taxes that will be due within twelve months of the ISRS filing;**

**(6) "ISRS revenues", revenues produced through an ISRS, exclusive of revenues from all other rates and charges;**

**(7) "Water corporation", every corporation, company, association, joint stock company or association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water to more than ten thousand customers;**

**(8) "Water utility plant projects", may consist only of the following:**

**(a) Mains, and associated valves and hydrants, installed as replacements for existing facilities that have worn out or are in deteriorated condition;**

**(b) Main cleaning and relining projects; and**

**(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to**

**such projects have not been reimbursed to the water corporation.**

**393.1003. 1. Notwithstanding any provisions of chapter 386, RSMo, and this chapter to the contrary, as of August 28, 2003, a water corporation providing water service in a county with a charter form of government and with more than one million inhabitants may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the water corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements made in such county with a charter form of government and with more than one million inhabitants; provided that an ISRS, on an annualized basis, must produce ISRS revenues of at least one million dollars but not in excess of ten percent of the water corporation's base revenue level approved by the commission in the water corporation's most recent general rate proceeding. An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1000 to 393.1006. ISRS revenues shall be subject to refund based upon a finding and order of the commission, to the extent provided in subsections 5 and 8 of section 393.1006.**

**2. The commission shall not approve an ISRS for a water corporation in a county with a charter form of government and with more than one million inhabitants that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the water corporation has filed for or is the subject of a new general rate proceeding.**

**3. In no event shall a water corporation collect an ISRS for a period exceeding three years unless the water corporation has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.**

**393.1006. 1. (1) At the time that a water corporation files a petition with the commission seeking to establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules and its supporting documentation.**

**(2) Upon the filing of a petition, and any associated rate schedules, seeking to establish or change an ISRS, the commission shall publish notice of the filing.**

**2. (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of sections 393.1000 to 393.1006, the commission shall conduct an examination of the proposed ISRS.**

**(2) The staff of the commission may examine information of the water corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1000 to 393.1006, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or**

**ratemaking issues shall be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1000 to 393.1006.**

**(3) The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.**

**(4) If the commission finds that a petition complies with the requirements of sections 393.1000 to 393.1006, the commission shall enter an order authorizing the water corporation to impose an ISRS that is sufficient to recover appropriate pretax revenues, as determined by the commission pursuant to the provisions of sections 393.1000 to 393.1006.**

**3. A water corporation may effectuate a change in its rate pursuant to this section no more often than two times every twelve months.**

**4. In determining the appropriate pretax revenues, the commission shall consider only the following factors:**

**(1) The current state, federal, and local income or excise tax rates;**

**(2) The water corporation's actual regulatory capital structure as determined during the most recent general rate proceeding of the water corporation;**

**(3) The actual cost rates for the water corporation's debt and preferred stock as determined during the most recent general rate proceeding of the water corporation;**

**(4) The water corporation's cost of common equity as determined during the most recent general rate proceeding of the water corporation;**

**(5) The current property tax rate or rates applicable to the eligible infrastructure system replacements;**

**(6) The current depreciation rates applicable to the eligible infrastructure system replacements;**

**(7) In the event information called for in subdivisions (2), (3), and (4) is unavailable and the commission is not provided with such information on an agreed-upon basis, the commission shall refer to the testimony submitted during the most recent general rate proceeding of the water corporation and use, in lieu of any such unavailable information, the recommended capital structure, recommended cost rates for debt and preferred stock, and recommended cost of common equity that would produce the average weighted cost of capital based upon the various recommendations contained in such testimony.**

**5. (1) An ISRS shall be calculated based upon the amount of ISRS costs that are eligible for recovery during the period in which the surcharge will be in effect and upon the applicable customer class billing determinants utilized in designing the water corporation's customer rates in its most recent general rate proceeding. The commission shall, however, only allow such surcharges to apply to classes of customers receiving a benefit from the subject water utility plant projects or shall prorate the surcharge according to the benefit received by each class of customers; provided that the ISRS shall be applied in a manner consistent with the customer class cost-of-service study recognized by the**

**commission in the water corporation's most recent general rate proceeding, if applicable, and with the rate design methodology utilized to develop the water corporation's rates resulting from its most recent general rate proceeding.**

**(2) At the end of each twelve-month calendar period that an ISRS is in effect, the water corporation shall reconcile the differences between the revenues resulting from an ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustment of an ISRS.**

**6. (1) A water corporation that has implemented an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall file revised rate schedules to reset the ISRS to zero when new base rates and charges become effective for the water corporation following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's base rates subject to subsections 8 and 9 of this section eligible costs previously reflected in an ISRS.**

**(2) Upon the inclusion in a water corporation's base rates subject to subsections 8 and 9 of this section of eligible costs previously reflected in an ISRS, the water corporation shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.**

**7. A water corporation's filing of a petition to establish or change an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall not be considered a request for a general increase in the water corporation's base rates and charges.**

**8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1000 to 393.1006 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the water corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.**

**9. Nothing contained in sections 393.1000 to 393.1006 shall be construed to impair in any way the authority of the commission to review the reasonableness of the rates or charges of a water corporation, including review of the prudence of eligible infrastructure system replacements made by a water corporation, pursuant to the provisions of section 386.390 RSMo.**

**10. The commission shall have authority to promulgate rules for the implementation of sections 393.1000 to 393.1006, but only to the extent such rules are consistent with, and do not delay the implementation of, the provisions of sections 393.1000 to 393.1006. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this**

**section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.**

**393.1009. As used in sections 393.1009 to 393.1015, the following terms mean:**

**(1) " Appropriate p retax r evenues", t he r evenues n ecessary t o p roduce n et operating income equal to:**

**(a) The gas corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS; and**

**(b) Recover state, federal, and local income or excise taxes applicable to such income; and**

**(c) Recover all other ISRS costs;**

**(2) "Commission", the Missouri public service commission;**

**(3) "Eligible infrastructure system replacements", gas utility plant projects that:**

**(a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;**

**(b) Are in service and used and useful;**

**(c) Were not included in the gas corporation's rate base in its most recent general rate case; and**

**(d) Replace, or extend the useful life of an existing infrastructure;**

**(4) "Gas corporation", every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any gas plant operating for public use under privilege, license, or franchise now or hereafter granted by the state or any political subdivision, county, or municipality thereof as defined in section 386.020, RSMo;**

**(5) "Gas utility plant projects", may consist only of the following:**

**(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;**

**(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life, or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and**

**(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to**

**such projects have not been reimbursed to the gas corporation;**

**(6) "ISRS", infrastructure system replacement surcharge;**

**(7) "ISRS costs", depreciation expense and property taxes that will be due within twelve months of the ISRS filing;**

**(8) "ISRS revenues", revenues produced through an ISRS exclusive of revenues from all other rates and charges.**

**393.1012. 1. Notwithstanding any provisions of chapter 386, RSMo, and this chapter to the contrary, beginning August 28, 2003, a gas corporation providing gas service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the gas corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. The commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues below the lesser of one million dollars or one-half of one percent of the gas corporation's base revenue level approved by the commission in the gas corporation's most recent general rate proceeding. The commission may not approve an ISRS to the extent it would produce total annualized ISRS revenues exceeding ten percent of the gas corporation's base revenue level approved by the commission in the gas corporation's most recent general rate proceeding. An ISRS and any future changes thereto shall be calculated and implemented in accordance with the provisions of sections 393.1009 to 393.1015. ISRS revenues shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections 5 and 8 of section 393.1009.**

**2. The commission shall not approve an ISRS for any gas corporation that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the past three years, unless the gas corporation has filed for or is the subject of a new general rate proceeding.**

**3. In no event shall a gas corporation collect an ISRS for a period exceeding three years unless the gas corporation has filed for or is the subject of a new general rate proceeding; provided that the ISRS may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding, or until the subject general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.**

**393.1015. 1. (1) At the time that a gas corporation files a petition with the commission seeking the establish or change an ISRS, it shall submit proposed ISRS rate schedules and its supporting documentation regarding the calculation of the proposed ISRS with the petition, and shall serve the office of the public counsel with a copy of its petition, its proposed rate schedules, and its supporting documentation.**

**(2) Upon the filing of a petition, and any associated rate schedules, seeking to establish or change an ISRS, the commission shall publish notice of the filing.**

**2. (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of sections 393.1009 to 393.1015, the commission shall conduct an examination of the**

proposed ISRS.

(2) The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015.

(3) The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed.

(4) If the commission finds that a petition complies with the requirements of sections 393.1009 to 393.1015, the commission shall enter an order authorizing the corporation to impose an ISRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of sections 393.1009 to 393.1015.

3. A gas corporation may effectuate a change in its rate pursuant to the provisions of this section no more often than two times every twelve months.

4. In determining the appropriate pretax revenue, the commission shall consider only the following factors:

(1) The current state, federal, and local income tax or excise rates;

(2) T he g as c orporation's a ctual r egulatory c apital s tructure as determined during the most recent general rate proceeding of the gas corporation;

(3) The actual cost rates for the gas corporation's debt and preferred stock as determined during the most recent general rate proceeding of the gas corporation;

(4) The gas corporation's cost of common equity as determined during the most recent general rate proceeding of the gas corporation;

(5) The current property tax rate or rates applicable to the eligible infrastructure system replacements;

(6) The current depreciation rates applicable to the eligible infrastructure system replacements; and

(7) In the event information pursuant to subdivisions (2), (3), and (4) of this subsection is unavailable and the commission is not provided with such information on an agreed upon basis, the commission shall refer to the testimony submitted during the most recent general rate proceeding of the gas corporation and use, in lieu of any such unavailable information, the recommended capital structure, recommended cost rates for debt and preferred stock, and recommended cost of common equity that would produce the average weighted cost of capital based upon the various recommendations contained in such testimony.

5. (1) The monthly ISRS charge may be calculated based on a reasonable estimate of billing

**units in the period in which the charge will be in effect, which shall be conclusively established by dividing the appropriate pretax revenues by the customer numbers reported by the gas corporation in the annual report it most recently filed with the commission pursuant to subdivision (6) of section 393.140, and then further dividing this quotient by twelve. Provided, however, that the monthly ISRS may vary according to customer class and may be calculated based on customer numbers as determined during the most recent general rate proceeding of the gas corporation so long as the monthly ISRS for each customer class maintains a proportional relationship equivalent to the proportional relationship of the monthly customer charge for each customer class.**

**(2) At the end of each twelve month calendar period the ISRS is in effect, the gas corporation shall reconcile the differences between the revenues resulting from an ISRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed ISRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of an ISRS charge.**

**6. (1) A gas corporation that has implemented an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall file revised rate schedules to reset the ISRS to zero when new base rates and charges become effective for the gas corporation following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's base rates subject to subsections 8 and 9 of this section eligible costs previously reflected in an ISRS.**

**(2) Upon the inclusion in a gas corporation's base rates subject to subsections 8 and 9 of this section of eligible costs previously reflected in an ISRS, the gas corporation shall immediately thereafter reconcile any previously unreconciled ISRS revenues as necessary to ensure that revenues resulting from the ISRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.**

**7. A gas corporation's filing of a petition or change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall not be considered a request for a general increase in the gas corporation's base rates and charges.**

**8. Commission approval of a petition, and any associated rate schedules, to establish or change an ISRS pursuant to the provisions of sections 393.1009 to 393.1015 shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in an ISRS, the gas corporation shall offset its ISRS in the future as necessary to recognize and account for any such overcollections.**

**9. Nothing in this section shall be construed as limiting the authority of the commission to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding of any gas corporation.**

**10. Nothing contained in sections 393.1009 to 393.1015 shall be construed to impair in any way the authority of the commission to review the reasonableness of the rates or charges of a gas corporation, including review of the prudence of eligible infrastructure system replacements made by a gas corporation, pursuant to the provisions of section 386.390, RSMo.**

**11. The commission shall have authority to promulgate rules for the implementation of sections 393.1009 to 393.1015, but only to the extent such rules are consistent with, and do not delay the implementation of, the provisions of sections 393.1009 to 393.1015. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.**

**Section 1. A steam heating company having fewer than one hundred customers in this state may file under a small company rate procedure promulgated by the commission which shall be consistent with 4 CSR 240-3.240 by giving notice to the secretary of the commission, the public counsel, each customer, and each gas corporation or electric corporation providing utility service in the area. Any customer, gas corporation, or electric corporation responding within thirty days of the date of the notice shall be entitled to copies of all filings subsequently made in the case and may participate in any conferences or hearings therein.**

Section B. Because immediate action is necessary in order to ensure the continued operation of certain aluminum smelting facilities in this state, the enactment of section 91.026 and the repeal and reenactment of section 91.030 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section 91.026 and the repeal and reenactment of section 91.030 section A of this act shall be in full force and effect upon its passage and approval.

# Missouri-American Water Company
## Impact of ISRS vs Traditional Regulation on Residential Customers' Bills

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 |
|---|---|---|---|---|---|---|
| Investment | $ 9,000,000 | $ 15,000,000 | $ 20,000,000 | $ 25,000,000 | $ 25,000,000 | $ 25,000,000 |
| Depreciation Reserve | 250,200 | 417,000 | 556,000 | 695,000 | 695,000 | 695,000 |
| Deferred Taxes | 42,151 | 70,251 | 93,668 | 117,085 | 117,085 | 117,085 |
| Net Rate Base | 8,791,951 | 14,653,251 | 19,537,668 | 24,422,085 | 24,422,085 | 24,422,085 |
| Rate of Return | 8.59% | 8.59% | 8.59% | 8.59% | 8.59% | 8.59% |
| UOI Required | 755,229 | 1,258,714 | 1,678,286 | 2,097,857 | 2,097,857 | 2,097,857 |
| Revenue Conversion w/ Interest | 1.37356 | 1.37356 | 1.37356 | 1.37356 | 1.37356 | 1.37356 |
| Revenue Required - Investment | 1,037,349 | 1,728,913 | 2,305,219 | 2,881,523 | 2,881,523 | 2,881,523 |
| Depreciation | 250,200 | 417,000 | 556,000 | 695,000 | 695,000 | 695,000 |
| Property Taxes | 135,000 | 225,000 | 300,000 | 375,000 | 375,000 | 375,000 |
| Total Revenue Required | $ 1,422,549 | $ 2,370,913 | $ 3,161,219 | $ 3,951,523 | $ 3,951,523 | $ 3,951,523 |
| **Impact Under Traditional Regulation** | | | | | | |
| Revenue Required | $ 1,422,549 | $ 2,370,913 | $ 3,161,219 | $ 3,951,523 | $ 3,951,523 | $ 3,951,523 |
| Rate Case Expense | 750,000 | 750,000 | 750,000 | 750,000 | 750,000 | 750,000 |
| Total Revenue Required | 2,172,549 | 3,120,913 | 3,911,219 | 4,701,523 | 4,701,523 | 4,701,523 |
| Revenue / Month / Customer (1) | $ 0.43 | $ 0.62 | $ 0.77 | $ 0.93 | $ 0.93 | $ 0.93 |
| **Impact Under ISRS** | | | | | | |
| Revenue Required | $ 1,422,549 | $ 2,370,913 | $ 3,161,219 | $ 3,951,523 | $ 3,951,523 | $ 3,951,523 |
| Rate Case Expense | 250,000 | 250,000 | 250,000 | 250,000 | 250,000 | 250,000 |
| Total Revenue Required | 1,672,549 | 2,620,913 | 3,411,219 | 4,201,523 | 4,201,523 | 4,201,523 |
| Revenue / Month / Customer (1) | $ 0.33 | $ 0.52 | $ 0.67 | $ 0.83 | $ 0.83 | $ 0.83 |
| Percent Savings Under ISRS | 23.26% | 16.13% | 12.99% | 10.75% | 10.75% | 10.75% |
| Rate A and Fire Service Revenues | $ 104,524,000 | $ 104,524,000 | $ 104,524,000 | $ 104,524,000 | $ 104,524,000 | $ 104,524,000 |
| % Increase Traditional Reg | 2.08% | 2.99% | 3.74% | 4.50% | 4.50% | 4.50% |
| % Increase ISRS | 1.60% | 2.51% | 3.26% | 4.02% | 4.02% | 4.02% |
| Average Residential Bill | $ 247.29 | $ 247.29 | $ 247.29 | $ 247.29 | $ 247.29 | $ 247.29 |

**Cumulative Impact over 6 Years**

| | |
|---|---|
| **Impact Under Traditional Regulation** | |
| Revenue Required | 18,809,250 |
| Rate Case Expense | 4,500,000 |
| Total Revenue Required | 23,309,250 |
| Total Revenue Collected - 6 Years | $ 172.08 (1) |
| **Impact Under ISRS** | |
| Revenue Required | 18,809,250 |
| Rate Case Expense | 1,500,000 |
| Total Revenue Required | 20,309,250 |
| Total Revenue Collected - 6 Years | $ 146.88 (1) |
| Average Savings over 6 Years | 14.64% (1) |

(1) For Residential Water Service Customers

# KLETT ROONEY LIEBER & SCHORLING

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
240 NORTH THIRD STREET, SUITE 600
HARRISBURG, PENNSYLVANIA 17101
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John M. Quain
(717) 231-7720

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E-MAIL: jquain@klettrooney.com

April 21, 2003

The Honorable Wayne Goode
Senator - District 13
Missouri State Capitol
Room 333
Jefferson City, MO 65101

The Honorable Rex Rector
Representative – District 124
Missouri State Capitol
Room 401B
Jefferson City, MO 65101

This letter is in reference to the possible creation of an Infrastructure System Replace Surcharge (ISRS) in Missouri. During my tenure as the Chairman of the Pennsylvania Public Utility Commission, a Distribution System Improvement Charge, or DSIC was approved by the Pennsylvania General Assembly for water companies. It is my opinion that the DSIC charge as enacted and used by Pennsylvania water companies has been a benefit to Pennsylvania consumers.

An ISRS allows a water company to make necessary system upgrades and improvements outside the scope of a base rate case. The ISRS provision is particularly relevant to water companies, many of which operate on very thin cost recovery margins while faced with the task of maintaining aging infrastructure. Indeed, it is often preferable to allow an ISRS rather than add to a company's O&M financial burden by requiring it to file and prosecute a base rate case with its attendant legal and administrative costs.

Based on the cases I have observed and briefings that I received from PUC support staff as Chairman, the DSIC did not pass along unnecessary costs to ratepayers. Indeed, the system improvements made through the DSIC helped avoid the increased costs that would have been associated with infrastructure the utility would otherwise have had to allow to fall further into disrepair.

KLETT ROONEY LIEBER & SCHORLING

Additionally, during my tenure as Chairman of the Pennsylvania Public Utility Commission, there was never any assertion or evidence that implementation of the DSIC added to the costs of the agency in any significant way.

In sum, an ISRS allows a water company to make timely, critical repairs and upgrades to the infrastructure that delivers the most essential of all utility-delivered commodities.

If you have any questions in reference to this, please contact me at (717) 231-7720.

Very truly yours,

John M. Quain
For KLETT ROONEY LIEBER & SCHORLING
A PROFESSIONAL CORPORATION

JMQ/smd

# Infrastructure System Replacement Surcharge ISRS

Government mandated infrastructure replacement/relocation

**Basics**:

- The bill allows for investments resulting from **government-mandated, non-revenue producing projects** to be recouped between rate cases.

- The government-mandated projects in question include safety projects ordered by the PSC and public improvement projects such as road widenings that require gas lines to be relocated.

**Why it makes sense**:

- The costs are incurred as a result of government mandates and do not produce new revenues.

- These types of costs/investments have never been disallowed by the PSC or even seriously reviewed.

- The new charges for residential customer would total only about $3 to $4 per year. Some of these costs would be offset by fewer rate cases (which are costly to the PSC, the companies and customers).

- The PSC and Office of Public Council worked with Sen. Wayne Goode on the bill. Chair Simmons was even present for some of the discussions.

- The PSC still has ample authority to review all costs—the bill requires rate cases every three years.

- The investment must be made first, then you can recoup.

# Missouri-American Water Company
## Impact of ISRS on Rate J Customers

| | | |
|---|---|---|
| Fully Ramped-Up Infrastructure Replacement Program (1) | $ | 25,000,000 |
| Amount of Infrastructure Investment Applicable to Rate J | $ | 250,000 |
| Rate of Return on Rate Base Investment | | 8.30% |
| Required Utility Operating Income | | 20,750 |
| Revenue Conversion Factor w/ Interest Deduction | | 1.3 |
| Revenue Required on Rate Base Investment | | 26,975 |
| Depreciation at 2.5% | | 6,250 |
| Property Taxes at 1.5% | | 3,750 |
| Total Revenue Requirement | $ | 36,975 |
| Total Current Rate J Revenues | $ | 7,612,016 |
| % Impact on Rate J Class | | 0.49% |

(1) Annual level of infrastructure investment

STATE OF ILLINOIS

received
12-10-01

# ILLINOIS COMMERCE COMMISSION

Cc; P. Foran
Route copy: FLR
RDS

December 7, 2001

Re: 01-0468
**Code Part 656 - Adoption**

Dear Sir/Madam:

Enclosed is a copy of the Order entered by this Commission. Related memorandums will be available on our web site (eweb.icc.state.il.us/e-docket) in the docket number referenced above.

Sincerely,

Donna M. Caton

Donna M. Caton
Chief Clerk

Enc.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

| | | |
|---|---|---|
| **Illinois Commerce Commission On Its Own Motion** | : | |
| **Adoption of 83 Ill. Adm. Code 656.** | : | **01-0468** |

**ORDER**

By the Commission:

On October 24, 2001, the Illinois Commerce Commission ("Commission") entered an order authorizing the submission to the Joint Committee on Administrative Rules ("Joint Committee") of the second notice of the proposed adoption of 83 Ill. Adm. Code 656, "Qualifying Infrastructure Plant Surcharge." The proposed rules will implement Section 9-220.2 of the Public Utilities Act, which authorizes water and sewer utilities to impose surcharges for the cost of purchased water, the cost of purchased sewage treatment, other costs difficult to predict, and infrastructure costs independent of the utilities' revenue requirements.

The proposed rules, as reflected in the order of October 24, 2001, were submitted to the Joint Committee and were considered at its meeting of November 13, 2001. The Joint Committee issued its certification of no objection at that time, ending the second notice period. The Commission can now adopt these rules.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the parties hereto and the subject matter herein;

(2) the recitals of fact set forth in the prefatory portion of this order are supported by the record and are hereby adopted as findings of fact;

(3) the proposed rules at 83 Ill. Adm. Code 656, as reflected in the attached Appendix, should be adopted with an effective date of December 19, 2001;

(4) the Notice of Adopted Rules should be submitted to the Secretary of State, pursuant to Section 5-65 of the Illinois Administrative Procedure Act.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the proposed rules at 83 Ill. Adm. Code 656, as reflected in the attached Appendix, are adopted with an effective date of December 19, 2001.

IT IS FURTHER ORDERED that the Notice of Adopted Rules be submitted to the Secretary of State pursuant to Section 5-65 of the Illinois Administrative Procedure Act.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 5th day of December, 2001.

(SIGNED) RICHARD L. MATHIAS

Chairman

(S E A L)

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER e: WATER AND SEWER UTILITIES

# PART 656
# QUALIFYING INFRASTRUCTURE PLANT SURCHARGE

Section


AUTHORITY: Implementing Section 9-220.2 and authorized by Section 10-101 of the Public Utilities Act [220 ILCS 5/9-220.2 and 10-101].

SOURCE: Adopted at ___ Ill. Reg. _____, effective December 19, 2001.

## Section 656.10 Applicability

a) The qualifying infrastructure plant surcharge (QIP surcharge) shall be applied to water/sewer bills of customers of water/sewer utilities in the rate zone where qualifying infrastructure plant (QIP) is installed by utilities having an effective QIP surcharge rider and information sheet in effect and on file with the Illinois Commerce Commission (Commission).

b) The purpose of the QIP surcharge is to recover a return on, and depreciation expense related to, the utility's investment in QIP as described in Section 656.40 of this Part. The QIP surcharge rider is authorized by Section 9-220.2 of the Public Utilities Act [220 ILCS 5/9-220.2].

c) Each QIP surcharge percentage shall be determined in accordance with Section 656.60 of this Part.

## Section 656.20 Definitions

"Act" means the Public Utilities Act [220 ILCS 5].

"Information sheet" means a tariff sheet filed in accordance with this Part to initiate or modify a QIP surcharge percentage.

"Operation year" means the calendar year (or portion thereof) during which a QIP surcharge percentage is applied to customer bills.

"QIP base rate revenues" mean revenues recorded in the certain accounts and their sub-accounts described in 83 Ill. Adm. Code 605, the Uniform System of Accounts for Water Utilities, and 83 Ill. Adm. Code 650, the Uniform System of Accounts for Sewer Utilities. For water utilities, QIP base rate revenues shall include revenues recorded in accounts 460, 461, 462, 464, 465, 466, and 469 as described in 83 Ill. Adm. Code 605. For sewer utilities, QIP base rate revenues shall include revenues recorded in accounts 521, 522, 523, 524, and 530 as described in 83 Ill. Adm. Code 650. QIP base rate revenues, however, shall not include revenues resulting from the QIP surcharge or any revenues attributable to Purchased Water and Sewage Treatment Surcharges developed pursuant to 83 Ill. Adm. Code 655.

"QIP surcharge percentage" is the percentage determined in accordance with Section 656.60 of this Part for filing in an information sheet.

"QIP-related costs" or "QIP costs" mean costs that are recoverable through the QIP surcharge percentage as determined in accordance with Sections 656.50 and 656.60 of this Part.

"Qualifying infrastructure plant surcharge" or "QIP surcharge" means the amount added to a customer bill when the QIP surcharge percentage is applied in accordance with Section 656.60(a) of this Part.

"Qualifying infrastructure plant" means certain non-revenue producing eligible plant that is not reflected in the rate base used to establish the utility's base rates and is consistent with the terms of Section 656.40 of this Part. Non-revenue producing plant is plant that is not constructed or installed for the purpose of serving a new customer.

"Rate zone" means the entire service area to which a particular base rate applies, but does not include areas that have different base rates even though such areas may be served by the utility.

"Reconciliation year" means the calendar year period for which actual QIP costs and revenues associated with the QIP surcharge are to be reconciled.

"Test year" means the test year period used by the utility in its last rate case as defined in 83 Ill. Adm. Code 285.150.

Section 656.30 General Requirements

a) The QIP surcharge shall be capped at 5% of the QIP base rate revenues billed to customers. The QIP surcharge shall not be applied to any add-on taxes, to any revenues attributable to the Purchased Water and Sewage Treatment Surcharges developed pursuant to 83 Ill. Adm. Code 655, or to any other revenues not recorded in a QIP base rate revenues account as described in Section 656.20 of this Part.

b) On the effective date of new base rates that provide for the recovery of the costs that had previously been recovered under the QIP surcharge rider, the QIP surcharge percentage for the applicable rate zone shall be reset to zero.

c) The utility shall provide notice of the QIP surcharge rider and subsequent filings and billings as follows:

1) The utility shall maintain and keep open for public inspection a copy of each filing of a QIP surcharge rider and subsequent information sheets and shall post public notice in each office of the utility in accordance with 83 Ill. Adm. Code 255.20(a).

2) For the initial filing of a QIP surcharge rider, each utility, regardless of size, shall provide notice by newspaper publication in accordance with 83 Ill. Adm. Code 255.20(f)(1) and by mailing a notice of the filing to each of its customers.

3) In connection with the initial billing of each change in a QIP surcharge percentage as specified in an information sheet (other than a change to a zero percentage), including information sheets resulting from the annual reconciliation and Commission-ordered adjustments, the utility shall provide an explanation of the QIP surcharge to be stated on, or included with, the initial billing of the new QIP surcharge percentage.

4) Except as noted above, no other notice of the filing or billing of the QIP surcharge rider or an information sheet shall be required, except as may be provided by law or by Order of the Commission.

d) The QIP surcharge shall be presented as a separate line item on customer bills.

e) The revenues resulting from each QIP surcharge rider shall be recorded in a separate revenue subaccount for each rate zone.

Section 656.40 Qualifying Infrastructure Plant

a) To be classified as QIP, the plant additions must meet the following criteria:

1) The plant additions must be replacements of existing plant items from the accounts listed in subsections (b) and (c);

2) Such replacements must be non-revenue producing;

3) Such replacements are installed to replace facilities that are worn out or deteriorated or to replace facilities that are obsolete and at the end of their useful service lives due to a change in law or a change in the regulations of a governmental agency;

4) Such replacements are installed after the conclusion of the test year in the utility's latest rate case; and

5) Such replacements were not included in the calculation of the rate base in the utility's last rate case.

b) For water utilities, the plant additions shall include items from the following accounts, pursuant to 83 Ill. Adm. Code 605:

1) Account 331, Transmission and Distribution Mains;

2) Account 333, Services;

3) Account 334, Meters and Meter Installations; and

4) Account 335, Hydrants.

c) For sewer utilities, the plant additions shall include items from the following accounts, pursuant to 83 Ill. Adm. Code 650:

1) Account 360, Collecting Sewers - Force;

2) Account 361, Collecting Sewers - Gravity (including costs associated with manholes); and

3) Account 363, Services to Customers.

d) In addition to replacements, the following items may be classified as QIP: main extensions recorded in Account 331 for water utilities that are constructed to eliminate dead ends and the unreimbursed costs recorded in the appropriate accounts listed in subsections (b) and (c) that are associated with relocations of mains, services, hydrants, and sewers occasioned by street or highway construction.

e) QIP shall include only plant additions installed on or after January 1 of the year in which the utility files its initial QIP surcharge rider in accordance with Sections 656.70 and 656.90 of this Part.

Section 656.50 Recoverable Qualifying Infrastructure Plant Costs

a) QIP costs shall include the pre-tax return on QIP and the net depreciation expense applicable to QIP.

1) The pre-tax return is calculated using the weighted cost of debt and weighted cost of equity determined in the utility's last rate case. The weighted cost of equity is multiplied by the gross revenue conversion factor (GRCF). The product is then added to the weighted cost of debt to obtain the pre-tax return. The pre-tax return is calculated using the following formulas:

$$GRCF = \frac{1}{(1 - PPTRIT)(1 - SIT)(1 - FIT)}$$

$$PTR = ((WCCE + WCPE) \times GRCF) + WCLTD + WCSTD$$

Where:

GRCF = Gross Revenue Conversion Factor.

PPTRIT = Illinois Personal Property Tax Replacement Income Tax rate in effect at the time of the initial, annual, or quarterly filing.

SIT = Illinois State income tax rate in effect at the time of the initial, annual, or quarterly filing.

FIT = Federal income tax rate in effect at the time of the initial, annual, or quarterly filing.

PTR = Pre-tax return.

WCCE = Weighted cost of common equity from the utility's last rate case.

WCPE = Weighted cost of preferred equity from the utility's last rate case.

WCLTD = Weighted cost of long-term debt from the utility's last rate case.

WCSTD = Weighted cost of short-term debt from the utility's last rate case.

2) Net depreciation expense shall be calculated by applying the utility's approved depreciation rate to each category of QIP. The depreciation expense for QIP shall be reduced by the depreciation expense on the plant being replaced.

Section 656.60 Determination of the Qualifying Infrastructure Plant Surcharge Percentage

a) The QIP surcharge percentage shall be expressed as a percentage carried to two decimal places. The QIP surcharge percentage shall be applied to the total amount billed to each customer located in the same rate zone based on the utility's otherwise applicable rates and charges. The QIP surcharge percentage shall not be applied to the exclusions listed in Section 656.30(a) of this Part.

b) In calculating the QIP surcharge percentage, the utility may choose either annual prospective operation or quarterly historical operation based on QIP investment data for a prior three-month period. Annual prospective operation may be selected only if the utility's immediately preceding rate case utilized a future test year as defined in 83 Ill. Adm. Code 285 and the utility submits the information required by Section 656.70(d)(6) of this Part.

1) Annual Prospective Operation

Utilities choosing annual prospective operation shall determine the QIP surcharge percentage for the operation year using the following formula:

$$S\% = \frac{(NetQIP \times PTR) + NetDep + (R \times 1.33) + ((O + INT) \times Om)}{PAR} \times 100\%$$

Where:

S% = QIP surcharge percentage.

NetQIP = The average forecasted cost of the investment in QIP for the rate zone for the operation year less forecasted accumulated depreciation in QIP for the rate zone for the operation year. The average forecasted cost of QIP, net of depreciation, shall be computed by using an average of 13 end-of-month

balances of QIP and accumulated depreciation for the period from December 31 of the year preceding the operation year through December 31 of the operation year.

PTR = Pre-tax return as described in Section 656.50(a)(1) of this Part.

NetDep = Net depreciation expense related to the average investment in QIP for the rate zone for the operation year. Depreciation expense shall be calculated by multiplying the average forecasted cost of the investment in QIP by plant account, net of retirements, by the approved depreciation rates for the respective accounts in which the specific items included in the average QIP investment are recorded. The average forecasted cost of the investment in QIP by plant account, net of retirements, shall be computed by using an average of 13 end-of-month balances of QIP by plant account and retirements for the period from December 31 of the year preceding the operation year through December 31 of the operation year.

R = Utility-determined reconciliation component (R component) calculated for the reconciliation year under the reconciliation feature as described in Section 656.80(d) of this Part. The reconciliation component shall be collected over nine months from April through December.

O = The Commission-ordered adjustment component (O component).

INT = The calculated interest attributable to the O component. This interest shall be calculated as described in Section 656.80(i) of this Part.

Om = The Commission-ordered O component multiplier. Om is a timing factor applied to the O component and the INT to allow for the collection of the O component and the INT over the remainder of the operation year. For example, if the O component and the INT were included in the QIP surcharge percentage on January 1, the Om would be 1.00. Similarly, if the O component and the INT were included in the QIP

surcharge percentage on April 1, the Om would be 1.33.

PAR = The projection of total water or sewer QIP base rate revenues, as applicable, for the rate zone for the period from January 1 through December 31. The projected revenue shall not include the exclusions listed in Section 656.30(a) of this Part.

2) Quarterly Historical Operation

Utilities choosing quarterly historical operation shall determine the QIP surcharge percentage for the quarter using the following formula:

$$S\% = \frac{(NetQIP \times PTR \times .25) + NetQDep + (R \times .33) + ((O + INT) \times Om)}{PQR} \times 100\%$$

Where:

S% = QIP surcharge percentage.

NetQIP = Original cost of QIP less accumulated depreciation for the rate zone. NetQIP shall be the level of investment in QIP existing at the end of the calendar month preceding the month in which an information sheet is filed.

PTR = Pre-tax return as described in Section 656.50(a)(1) of this Part.

NetQDep = Net quarterly depreciation expense applicable to NetQIP less the quarterly depreciation applicable to plant being retired.

R = Utility-determined reconciliation component calculated for the reconciliation year under the reconciliation feature as described in Section 656.80(d) of this Part. The reconciliation component shall be collected over nine months from April through December. No reconciliation component amount shall be included for the January through March quarter.

O = Commission-ordered adjustment component.

INT = The calculated interest attributable to the O component. This interest shall be calculated as described in Section 656.80(i) of this Part.

Om = The Commission-ordered O component multiplier. Om is a timing factor applied to the O component and the INT to allow for the collection of the O component and the INT over the remainder of the operation year. For example, if the O component and the INT were included in the QIP surcharge percentage on January 1, the Om would be 0.25. Similarly, if the O component and the INT were included in the QIP surcharge percentage on April 1, the Om would be 0.33.

PQR = Projected quarterly water or sewer QIP base rate revenues, as applicable, for the rate zone during the calendar quarter when the QIP surcharge percentage shall be in effect. The projected quarterly revenue shall not include the exclusions listed in Section 656.30(a) of this Part.

Section 656.70 Rider and Information Sheet Filings

a) A utility shall file a proposed QIP surcharge rider consistent with this Part pursuant to Section 9-201 of the Act. After a QIP surcharge rider is in effect, the QIP surcharge percentage shall be filed on an information sheet with supporting data no later than the 20th day of the month preceding the effective date of the QIP surcharge percentage. An information sheet with supporting data filed after that date, but prior to the effective date, shall be accepted only if it corrects an error or errors from a timely filed information sheet for the same effective date. Any other information sheet with supporting data shall be accepted only if submitted as a special permission request to become effective on less than 45 days notice under the provisions of Section 9-201(a) of the Act.

b) For utilities electing annual prospective operation, a utility may file its initial information sheet with a QIP surcharge percentage for the initial operation year with an effective date of the first day of any month. The effective date of any subsequent information sheet with a QIP surcharge percentage is January 1 (and April 1 if the R component is modified). A utility may, at its option, file an information sheet modifying the surcharge percentage, with an effective date of the first day of any month during the operation year, when necessary to recognize a material change in assumptions used in developing the QIP surcharge percentage (including, but not limited to, a

change in depreciation rates). The utility shall also file an information sheet to implement a Commission-ordered O component.

c) For utilities electing quarterly historical operation, a new surcharge percentage may become effective on April 1, July 1, October 1, and January 1 (with a new R component becoming effective, if required, on April 1). A utility may elect not to file an information sheet showing an increased QIP surcharge percentage for any quarter provided that the QIP costs that would have been reflected for that quarter in excess of the level reflected in developing the QIP surcharge percentage in effect for the quarter are disregarded in calculating the R component and O component for the affected reconciliation year.

d) A utility electing annual prospective operation shall provide the following with the filing of each information sheet to become effective on January 1:

1) A calculation of the QIP surcharge percentage, PTR, and GRCF for each rate zone for which a QIP surcharge rider is in effect;

2) A schedule showing, for each rate zone for which a QIP surcharge rider is in effect, the amount of forecasted expenditures for QIP during the operation year by plant account;

3) A description, for each rate zone for which a QIP surcharge rider is in effect, of the projects included in each plant account by type of project;

4) A detailed description, for each rate zone for which a QIP surcharge rider is in effect, of individual QIP projects with a forecasted cost in excess of $100,000;

5) A detailed schedule showing the calculation of depreciation expense for each rate zone for which a QIP surcharge rider is in effect; and

6) A statement verified by an officer of the utility that, in the belief of management:

A) The forecast used in developing the QIP surcharge percentage was prepared in accordance with the Guidelines for Presentation of Projected Financial Information (April 1, 1999) established by the American Institute of Certified Public Accountants, Inc., 1211 Avenue of the Americas, New York NY 10036-8775; and

B) The accounting treatment applied to events and transactions in the forecast is the same as the accounting treatment to be applied in recording the events once they occur.

e) A utility electing quarterly historical operation shall submit with each information sheet:

1) A calculation of the QIP surcharge percentage, PTR, and GRCF for each rate zone for which a QIP surcharge rider is in effect;

2) A detailed schedule, for each rate zone for which a QIP surcharge rider is in effect, providing the following information for each completed QIP eligible project whose cost has been transferred to utility plant with the closing of the QIP eligible project's work order:

A) Plant account number and title;

B) Category of project;

C) Project name;

D) Description of project;

E) Work order number;

F) Dollar amount in the month of closing; and

G) Month and year of closing; and

3) A detailed schedule showing the calculation of depreciation expense for each rate zone for which a QIP surcharge rider is in effect.

Section 656.80 Annual Reconciliation

a) On or before March 15 of each year, a utility that had a QIP surcharge in effect for all or part of the immediately preceding calendar year shall submit to the Commission an annual reconciliation regarding the results for the previous reconciliation year. The annual reconciliation shall be verified by an officer of the utility. As required by this Section, the annual reconciliation shall include a calculation of the R component necessary to adjust revenue collected under the QIP surcharge rider in effect for the rate zone during the reconciliation year to an amount equivalent to the actual level of prudently-incurred QIP cost for the reconciliation year. In the event that the earnings report filed under this Section for the rate zone shows that the utility's actual rate of return has exceeded the level

authorized in the utility's last water or sewer general rate proceeding, as applicable, then the R component shall include the credit required by subsections (c) and (d). Any adjustment made through the R component shall be in effect for nine months commencing on the April 1 immediately following submittal of the annual reconciliation.

b) With the annual reconciliation, the utility shall file a petition seeking initiation of the annual reconciliation hearings required by Section 9-220.2 of the Act. After the hearing, the Commission shall determine the amount of the adjustment, if any, that should be made (through the O component) to the level of revenue collected by operation of the QIP surcharge rider during the reconciliation year, so that the amount of such revenue is equal to the actual level of prudently-incurred QIP cost for the reconciliation year (to the extent that such adjustment has not already been reflected through an adjustment made by the utility to the R component of the QIP surcharge percentage).

c) In the annual reconciliation, the utility shall include, for each rate zone in which a QIP surcharge has been in effect, data showing operating income and rate base for the reconciliation year, such data being developed in accordance with subsection (f)(4). If, for any such rate zone, the actual rate of return on rate base for the reconciliation year exceeds the overall rate of return allowed in the utility's last water or sewer general rate proceeding, revenues collected under the QIP surcharge rider shall be reflected as a credit through the R component of the QIP surcharge to the extent that such revenues contributed to the realization of a rate of return above the last approved level. A credit value for the R component will result in a reduction of the QIP surcharge percentage. To the extent, if any, that a required adjustment for a reconciliation year has not been already made by the utility (through the R component), the Commission shall require (through the O component) that such an adjustment be made after the annual reconciliation hearing.

d) Utilities shall calculate the R component using the following formula:

$$R = (ActNetQIP \times PTR) + ActNetDep - QIPRev + Rpy + Opy - EEA$$

Where:

R = Utility-determined reconciliation component.

ActNetQIP = The average actual cost of the investment in QIP for the rate zone for the reconciliation year less actual accumulated depreciation of QIP for the rate zone for the reconciliation year. The average actual cost of QIP, net of depreciation, shall be computed by using an average of 13 end-of-month

balances of QIP and accumulated depreciation for the period from December 31 of the year preceding the reconciliation year through December 31 of the reconciliation year. (For utilities electing quarterly historical operation, the amount of the ActNetQIP shall be limited by the provisions of Section 656.70(c) of this Part.)

PTR = Pre-tax return as described in Section 656.50(a)(1) of this Part.

ActNetDep = Actual net depreciation expense related to the average investment in QIP for the rate zone for the reconciliation year. Depreciation expense shall be calculated by multiplying the actual investment in QIP by plant account, net of retirements, by the approved depreciation rates for the respective accounts in which the specific items included in the average QIP investment are recorded. (For utilities electing quarterly historical operation, the amount of the ActNetDep shall be limited by the provisions of Section 656.70(c) of this Part.)

QIPRev = Actual QIP revenues collected during the reconciliation year through the QIP surcharge.

Rpy = The R component from the previous reconciliation year.

Opy = The sum of the O component and the calculated interest attributable to the O component, or the sum of any O components and the calculated interest attributable to the O components, included in the calculation of the QIP surcharge percentage during the reconciliation year.

EEA = Excess earnings amount calculated in accordance with subsections (a), (c), and (f)(4) of this Section. There will only be an EEA when the utility's actual rate of return for the reconciliation year exceeds the overall rate of return authorized by the Commission in the utility's last water or sewer rate proceeding.

e) Any adjustment made by Order of the Commission under subsection (b) or (c) shall be included in the O component and be in effect for either 12 months or nine months, beginning on the next January 1 (if 12 months) or April 1 (if nine months) following the Order of the Commission, or such other period as the Commission may direct in the Order requiring that an adjustment be made.

f) Each annual reconciliation shall include the following schedules:

1) A schedule showing, for each rate zone for which a QIP surcharge rider was in effect, the QIP costs for the reconciliation year;

2) A schedule showing, for each rate zone for which a QIP surcharge rider was in effect, the revenues arising through the application of the QIP surcharge during the reconciliation year;

3) A schedule showing, for each rate zone for which a QIP surcharge rider was in effect, the reconciliation component determined by the utility showing the amount to be recovered or refunded over a nine-month period commencing on April 1; and

4) Schedules showing the utility's calculation of actual operating income and 13 -month average rate base for the reconciliation year by rate zone. This calculation of actual operating income and 13 - month average rate base shall be adjusted for any applicable adjustments accepted by the Commission in the utility's last rate case. In calculating the amount of federal and State income tax expense reflected in operating income, the utility shall reflect as deductible interest expense for tax purposes the product that results when the weighted embedded cost-of-debt reflected in the overall rate of return calculation used in the utility's last rate proceeding is multiplied by the rate base for the applicable rate zone as shown in the annual reconciliation. In the event that the actual rate of return for any rate zone exceeds the rate of return allowed in the utility's last water or sewer general rate proceeding, a schedule showing the extent to which revenues provided by operation of the QIP surcharge contributed to the difference between the actual and last-authorized rate of return also shall be provided. The amount of the revenues provided by the QIP surcharge that contributed to the actual rate of return exceeding the overall rate of return authorized by the Commission in the utility's last water or sewer rate proceeding shall be included as a credit in the calculation of the R component.

g) The first reconciliation year shall begin on the effective date of the first QIP surcharge information sheet and end on December 31 of the calendar year in which the first information sheet became effective. Each subsequent reconciliation year shall end on December 31.

h) When the utility files its annual reconciliation, the utility shall provide copies of the following items to the Commission's Manager of the Water Department and to the Commission's Manager of the Accounting Department:

1) Copies of all workpapers pertaining to the reconciliation;

2) A detailed summary of all invoices supporting the costs for eligible QIP surcharge projects;

3) Copies of the applicable general ledger or comparable material supporting the recovery of the QIP surcharge;

4) A detailed worksheet showing the calculation of any utility-determined reconciliation component (R component) amount based upon the annual reconciliation; and

5) Information regarding the prudence of the utility's investment in QIP.

i) Amounts either collected or refunded through the O component shall accrue interest at the rate established by the Commission under 83 Ill. Adm. Code 280.70(e)(1). Interest on the O component shall be applied from the end of the reconciliation year until the O component is refunded or charged to ratepayers through the QIP surcharge.

j) If, for a rate zone, the annual reconciliation filed by a utility shows that the revenues collected by application of the QIP surcharge rider exceed actual QIP costs for three or more consecutive reconciliation years, the Commission may initiate hearings under Section 9-250 of the Act [220 ILCS 5/9-250] to determine whether the utility's QIP surcharge rider for the rate zone should be canceled.

Section 656.90 Application for Qualifying Infrastructure Plant Surcharge Rider

a) A utility's filing seeking initial approval of a QIP surcharge rider for a rate zone shall be accompanied with the necessary testimony and exhibits justifying the rider.

b) Required testimony and exhibits:

1) A water utility shall prepare and provide a history of current replacement rates of qualifying plant, as well as history of failure, by location, for the qualified rate zone. The water utility shall provide 5 years of data by year for the following categories, based upon utility records to the extent that records of that data are available, or based upon estimates if records are not available:

A) Transmission and distribution mains, including the age, footage, and material;

B) Services, including the age, footage, and material;

C) Meters and meter installations, including the age, size, and number; and

D) Hydrants, including the age, number, and manufacturer.

2) A sewer utility shall prepare and provide a history of current replacement rates of qualifying plant, as well as a history of failure, by location, for the qualified rate zone. The sewer utility shall provide 5 years of data by year for the following categories, based upon utility records to the extent that records of that data are available, or based upon estimates if records are not available:

A) Collecting sewers – force, including the age, footage, and material;

B) Collecting sewers – gravity, including the age and number; and

C) Services to customers, including the age, footage, and material.

3) All utilities shall provide the reason for each increase in the rate of replacement and include specific data to justify the replacement rate for each plant account.

4) All utilities shall provide their specific plans for future replacements. The utilities shall provide a schedule showing the replacement projects listed by priority. This schedule shall include an explanation and justification for the prioritization.

5) All utilities shall provide detailed computations of expected revenue effects of investment in QIP for the shorter of the time period covered by the plans submitted in response to subsection (b)(4) or five years.

6) All utilities proposing to use the annual prospective method shall provide explanations for any changes in the expected rates of investment in QIP for the forecasted period as compared to the historical period.

7) All utilities shall provide any other information and data that supports the approval of the proposed QIP surcharge rider.

8) All utilities shall provide bill comparisons showing the effect of the QIP surcharge for each class of customer at the average customer usage level, at five usage levels above the average customer usage level, and at five usage levels below the average customer usage level. The bill comparisons shall present the current bill, the proposed bill, the difference between the current bill and the proposed bill, and the percentage change between the current bill and the proposed bill. For the purposes of this subsection (b)(8), the bill comparison shall include only QIP base rate revenues, exclusive of revenue attributable to public/private fire protection service. All utilities shall also provide supporting schedules showing the billing units, charges, and revenues used in calculating the bill comparison.

**WEST'S ILLINOIS ADMINISTRATIVE CODE**
**TITLE 83. PUBLIC UTILITIES**
**CHAPTER I. ILLINOIS COMMERCE COMMISSION**
**SUBCHAPTER E. WATER UTILITIES**
**PART 656. QUALIFYING INFRASTRUCTURE** PLANT SURCHARGE
Current through April 18, 2003

AUTHORITY: Implementing Section 9-220.2 and authorized by Section 10-101 of the **Public Utilities** Act [220 ILCS 5/9-220.2 and 10-101].

SOURCE: Adopted at 25 Ill. Reg. 16258, effective December 19, 2001.
83 IL ADC Ch. I, Subch. E, Pt. 656, Refs & Annos
END OF DOCUMENT

C

*WEST'S* SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 220. UTILITIES
ACT 5. PUBLIC UTILITIES ACT
ARTICLE IX. RATES



Current through P.A. 93-4 of the 2003 Reg. Sess.

5/9-220.2. Water and sewer surcharges authorized

§ 9-220.2. Water and sewer surcharges authorized.

(a) The Commission may authorize a water or sewer utility to file a surcharge which adjusts rates and charges to provide for recovery of (i) the cost of purchased water, (ii) the cost of purchased sewage treatment service, (iii) other costs which fluctuate for reasons beyond the utility's control or are difficult to predict, or (iv) costs associated with an investment in qualifying **infrastructure** plant, independent of any other matters related to the utility's revenue requirement. A surcharge approved under this Section can operate on an historical or a prospective basis.

(b) For purposes of this Section, "costs associated with an investment in qualifying **infrastructure** plant" include a return on the investment in and depreciation expense related to plant items or facilities (including, but not limited to, replacement mains, meters, services, and hydrants) which (i) are not reflected in the rate base used to establish the utility's base rates and (ii) are non-revenue producing. For purposes of this Section, a "non-revenue producing facility" is one that is not constructed or installed for the purpose of serving a new customer.

(c) On a periodic basis, the Commission shall initiate hearings to reconcile amounts collected under each surcharge authorized pursuant to this Section with the actual prudently incurred costs recoverable for each annual period during which the surcharge was in effect.

CREDIT(S)

2000 Main Volume

Laws 1921, p. 702, § 9-220.2, added by P.A. 91-638, § 5, eff. Jan. 1, 2000.

<General Materials (GM) - References, Annotations, or Tables>

220 I.L.C.S. 5/9-220.2

IL ST CH 220 § 5/9-220.2

END OF DOCUMENT

Tom McKitrick 05/19/2003 01:01 PM

To: Paul T Diskin/PAWC/AWWSC@AWW, James L Cutshaw/GRNWD/INAWC/AWWSC@AWW, Ronald D Stafford/ILAWC/AWWSC@AWW
cc: Roy Ferrell/WVAWC/AWWSC@AWW

Subject: TAWC AG's Request for Information

Gentlemen,
Can you help Roy out on this one.

Tom
----- Forwarded by Tom McKitrick/ADMIN/CORP/AWWSC on 05/19/2003 02:00 PM -----

**Roy Ferrell**
05/16/2003 01:58 PM

To: Paul Foran/ADMIN/CORP/AWWSC@AWW, Tom McKitrick/ADMIN/CORP/AWWSC@AWW
cc: Sheila Valentine/WVAWC/AWWSC@AWW
Subject: TAWC AG's Request for Information

Paul/Tom, the AG has requested copies of the following orders relative to "DSIC". Can you provide or do I need to go directly to the source?

**Pennsylvania American PA Docket P -- 00961031**
**Pennsylvania Suburban (obtaining docket number and order)**
**Indiana -- Docket #42351 DSIC - 1**
**Illinois Illinois Statue for DSIC 25 ILL Reg. 16258 eff 12/19/01**

SEE ATTACHED – WE COULDN'T FIND THE ORIGINAL ILLINOIS REGISTER DOCUMENT, BUT DID FIND WHAT WE BELIEVE IS RELEVANT TO HELP YOU ANSWER THE REQUEST.

ANY QUESTIONS, FEEL FREE TO CALL ME AT 618-[illegible]

R. J

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

| | | |
|---|---|---|
| PETITION OF INDIANA-AMERICAN WATER COMPANY, INC. FOR APPROVAL OF (A) A DISTRIBUTION SYSTEM IMPROVEMENT CHARGE ("DSIC") PURSUANT TO IND. CODE CHAP. 8-1-31; (B) A NEW RATE SCHEDULE REFLECTING THE DSIC; AND (C) INCLUSION OF THE COST OF ELIGIBLE DISTRIBUTION SYSTEM IMPROVEMENTS IN ITS DSIC | ) | CAUSE NO. 42351 DSIC-1 |
| | ) | APPROVED: FEB 27 2003 |

**BY THE COMMISSION:**
**Judith G. Ripley, Commissioner**
**William G. Divine, Administrative Law Judge**

On December 19, 2002, pursuant to Indiana Code 8-1-31, Indiana-American Water Company, Inc. ("Petitioner" or "Indiana-American") filed its Petition seeking approval of a Distribution System Improvement Charge ("DSIC") for various improvement projects that were placed in service between August 1, 2001 and November 30, 2002. Given the statutory deadline requiring the Commission to issue an Order not later than sixty (60) days after a petition is filed under Indiana Code 8-1-31, the Presiding Officers, in lieu of convening a Prehearing Conference, issued a Docket Entry on December 27, 2002 establishing a procedural schedule for this Cause and scheduling an Evidentiary Hearing date of January 29, 2003. Petitioner prefiled its direct case-in-chief on December 19, 2002. The Indiana Office of Utility Consumer Counselor ("Public") prefiled its case-in-chief on January 21, 2003. The Petitioner prefiled rebuttal testimony on January 24, 2003.

Accompanying its Petition, on December 19, 2002, Petitioner filed a *Verified Motion for Establishment of Procedures to Protect Against Disclosure of Confidential Information* ("Motion to Protect Confidential Information"). The Motion to Protect Confidential Information sought confidential treatment of evidence to be introduced at the Evidentiary Hearing concerning Petitioner's security improvements made in response to the terrorist attacks of September 11, 2001. In addition to the claim of trade secrets, Petitioner claimed that detailed disclosure of its security improvements could jeopardize the effectiveness of its security system. In a December 30, 2002 Docket Entry, the Presiding Officers established a procedure that, following the public portion of the evidentiary hearing, an *in camera* session would be conducted for the purpose of eliciting detailed information about Petitioner's security improvements for which it was requesting approval of a DSIC. Attendance at the *in camera* session was limited to the Presiding

Officers, other Commissioners, and authorized Commission and Public employees. Based on a preliminary finding that the security improvements constituted trade secrets, the disclosure of which might also jeopardize a security system that is within the state's and national interest to protect, this Docket Entry provided that the record comprising the *in camera* session of the Evidentiary Hearing would be handled and maintained as confidential information, in accordance with Indiana Code 5-14-3.

Thereafter, and pursuant to notice published as required by law, an Evidentiary Hearing was convened on January 29, 2003 at 10:30 a.m. EST, in Room E-306 of the Indiana Government Center South, Indianapolis, Indiana. Petitioner and the Public attended and participated in the Evidentiary Hearing by presenting evidence into the record of this Cause. On January 29, 2003, at the conclusion of both the public and *in camera* sessions of the Evidentiary Hearing, this Cause was adjourned. On January 31, 2003, each party filed a Proposed Order that aligned with its testimonial position taken at the January 29, 2003 Evidentiary Hearing.

On January 30, 2003, Petitioner and the Public advised the Presiding Officers via telephone that they had reached a settlement agreement. The Presiding Officers agreed to consider a late-filed settlement agreement. On February 3, 2003, the parties filed their *Stipulation and Settlement Agreement* and a joint Proposed Order. Also filed on February 3, 2003, was *Petitioner's Notice with Respect to 60-Day Deadline*, which stated Petitioner recognized that the Commission's receipt and consideration of a settlement agreement at this point in the proceedings would require time beyond that allowed by Indiana Code 8-1-31-9(c) for the Commission to issue its Order and Petitioner would have no objection to an Order being issued beyond the 60-day deadline so long as an Order was issued by March 5, 2003. In order to receive the *Stipulation and Settlement Agreement* into the record of this proceeding, this Cause was public noticed according to law for an Evidentiary Hearing to be conducted on February 14, 2003. With Petitioner and the Public in attendance, this Cause was reopened on February 14, 2003, at 1:30 p.m. EST, in Room E306 of the Indiana Government Center South, Indianapolis, Indiana. The *Stipulation and Settlement Agreement* was admitted into the record at the Evidentiary Hearing and, with no members of the general public appearing or having expressed a desire to be heard, this Cause was adjourned.

1. **Notice and Jurisdiction.** The Commission published notice of the public Evidentiary Hearings held in this Cause as required by law. Petitioner is a "public utility" within the meaning of Indiana Code 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the State of Indiana. This Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Petitioner is an Indiana corporation engaged in the business of providing water utility service to approximately 268,000 customers in twenty-one (21) counties in the State of Indiana. Petitioner's corporate office is located in the City of Greenwood, Indiana. Petitioner provides water utility service by means of water utility plant, property, equipment and related facilities owned,

leased, operated, managed and controlled by it, which are used and useful for the convenience of the public in the production, treatment, transmission, distribution and sale of water for residential, commercial, industrial, sale for resale, public authority and public and private fire protection purposes. In addition, Petitioner provides sewer utility service in the City of Somerset, Wabash County, Indiana and in or near the City of Muncie, Delaware County, Indiana.

3. **Indiana Code 8-1-31.** Effective July 1, 2000, the Indiana Legislature enacted Indiana Code 8-1-31 which provides for the Commission to approve distribution system improvement charges in order to allow water utilities to automatically adjust their basic rates and charges to recover a pre-tax return and depreciation expense on Eligible Distribution System Improvements. Eligible Distribution System Improvements are defined as new, used and useful water utility plant projects that:

(a) do not increase revenues by connecting the distribution system to new customers;
(b) are in service; and
(c) were not included in the public utility's rate base in its most recent general rate case. Indiana Code 8-1-31-5.

A petition under Indiana Code 8-1-31 may not be filed more than once every twelve (12) months or in the same calendar year in which the public utility has petitioned the Commission for a general increase in its basic rates and charges. Indiana Code 8-1-31-10. The rate of return allowed on Eligible Distribution System Improvements is equal to the public utility's weighted cost of capital. Unless the Commission finds that such determination is no longer representative of current conditions, the cost of common equity to be used in determining the weighted cost of capital shall be the most recent determination by the Commission in a general rate proceeding of the public utility. Indiana Code 8-1-31-12. The Commission may not approve a DSIC to the extent the proposed DSIC would produce total DSIC revenues exceeding 5% of the public utility's base revenue level approved by the Commission in the most recent general rate proceeding. Indiana Code 8-1-31-13. The DSIC is to be calculated based upon a reasonable estimate of sales in the period in which the charge will be in effect. At the end of each 12 month period with the charges in effect, the difference between the revenues produced through the DSIC ("DSIC revenues") and the depreciation expense and pre-tax return associated with the Eligible Distribution System Improvements ("DSIC costs") shall be reconciled and the difference refunded or recovered as the case may be through adjustment of the DSIC. Indiana Code 8-1-31-14. When a petition to establish a DSIC is filed, the Public may, within thirty (30) days of the petition being filed, confirm that the system improvements are eligible and that the charges were properly calculated, and submit a report to the Commission. The Commission is required to hold a hearing and issue its order not later than 60 days after the petition is filed. Indiana Code 8-1-31-9.

4. **Relief Requested.** Petitioner seeks approval of a DSIC pursuant to Indiana Code 8-1-31, a new rate schedule reflecting the DSIC, and inclusion of the cost

of the Eligible Distribution System Improvements in Petitioner's DSIC. Briefly stated, Petitioner seeks to recover its DSIC costs for Eligible Distribution System Improvements placed in service between August 1, 2001 and November 30, 2002 amounting to $11,959,762. (The total cost of the projects for which Indiana-American claims the ability to recover through a DSIC is $13,270,267, with $11,959,762 representing the investor supplied additions and being the figure used to determine the requested DSIC revenue requirement due to reimbursement from the Indiana Department of Transportation ("INDOT") in the amount $1,310,504.) The depreciation expense of such improvements is $297,503 (calculated by using Petitioner's current Commission-approved depreciation accrual rates), with a return on the improvements using a weighted after-tax cost of capital of 7.83% (10.81% on a pre-tax basis). The rate of return was calculated based on Petitioner's current capital structure and debt cost rate and the cost of common equity determined by the Commission in Petitioner's last rate order. Petitioner's proposed DSIC would produce additional annual revenues of approximately $1,590,353, which would equate to an increase of approximately 1.29% above the rates currently in effect.

5. **Petitioner's Direct Evidence.** Petitioner's direct evidence was presented and supported by two (2) of its officers: Assistant Treasurer and Assistant Secretary James L. Cutshaw, who is a Senior Financial Analyst for Petitioner, and Alan J. DeBoy, Vice President of Engineering.

Mr. Cutshaw provided some general background information about DSICs, testifying that the purpose served by a DSIC is to provide an innovative ratemaking mechanism necessary to replace aging infrastructure, which is an issue of national concern. Mr. Cutshaw testified that DSIC revenues to be derived from approval of the Petition would amount to $1,590,353, which is 1.29% of its current base revenue level of $123,449,194. Mr. Cutshaw provided evidence concerning the calculation of the proposed DSIC and sponsored, as *Petitioner's Exhibit JLC-1*, Petitioner's proposed rate schedules reflecting the DSIC. He explained that the rate of return used in the DSIC revenue requirement calculation is Petitioner's weighted average cost of capital derived from Petitioner's capital structure as of November 30, 2002. The long-term debt cost rate used in the calculation is the average embedded long-term debt cost rate as of that date. A common equity cost rate of 10.5% was used because that rate was determined by the Commission in Petitioner's most recent general rate case in Cause No. 42029. The result is a weighted average cost of capital of 7.83% on an after-tax basis. This rate was converted to a pre-tax rate of 10.81% to include revenues for state and federal income taxes.

Depreciation expense was calculated by applying the applicable Commission-approved depreciation accrual rates to the Eligible Distribution System Improvements, net of related retirements. The proposed DSIC volumetric rate was calculated by dividing the DSIC revenue requirement by Petitioner's projected 2003 water sales. Mr. Cutshaw testified that the DSIC revenues that would be produced by the proposed DSIC will be less than 5% of Petitioner's base revenue level as approved in Petitioner's last base rate order.

Petitioner's witness Alan J. DeBoy sponsored *Petitioner's Exhibit AJD-1* that gave a brief description of each improvement project, the cost of each project, the date each project was placed in service, the account number assigned to each project based on accounting standards found in the Uniform System of Accounts, and Petitioner's operation area where each project exists. Mr. DeBoy generally described the projects as being replacement infrastructure, reinforcement infrastructure, or security improvements. Mr. DeBoy defined replacement infrastructure as consisting of mains, valves, hydrants, customer services, a water storage tank, process unit components like filter media, coating systems, and sludge collector drive units. Mr. DeBoy stated that a significant portion of main replacements are associated with right-of-way improvement projects where the location of Petitioner's mains conflicts with municipal improvement projects. Reinforcement projects, according to Mr. DeBoy, are projects that improve service to large areas of the existing distribution system by increasing flow capacity, and consist of new mains, a water storage tank in Hobart, Indiana, and a pump station located in Petitioner's Northwest operation referred to as the Taft Street Pump Station. Mr. DeBoy stated that security improvements provide enhancements that deter, delay and detect unauthorized entry to water utility property.

Mr. DeBoy also provided testimony that each improvement listed on *Petitioner's Exhibit AJD-1* was an "Eligible Distribution System Improvement" as defined in Indiana Code 8-1-31-5. As to the eligibility requirement that a project not increase revenues by connecting the distribution system to new customers, Mr. DeBoy testified that he had an understanding and familiarity with all of the projects listed on *Petitioner's Exhibit AJD-1*, and none on them increased revenues by connecting the distribution system to new customers. Regarding the second statutory eligibility requirement that all projects are in service, Mr. DeBoy stated that he has personal knowledge of the projects listed on *Petitioner's Exhibit AJD-1*. Mr. DeBoy further testified as to his understanding that before an in service date can be designated on Petitioner's accounting system the person responsible for oversight of the project must conduct a physical inspection to confirm that the project is in service. Mr. DeBoy also reiterated Mr. Cutshaw's testimony that none of the improvements were included in Petitioner's rate base in its most recent general rate case. Mr. DeBoy testified that the rate base cutoff date used in Petitioner's last general rate case was July 31, 2001, and that all projects listed on *Petitioner's Exhibit AJD-1* reflect in service dates subsequent to July 31, 2001.

6. **Public's Case-In-Chief.** The Public's case-in-chief was presented through three (3) of its employees: Edward R. Kaufman, Lead Financial Analyst in the Rates/Water/Sewer Division; Judith I. Gemmecke, Utility Analyst; and Scott A. Bell, Assistant Director of the Sewer/Water Division.

Mr. Kaufman asserted that Petitioner should not be allowed to recover through a DSIC proceeding those improvements to components of its utility that comprise source of supply, water treatment plant, general plant or security. After removing improvements to those utility components that should be disallowed, Mr. Kaufman proposed that completed plant amounting to $7,723,795 could be included in Petitioner's DSIC.

In his testimony, Public's witness Mr. Kaufman discussed the theory behind DSICs. Mr. Kaufman asserted that the DSIC was created as a special tool to provide utilities with additional resources to accelerate the replacement of aged distribution assets. Mr. Kaufman supported his analysis by quoting several sources including a January 18, 2000 memo from Eric W. Thornburg, former Vice President of Indiana-American, to the Members of the Indiana Senate Committee on Commerce and Consumer Affairs. This memo was included as *Attachment No. 1 to Public's Exhibit No. 1*. In that memo Mr. Thornburg stated as follows:

> This new technique will allow for the replacement of aged infrastructure, primarily pipelines, without the necessity of filing for a rate increase with the added cost to customers and delay of such undertakings. It does not include new main extensions that would produce additional revenues for the utility.

Mr. Kaufman then discussed the factors that differentiated distribution mains and other distribution assets from other investments made by utilities between rate cases. In *Public's Exhibit No. 1, pgs. 7 & 8*, Mr. Kaufman asserted as follows:

> There are several factors which in combination give weight to the need for a DSIC to specifically promote the replacement of old distribution system assets:
>
> 1) The scope of replacing these assets is very large.
>
> 2) The replacement of distribution system assets is ongoing or continuous in nature.
>
> 3) The replacement of distribution assets is a series of many small projects. Thus, a utility is unable to time a rate case around their replacement as it could for a single large project.

Mr. Kaufman added that if one accepts the supposition that the factors described above are so severe that traditional ratemaking is unlikely to adequately facilitate necessary infrastructure improvements on a large scale, then the same rationale needs to be used to determine what plant should be approved in a DSIC case. Mr. Kaufman contended that the purpose of a DSIC is to accelerate the repair and replacement of aging infrastructure that has not or would not occur under traditional ratemaking. He added that the DSIC was created as a special tool to promote the adequate replacement of old and/or dilapidated distribution assets. The DSIC should not be applied to typical investments made by water utilities on a regular basis and investments that can be handled through traditional ratemaking should be handled in that manner.

Mr. Kaufman also noted that Petitioner's proposed DSIC seeks to earn a return on and return of assets that did not rehabilitate its distribution system and that Petitioner was

using the DSIC as a catch-all for virtually all of its rate base additions (other than those that increase revenues by hooking up new customers to the distribution system). Mr. Kaufman then referred to several of Petitioner's responses to data request questions that highlighted Petitioner's assertion that the DSIC was designed to include treatment plant, general plant and source of supply assets as well as distribution assets. Mr. Kaufman added that Indiana-American's response to data request question 36 indicated that Indiana-American has not accelerated the replacement of its mains as a result of the opportunity to collect DSIC revenues.

Mr. Kaufman also asserted that the limited time frame of a DSIC procedure limited the Public's ability to conduct meaningful fact finding and that a DSIC procedure should not include additions that are controversial and/or require a lengthy review. Additionally, Mr. Kaufman stated that the DSICs used in Pennsylvania and Illinois had significant differences than the DSIC proposed by Petitioner. The key differences were that both Illinois' and Pennsylvania's DSICs limited recovery to very specific account categories, included an earnings test and required consumer notification. Finally, Mr. Kaufman proposed that any future DSIC should include a 10-year projection of plans to repair and rehabilitate its distribution. Mr. Kaufman argued that since the rationale of the DSIC is to promote the replacement of aging infrastructure it seems logical that utilities should have a plan on how and when they intends to replace aging infrastructure. Such a plan will help to address the concerns expressed by the parties that led to creation of the DSIC.

Also testifying on behalf of the Public was accountant, Judith I. Gemmecke. Ms. Gemmecke echoed Mr. Kaufman's beliefs about what should be included in a DSIC and discussed specific calculations of the DSIC given certain parameters shown below. In considering Ms. Gemmecke's testimony it is important to note that Petitioner presented its calculation for the DSIC which included a return of 10.81% (before tax) on additions made which Petitioner asserts are subject to the surcharge, less the amounts contributed by INDOT. To that result, Petitioner added depreciation, which it calculated by subtracting retirements from the total additions of assets. Ms. Gemmecke noted that by making no adjustment for those contributed funds, this calculation allows depreciation on Contributions in Aid of Construction ("CIAC").

Ms. Gemmecke, presented her calculation of the DSIC, which also included the 10.81% before tax return, but only on the additions the Public recommends should be allowed in the DSIC as discussed earlier. Her calculation decreases the allowable additions by the amount of related retirements at original cost. To that result, Ms. Gemmecke also added depreciation expense, which she calculated by subtracting retirements from the total additions of allowable assets. By making no adjustment for funds contributed by INDOT, this calculation also allows for depreciation to be collected on CIAC. Ms. Gemmecke points out in her testimony that Indiana is one of a handful of states that allows water utilities to collect depreciation on CIAC. Allowing depreciation on contributed plant accomplishes many of the same goals the DSIC was intended to accomplish -- namely, providing additional funds to replace aging distribution systems.

On *page 6 of Public's Exhibit No. 2*, Ms. Gemmecke included the following accounts in her calculation of the DSIC:

| Account | Description |
|---|---|
| 331001 – | TD (Transmission/Distribution) Mains Not Classified by Size (formerly Mains Conversions) |
| 333000 - | Services |
| 334200 – | Meter Installations |
| 335000 – | Hydrants |

The Public encouraged the Commission to use these same accounts in determining eligibility for a DSIC, especially in light of the time limitations for conducting discovery, conducting an evidentiary hearing, and issuing a final order.

The Public's engineering witness, Mr. Scott A. Bell, Assistant Director of the Public's Rates/Water/Sewer Division, testified that Petitioner's investments in Source of Supply, Water Treatment Plant and General Plant should not be included in the calculation of the DSIC. He also stated that there are some items Petitioner listed as Transmission and Distribution Plant that should also not be included in the calculation of the DSIC. Mr. Bell pointed out that Petitioner made investments in "Tank Security Improvements" in a number of its operational areas that total approximately $1,977,417. He stated that Petitioner has categorized those investments as "Transmission and Distribution Plant" and assigned to Account No. 330000. While having no independent knowledge of the exact nature of the security improvements other than what was represented by Petitioner in its pre-filed testimony, Mr. Bell testified that these "Tank Security Improvements" should not be considered eligible for inclusion in the calculation of the DSIC because these improvements are not repairs or replacements of aging transmission and distribution infrastructure, but rather are investments in the new security systems as a result of the increased security risks after September 11, 2001. He concluded that while it is important that a utility make prudent investments in security, such improvements should not be considered eligible for inclusion in the calculation of the DSIC. Mr. Bell recommended that Petitioner should recover its security related investments in a more appropriate proceeding.

Mr. Bell also testified about Petitioner's inclusion of the 1.5 MG water storage tank in Hobart, Indiana, which represents an investment of approximately $1,644,841. He testified that the water storage tank and associated facilities should not be eligible for inclusion in the calculation of the DSIC because the investment Petitioner made in the Hobart water storage tank was not only to replace an aging water storage facility, but also to provide additional storage capacity to adequately serve increasing water demands or to meet fire-flow requirements. He stated that, in effect, the Hobart water storage tank would increase Indiana-American's revenue by making it possible to connect the distribution system to new users. He concluded that the investment in the 1.5 MG storage facility should not be considered DSIC eligible.

7. **Petitioner's Rebuttal.** Mr. Cutshaw responded to the Public's testimony to exclude improvements that have been recorded as Source of Supply, Water Treatment Plant, General Plant, Distribution Reservoirs and security improvements. Mr. Cutshaw testified that Indiana-American reviewed the language of the statute, as written, to determine what improvements are and are not eligible. Mr. Cutshaw suggests that the Public is attempting to add factors not provided in the statute and is relying on variations of the DSIC implemented in the States of Pennsylvania and Illinois to support its position. Mr. Cutshaw testified that these additional factors are not found in Indiana Code 8-1-31 and stated that Indiana-American's proposed DSIC is calculated pursuant to the definition the Legislature used.

Mr. Cutshaw stated that it is significant that some of the improvements Indiana-American included as "Eligible Distribution System Improvements" could not be included in a similar rate adjustment in either Illinois or Pennsylvania because it reveals the differences in the Indiana legislation as compared to Pennsylvania and Illinois. He explained that the Pennsylvania variety of the DSIC was first employed before there was a statute specifically authorizing it. The Pennsylvania Public Utility Commission established its DSIC in the order that is included with Mr. Kaufman's testimony as *Attachment No. 4.* The only statutory authority for the request was the generic authority to approve automatic tracker mechanisms. The Pennsylvania Commission approved of the concept of a DSIC, and in the process, established all of the procedures and requirements for a DSIC without any guidance from the legislature. In doing so, the Commission defined what is and is not eligible. After the Pennsylvania DSIC was first approved in this fashion, the Pennsylvania legislature confirmed what the Commission had done, and left all decisions regarding the eligibility and implementation to the Pennsylvania Commission. 66 Pa. Cons. Stat. § 1307(g).

Mr. Cutshaw further testified that the Illinois variety of the DSIC is likewise very general. The Illinois legislature left the decision whether to approve a DSIC entirely up to the Commission, indicating that the Commission "may authorize" the mechanism. 220 Ill. Code § 5/9-220.2. Mr. Cutshaw states these differences are significant for purposes of Indiana's DSIC legislation because this alternative approach was available to the General Assembly when Indiana Code 8-1-31 was enacted. The Legislature could have left to the Commission the decisions whether a DSIC should be approved, what would be eligible and what procedures would govern, as has been done in both Illinois and Pennsylvania. He speculated that the Legislature chose not to do so and instead specifically chose to define what is authorized as a DSIC.

Mr. Cutshaw responds to Mr. Kaufman's concerns that Indiana-American has not increased its investment in the replacement of mains by noting that Indiana-American makes its investment decisions based upon what will be needed, when it will be needed, and whether and to what extent there is capital available. Indiana-American believes the DSIC should help with its ability to access capital by mitigating some of the effects of regulatory lag. The DSIC should therefore help Petitioner in its ability to make all types of rehabilitations, replacements, and improvements throughout its utility systems. Mr. Cutshaw did not consider it appropriate to eliminate the Hobart storage tank from the

DSIC asserting it was not included in rate base in Cause No. 42029, and that it does not increase revenues by connecting new customers. He also stated that, while not a requirement under Indiana Code 8-1-31, the Hobart storage tank is a replacement of existing tanks as explained by Mr. DeBoy.

In defending the inclusion of security costs, Mr. Cutshaw testified that the security improvements are improvements to existing infrastructure. Mr. Cutshaw suggests that if a 100-foot section of a main is replaced, the overall main will have been improved. In the same manner, if an investment is made to secure one of its facilities against a terrorist attack, the facility will have been improved. He does not believe an improvement to existing infrastructure should be treated any differently from the replacement of existing infrastructure. Mr. Cutshaw further testified that he believed adequate access to information had been provided to the Public related to the security improvements and he finds it significant that a Non-Disclosure Agreement was executed with the Utility Consumer Counselor and the Public's Water and Sewer/Rates Director. Mr. Cutshaw also disagreed that Indiana-American has provided no more information on the security-related improvements than it provided on security expense in Cause No. 42029. He stated that at issue in Cause No. 42029 were security-related Operation and Maintenance expenses as opposed to the capital items at issue here. He explained that Indiana-American has provided in this proceeding every security task order number, the total amount for each, and the operation for each in *Petitioner's Exhibit AJD-1*. Indiana-American also provided information on security capital expenditures through the presentation of its case-in-chief during the in camera portion of the hearing. Finally, Indiana-American's witnesses have been available to respond to any questions about the security program or task orders that are included in *Petitioner's Exhibit AJD-1*.

As to Mr. Kaufman's concern that the type of review that would be done in a rate case cannot be completed during the abbreviated process for a DSIC, Mr. Cutshaw stated that the DSIC was not intended to be and will not result in a final determination that the DSIC assets are in rate base for purposes of a general rate case. The Public will have the opportunity to conduct a full rate base review in its next general rate case.

Mr. Cutshaw stated that he did not believe limitations on accounts that are eligible for DSIC and an earnings test would be consistent with Indiana Code 8-1-31. However, Mr. Cutshaw believed a requirement for customer notice and a requirement that a utility file a forecast that could be updated in future DSIC proceedings could be consistent with the DSIC statute and could be adopted if the Commission finds appropriate. Mr. Cutshaw stated Indiana-American would be willing to comply with these requirements in future DSIC proceedings if the Commission requests, but suggested a five-year forecast instead of ten years.

Mr. Cutshaw does not agree with the Public's assertion that retirements should be deducted from additions subject to DSIC in determining the net investor supplied DSIC additions to which the pre-tax return is applied. Mr. Cutshaw explained that under mass asset accounting rules, retirements are treated as fully depreciated with the original cost

being deducted from both utility plant and accumulated depreciation. Such a retirement results in no change to the net book value of the Company's assets.

Mr. Cutshaw also disagreed with the depreciation rates used by the Pubic because different depreciation rates apply to Petitioner's Northwest, Mooresville, Warsaw, West Lafayette, and Winchester operations. Mr. Cutshaw provided a table that was later corrected at the hearing which reflects the appropriate depreciation rates. Next, Mr. Cutshaw disagreed with the Public's conversion from MGAL to CCF. Indiana-American determined the conversion to CCF (hundred cubic feet) by dividing the MGAL (thousand gallons) by 0.75. He explained that this is the same relationship that has existed in the Company's tariff sheets for many years.

Finally, Mr. Cutshaw disagreed with the Public's suggestion to separate Water Groups 1,2,3 into Water Group 1, Water Group 2, and Water Group 3. Mr. Cutshaw explained that this is inappropriate because the company's rate design has moved toward Single Tariff Pricing ("STP"). Rate base and operating income findings have been proposed and approved for the combined Groups, not for each separate Group mainly because there are different groupings for General Water Service, Sales for Resale, Private Fire Protection, and Public Fire Protection. The Groups shown on Schedule *No. 1 of Public's Exhibit No. 2* are the Sales for Resale groupings. For General Water Service there are only two Groups, with Johnson County and Southern Indiana in Group 2. Mr. Cutshaw stated it is consistent with the movement towards STP to continue to make one finding for Water Groups 1,2,3 as a whole as proposed on *Petitioner's Exhibit JLC-2*.

During Indiana-American's rebuttal case, Mr. DeBoy testified that he did not agree with Mr. Bell's opinion that the Hobart water storage tank should not be included in this case. He asserted that the Hobart tank satisfied the conditions for eligible distribution system improvements put forth in Mr. Cutshaw's testimony. Mr. DeBoy testified that he believed that Mr. Bell proposed to exclude the tank because it is new as opposed to replacement infrastructure. Mr. DeBoy noted that there is nothing in the statute that states only replacement infrastructure is eligible. He went on to explain that, in fact, the Hobart water storage tank actually replaced three elevated water storage tanks that were beyond economical repair.

8. **Commission Findings and Analysis.** We note, first, that the Petitioner and Public have filed a *Stipulation and Settlement Agreement*. The Commission has a clear standard for its review and consideration of settlement agreements. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. IPL Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

As will be explained more fully below, we find that the public interest will not be served by approving the parties' settlement.

A determination of whether the Petition filed herein complies with Indiana Code 8-1-31 hinges on the phrase "distribution system." This phrase is not defined in Indiana Code 8-1-31 or elsewhere in Title 8 of the Indiana Code. In addition, the testimony of the Parties agrees neither on the meaning nor significance of this phrase. Petitioner contends that any improvement to a water utility qualifies for a DSIC so long as the improvement meets the eligibility criteria of (1) not increasing revenues by connecting the distribution system to new customers, (2) being in service, and (3) not being included in the public utility's rate base in the most recent general rate case. Indiana Code 8-1-31-5. Petitioner encourages the Commission to look to the plain language of the statute and find that any improvement to any component of a water utility qualifies for a DSIC, limited only by the above three (3) eligibility criteria. The Public, on the other hand, supports a more limited meaning of "distribution system," relying on legislative intent, DSIC legislation in other states, as well as an interpretation of the language of Indiana's DSIC statute that may tend to argue against the broad view advocated by Petitioner.

*A. Meaning of "Distribution System."* Use of the phrase "distribution system" as applied to different types of utilities, and of the phrase "water distribution system" as applied specifically to water utilities, is not foreign or uncommon to the Commission or to those whom it regulates. This Commission has used the phrases "distribution system" or "water distribution system" to identify one component of a water utility that is distinguishable from other water utility components. By way of example, on September 18, 2002, in Cause No. 42226, the Commission issued an Order in a proceeding brought by the same Petitioner in this proceeding, Indiana-American Water Company, Inc., seeking approval to acquire the water distribution system properties of the Town of Dune Acres. The Commission's Order in that acquisition proceeding restated Indiana-American's testimony as to the relief it was seeking: "He (Indiana-American witness, Randal D. Edgemon) testified that Indiana-American proposes to acquire only the distribution system assets consisting of the distribution mains, valves, hydrants and other appurtenances necessary to provide water service. This also includes the service lines, meters, and meter installation. Mr. Edgemon testified that Indiana-American is not purchasing the source of supply, storage or booster pumps related to source and treatment from Dune Acres. The remaining facilities not purchased will not be needed to provide service after the system is interconnected to Indiana-American's Northwest Operation." Cause No. 42226, September 18, 2002, pg.3.

Other Commission Orders have also distinguished the distribution system from other functional components of a water utility. See, for example, Cause No. 41684, August 4, 2000, pgs. 3 & 4: "The directors of North Dearborn Water Corporation authorized Robert E. Curry & Associates to perform an engineering study of the utility's source of water supplies, water treatment, water distribution system and elevated water storage for the purpose of determining the adequacy of the existing water works facilities to accommodate present and future water demands to the utility." In Cause No. 41879, July 3, 2001, pg. 2, it states: "Petitioner's facilities consist of a water distribution system serving the customers and a water treatment plant rated at 350,000 gal/day that was built

in 1952. Petitioner's facilities also include 2 wells with a pumping capacity of 350 GPM each and a water tower with a capacity of 150,000 gallons." From these examples, the commonly recognized components of a water utility are its source of supply (underground wells or surface water), treatment (water treatment plants), storage (elevated water storage tanks), and distribution (mains/pipes, valves, hydrants and meters needed to deliver water to customers). In short, this Commission and regulated water utilities commonly differentiate among their various utility components, including the segregation of activity into the "distribution system."

This differentiation was established in this proceeding in a response to a discovery request from the Public asking Petitioner to identify the categories of all relevant capital improvements. The discovery response, submitted by the Public into evidence (*Public's Exhibit No. 1, Attachment No. 3, pg. 20*), is a table containing information that Petitioner prepared using the same accounting format as other water utilities when submitting their Annual Reports to the Commission. More specifically, this table is an account matrix that corresponds to accounting practices originally promulgated by the National Association of Regulatory Utility Commissioners ("NARUC") and then adopted by most state public utility commissions, including Indiana's Commission. Indiana's adoption, by reference, of NARUC's rules governing the classification of accounts for water utilities is found at 170 IAC 6-2-2. A summary of Petitioner's account matrix, categorizing all of its proposed DSIC eligible projects, is illustrated below. The "Subsidiary Accounts" and their corresponding numbers shown on the vertical axis are further segregated by the matrix into classifications by function as shown on the horizontal axis (EG: "Source of Supply," "Water Treatment," and "Transmission and Distribution").

| Subsidiary Account | Description | Amount | Source of Supply/ Pumping Plant Plant (SS)(PU) | Water Treatment Plant (WT) | Transmission & Distribution Plant (TD) | General Plant |
|---|---|---|---|---|---|---|
| 303200 | Land SS | 143,998.81 | 143,998.81 | | | |
| 304100 | Structures SS | 74,673.16 | 74,673.16 | | | |
| 304200 | Structures PU | 545,787.04 | 545,787.04 | | | |
| 304300 | Structures WT | 111,572.31 | | 111,572.31 | | |
| 304302 | Tank Ptg WT | 49,498.00 | | 49,498.00 | | |
| 304800 | Structures Misc | 51,299.61 | | | | 51,299.61 |
| 307000 | Wells & Springs | 31,632.50 | 31,632.50 | | | |
| 311200 | Pump Eq Elec | 320,973.09 | 320,973.09 | | | |
| 311300 | Pump Eq Diesel | 62,477.00 | 62,477.00 | | | |
| 320100 | WT Equip | 340,250.55 | | 340,250.55 | | |
| 320190 | Wt Equip Clear | 60,529.00 | | 60,529.00 | | |
| 320191 | WT Equip Plant | 27,903.00 | | 27,903.00 | | |
| 330000 | Dist Reserv | 3,622,258.29 | | | 3,622,258.29 | |
| 331001 | Mains | 5,020,306.63 | | | 5,020,306.63 | |
| 333000 | Services | 1,279,349.58 | | | 1,279,349.58 | |
| 334200 | Mtr Installs | 1,074,128.33 | | | 1,074,128.33 | |
| 335000 | Hydrants | 350,010.33 | | | 350,010.33 | |
| 343000 | Tools/Shop | 4,339.00 | | | | 4,339.00 |
| 346100 | Comm Equip | 30,085.00 | | | | 30,085.00 |
| 346190 | Remote Instrum | 10,608.00 | | | | 10,608.00 |
| 347000 | Misc Equip | 58,588.08 | | | | 58,588.08 |
| Grand Total | | 13,270,267.31 | 1,179,541.60 | 589,752.86 | 11,346,053.16 | 154,919.69 |

The Public's evidence supports, for DSIC purposes, those project amounts identified in Subsidiary Account Nos. 331001 (Mains), 333000 (Services), 334200 (Meter Installations), and 335000 (Hydrants), totaling $7,723,795, all of which are further categorized functionally on the matrix within "Transmission & Distribution Plant." The only other Subsidiary Account Petitioner lists within "Transmission and Distribution Plant," and for which the Public's evidence supports exclusion from DSIC, is No. 330000 (Distribution Reservoir), amounting to $3,622,258.29, which the evidence shows accounts for all "Tank Security Improvements," and the installation of a 1.5 million gallon water storage tank in Hobart, Indiana.

This breakdown of a water utility into its various functional components is also used by the American Water Works Association ("AWWA"). In response to a bench question as to his definition of "distribution system," the Public's engineering witness, Scott A. Bell, answered by referring to the AWWA's Manual: *Principles of Water Rates, Fees, and Charges.* Mr. Bell specifically referred to Table 7-1 in the section of the manual regarding "Allocating Costs of Service to Cost Components," and described how that table separates a water utility's components into Intangible Plant, Source of Supply Plant, Water Treatment Plant, Transmission and Distribution Plant and General Plant.

We believe that the AWWA manual and NARUC's accounting system are consistent with the general understanding in the industry of what can and cannot properly be described as distribution system improvements in the context of water utility plant projects. Items that fall within the other functional categories (EG: Source of Supply/Pumping Plant, Water Treatment Plant, and General Plant) should not be considered distribution system for purposes of a DSIC.

***B. DSIC Laws in Other States.*** We also note, as referenced in the Public's testimony, the comparison of Indiana's DSIC statute with the DSIC statutes enacted in other states, specifically Pennsylvania and Illinois. The DSIC statutes in these states contain many obvious similarities to Indiana's statute. In its *Exhibit No. 1, Attachment No. 4*, the Public produced in evidence an Order from the Pennsylvania Public Utility Commission ("PPUC") that discusses that state's DSIC statute. One issue before the PPUC in that proceeding, and an issue presented by the Public in this proceeding, was a concern that the DSIC statute would be in conflict with the traditional ratemaking process. In *Public's Exhibit No. 1, Attachment No. 4, pgs. 11 & 12* the PPUC states: "Recovery of this narrow set of (DSIC) costs is clearly permitted under Section 1307 (a)...and Pennsylvania case law; and, in the Commission's judgment, this proposal ("to file and implement an automatic adjustment clause to recover its distribution system improvement costs") is in no way a mechanism to "disassemble" the traditional ratemaking process for several reasons: first, the DSIC is designed to identify and recover the distribution system improvements costs incurred between rate cases; second, the costs to be recovered represent a narrow subset of the company's total cost of service; and third, the DSIC will be capped at a relatively low level to prevent any long-term evasion of a base rate review of these plant costs."

In this same Pennsylvania proceeding, the PPUC spoke generally about the purpose of a DSIC: "We agree with the company that the establishment of a DSIC would enable the company to address, in an orderly and comprehensive manner, the problems presented by its aging water distribution system, and would have a direct and positive effect upon water quality, water pressure and service reliability." *Public's Exhibit No. 1, Attachment 4, pg. 8.* This Commission agrees with and endorses such a purpose for a DSIC.

The evidence shows that in Illinois the only projects eligible for DSIC consideration are those that fall within the account numbers noted above: 331 (Transmission and Distribution Mains), 333 (services), 334 (Meters and Meter Installations) and 335 (Hydrants). *Public's Exhibit No. 1, Attachment 5, page 4.* These are the same accounts to which the Public proposes to limit DISC eligibility and, as shown in the above matrix, accounts to which Petitioner has assigned some of the projects for which it seeks approval of a DSIC. While not using the exact same account numbers, it appears from the evidence that Pennsylvania likewise generally limits DSIC-eligible property to services, meters, hydrants and mains. *Public's Exhibit No. 1, Attachment 4, page 18.*

***C. A DSIC Proceeding is an Expedited Proceeding.*** In contrast to traditional rate case proceedings, Indiana Code 8-1-31 obviously intends for a

determination on a DSIC automatic rate adjustment to be made in an abbreviated and accelerated fashion. First, public notice that a DSIC petition has been filed is not required. Indiana Code 8-1-31-8(c). In addition, the Public is under a statutory deadline to issue a report to the Commission, if it chooses to do so, no later than thirty (30) days after the petition is filed. And the Commission is required to conduct a public evidentiary hearing and issue an order within sixty (60) days of the DSIC petition being filed. Indiana Code 8-1-31-9. These short time frames are not indicative of a proceeding that would require any extensive discovery on the part of the Public or review on the part of the Commission of complex projects that are often, and appropriately, the subject of traditional rate case proceedings.

These short time frames are, however, consistent with purposes set forth in Eric W. Thornburg's memo to the Indiana Senate, urging passage of the DSIC legislation. As noted above, Eric Thornburg was Vice President of Indiana-American. Mr. Thornburg stated as follows:

> Regardless of their size and complexity, a common challenge is the age of underground infrastructure, the water mains that convey the product to the customer's tap. The principal focus of regulatory and financial resources has been on improving the quality of our drinking water primarily through promulgating water treatment standards. However, once the water leaves our plants, it travels through piping systems that can be 125 years old.
>
> With so much of the capital available going towards improving water treatment systems, little has been available for replacing pipelines. Compounding the situation is the cost differential. New water lines vary in cost depending on their size, but typical installations average $20 – 100 per foot. We are often retiring pipe that cost less than $1 per foot when it was installed and rate shock can result.
>
> This new technique will allow for the replacement of aged infrastructure, primarily pipelines, without the necessity of filing for increases with the added cost to customers and delay of such undertakings. It does not include new main extensions that would produce additional revenue for the utility.
> *Petitioner's Exhibit No. 1, Attachment No. 1.*
> (Emphasis added.)

If Indiana-American's request in this proceeding were consistent with its former Vice President's description of the DSIC legislation, it would not have included improvements to utility components such as water treatment or source of supply, or security improvements, but would have concentrated primarily on the replacement of pipelines, meters and hydrants within the distribution system. In this proceeding, however, Petitioner contends that the lack of qualifying language in Indiana Code 8-1-31-5 to specifically limit "water utility plant projects" to projects within the "distribution system" results in DSIC eligibility for any utility plant project that is in service, was not included in the utility's last rate case, and was not a project to hook-up new customers.

***D. Legislative Intent.*** To the extent Petitioner's reading of this statute has merit we rely on what the courts have said regarding the discernment of legislative intent. "The intention of the legislature, as ascertained from a consideration of the act as a whole, will prevail over the literal meaning of any of the terms used therein." *Brown v. Grzeskowiak*, 230 Ind. 110, 101 N.E. 2d 639 (1951). In *City of Indianapolis v. Evans*, 216 Ind. 555, 24 N.E.2d 776, (1940), the court said: "The legislative intent, however, is to be ascertained by an examination of the whole, as well as the separate parts of the act, and when so ascertained, the intention will control the strict letter of the statute or the literal import of particular terms of phrases, where to adhere to the strict letter or literal import of terms would lead to injustice, absurdity, or contradict the evident intention of the legislature." And in *Rexing v. Princeton Window Glass Co.*, 51 Ind. App. 124, 94 N.E. 1031 (1912), we look to the language: "The purpose and scope of an act of the legislature must be determined from its title," and then to the title of Indiana Code 8-1-31, which is: "Distribution System Improvement Charges." When read as a whole, particularly with the intended and repeated reference to "distribution system," we find the most reasonable intent of Indiana Code 8-1-31 is to limit water utility plant projects to projects that are within the utility's distribution system.

***E. The Language of Indiana Code 8-1-31.*** In addition, we also find the actual language of Indiana Code 8-1-31 to be consistent with our finding as to legislative intent. We, therefore, do not accept Petitioner's assertion that a plain language examination of Indiana Code 8-1-31 necessarily results in the conclusion that eligible improvements under this statute include any utility improvements that do not increase revenue by connecting the distribution system to new customers; are in service; and were not included in the utility's last general rate case. Indiana Code 8-1-31-5 states:

> As used in this chapter, "eligible distribution system improvements" means new used and useful water utility plant projects that:
>
> (1) do not increase revenues by connecting the distribution system to new customers;
> (2) are in service; and
> (3) were not included in the public utility's rate base in its most recent general rate case.

This statute specifically disallows DSIC eligibility for "water utility plant projects" that would increase revenues by connecting the "distribution system" to new customers. This is one place in the statute where the phrase "water utility plant projects" is juxtaposed against the phrase "distribution system," thereby imparting a meaning to "distribution system" that is narrower than that of "water utility plant projects." If the broad meaning of "water utility plant projects" was intended to carry through all of Section 5, why qualify Section 5(1) with the phrase "distribution system?" We find it a reasonable interpretation that the statute as written is stating what was obviously intended, which is that the type of water utility plant projects contemplated are necessarily within the water utility's distribution system.

In addition, this juxtaposition of the phrase "water utility plant projects" with the phrase "distribution system" results only in a limitation that excludes from DSIC eligibility a particular category of utility plant project within the distribution system (connecting to new customers). Connecting to new customers describes a classic type of distribution system activity within the common meaning of "distribution system" as discussed above. We do not find it logical that this "Distribution System Improvement Charge" statute, with this single, exclusionary reference to a specific type of "distribution system" project, intended thereby to open the door of DSIC eligibility to any other "water utility plant project." Rather, we find that this one exclusion of a type of project within the distribution system is meant to thereby imply the inclusion, or DSIC eligibility, of all other types of distribution system improvements. We find the language and intent of this statute to include the requirement that a water utility plant project, in order to be eligible for DSIC consideration, must be a project within the "distribution system," limited, as to type of project, only by the ineligibility of projects that connect to new customers.

Accordingly we find, as applied to water utilities, that a common and consistent meaning of the phrase "distribution system" is found: in our previous Orders, in other states' DSIC laws, and in the water utility industry in general. We find that meaning identifies one component of a water utility that is distinguishable in plant and function from other components such as source of supply, water treatment and, in some instances, water storage. We also find that the evident legislative intent of Indiana Code 8-1-31, as well as the express language of that statute, conveys that same meaning. We cannot conclude that the Indiana General Assembly chose to adopt and repeatedly refer to "distribution system" in Indiana Code 8-1-31 as a way to generally identify, as Petitioner contends, the whole of a water utility. As to what water utility projects fall within the distribution system for DSIC eligibility, we find it within the purpose and meaning of Indiana Code 8-1-31 to look to the categories or accounts that the water utility industry uses, and specifically NARUC's system of accounts, to identify projects that are within a utility's distribution system.

***F. Projects and Amounts to Be Included and Excluded as Distribution System Improvement Charges.*** Of the $13,270,267 Petitioner has requested for DSIC eligibility, the Public sought to allow $7,723,795. All of this $7,723,795 is categorized on Petitioner's matrix within the following Subsidiary Accounts: " Mains (331001), Services (333000), Meter Installations (334200), and Hydrants (335000). And all of these Subsidiary Accounts are contained within the functional category: "Transmission and Distribution." Based on our discussion above, since these improvements are categorized as being within Petitioner's distribution systems, we find that they should be approved for DSIC recovery.

The Public sought to disallow $5,546,472, which includes $2,402,473 for security improvements and $3,143,999 for non-security improvements that the Public claims are either not distribution system improvements or are otherwise not eligible. Of the total amount the Public seeks to disallow, $1,499,158 relates to costs for non-security projects, and $425,057 is for security-related projects, that Petitioner has categorized on its matrix within the functional categories of "Source of Supply/Pumping," "Water Treatment," and

"General Plant." Petitioner has categorized the remaining $3,622,258 within the matrix category of "Transmission and Distribution." Of that Transmission and Distribution amount, $1,644,841 accounts for the cost of a project to erect a tank in Hobart, Indiana, and $1,977,417 relates to various projects to improve tank security.

Based on our analysis above of the DSIC statute, we find that all non-security projects that fall outside of improvements to the utility's distribution system; that consist of improvements to Source of Supply/Pumping, Water Treatment and General Plant, should be excluded from recovery of a DSIC charge. In this proceeding, therefore, $1,499,158 should be excluded.

We turn our attention next to the $1,644,841 attributed to placing a new water tower in service in Hobart, Indiana. We agree that the Hobart Water Tower was properly categorized by Petitioner on the account matrix discussed above as being functionally within "Transmission and Distribution Plant", in Subsidiary Account No. 330000 ("Distribution Reservoir"). Based on our discussion above, that fact argues for inclusion of the water tower as a DSIC. However, we also note that both Pennsylvania and Illinois do not include "Distribution Reservoir" in their definition of DSIC eligible, distribution system projects. That fact suggests, as we believe, that water storage may go beyond the distribution system improvements contemplated by this statute. We are not convinced that the replacement of three (3) water towers with one tower that is three (3) times the capacity of the three (3) replaced towers combined, at a cost of $1.5M dollars, could be adequately reviewed by the Public and determined by this Commission within the time prescribed for the issuance of a DSIC Order.

The construction of new or replacement water storage tanks is accomplished at a considerable expense for water utilities. That expense is ultimately borne by water utility customers, who are the ratepayers. In this proceeding, the Hobart Water Tower is the most expensive single project that Petitioner has presented to this Commission for DSIC approval. As already noted, the DSIC statute does not require public notice that a DSIC petition has been filed. It is difficult to reconcile the inclusion of projects of this magnitude with the procedural constraints imposed by the DSIC statute. Consideration of the water tank in this proceeding is complicated even more by the fact that this tank project has resulted in an infrastructure very different from the infrastructure it has replaced. All of these considerations serve to emphasize the limitations built into the DSIC statute that are not found in a traditional rate case, such as a longer review period and more public notice, all of which are very important for projects of this size and scope. Referring to a Pennsylvania court decision, the PPUC stated: "...the purpose of (Pennsylvania's automatic rate adjustment law) is to permit reflection in customer charges of changes in one component of a utility's cost of providing public service without the necessity of the broad, costly and time-consuming inquiry required in a...base rate case." *Public's Exhibit No. 1, Attachment 4, pg. 10.*

It is also arguable that the costs of the Hobart Water Tower project are subject to allocation, with some costs being DSIC eligible and some not being DSIC eligible. But there is not sufficient evidence in this proceeding to support a cost allocation. Even if

such evidence did exist, timely review would be hindered by the complexity of allocation techniques and by the statutory deadlines inherent to DSIC proceedings that have already been discussed.

Mr. DeBoy testified that the Hobart Water Tower project was in the planning stage prior to Petitioner's acquisition of the Northwest Indiana Water Company, though not placed in service until after its last rate case was filed on June 29, 2001 in Cause No. 42029. This Commission approved Indiana American's acquisition of the Northwest Indiana Water Company on December 15, 1999. We note, however, our rate Order in Cause No. 42029 gave consideration to certain of Petitioner's projects (Tunnel Project, Newburgh Project, and Wabash Valley Project) that included estimated costs and estimated in-service dates for completion. Thus, the Commission has allowed for projects that are not yet in service and outside the test year to be included in rates during traditional rate case proceedings. Petitioner could have effectively included the Hobart Water Tower in this most recent traditional rate case, which allowed for a two-step increase to be phased in upon completion of the Tunnel Project.

We also note that the Hobart Water Tower was constructed, at least in part, with additional customer revenue in mind. Mr. DeBoy testified that it would have been shortsighted for Petitioner not to consider future needs in determining the capacity of the Hobart Water Tower and that additional customers were, in fact, a consideration in determining the size tank to build. Notwithstanding, therefore, the argument that the Hobart Water Tower can be described as a distribution system improvement, there is also evidence that a substantial portion of the much larger water tower will increase revenues by permitting connection of the distribution system to new customers, thereby making it ineligible for DSIC recovery. Of course we realize, first, that no water utility customer is directly connected to a water storage tank and, second, that some aging distribution system infrastructure, such as mains, could, for example, be replaced with larger diameter mains in response to or anticipation of new customers, yet still be DSIC eligible. A new or replacement water tower, however, can play a significant role in connecting new customers. It is clearly the intent of the DSIC statute to exclude distribution system projects that connect to new customers, and we find this water tower, with its ability to generate new revenue, fits within the purpose of that exclusion.

This Cause is the first DSIC proceeding brought before this Commission, and our findings and conclusions will impact future DSIC petitions. It is a primary charge of this Commission to ensure just and reasonable utility rates. The traditional ratemaking process contains the safeguards needed for comprehensive review, particularly of complex and expensive projects, by the Public, the Commission, and the public in general. We find the DSIC statute is similar in purpose to other "tracker" statutes that allow utilities expedited adjustment to rates in matters that fall outside the need for the comprehensive review allowed in a traditional rate case.

We are, however, not prepared to find in this proceeding, as has been determined in Pennsylvania and Illinois, that any project categorized within "Distribution Reservoir" is not DSIC eligible. Distribution Reservoir projects presented to the Commission for

DSIC recovery will be considered on a case-by-case basis. We find only, for all of the above reasons specific to this particular project, that the Hobart Water Tower project is not DSIC eligible.

Finally, we address the $2,402,473 in security costs that Petitioner has proposed for DSIC recovery. An amount of $425,057 for security improvements is DSIC excludable for the same reason as the non-security improvements above that did not take place within the distribution system. And even though Petitioner has categorized a portion ($1,977,417) of its security costs as being projects within the distribution system, we find that those security costs should also be excluded from DSIC recovery. We agree with the Public's testimony that the purpose of a DSIC proceeding is to encourage, through an expedited and automatic rate increase, repair or replacement of a distribution system's aging and failing infrastructure. Security improvements, while providing overall improvement to a utility, are not the type of infrastructure improvements contemplated by DSIC statutes.

In addition, given the highly sensitive nature of all security system information, more time than the DSIC statute allows is needed to permit the Public as well as the Commission to fulfill its statutory duties. Indiana Code 8-1-31-9(b) states that the Public may issue a report on a DSIC request within thirty (30) days of the petition being filed. The Public testified, through Mr. Kaufman, that any discovery about improvements that are claimed to be sensitive is difficult and arguments about the recovery of those improvements are awkward, thereby suggesting a lengthier process to ensure adequate review. Given the time needed for the Public and Petitioner to enter into a standard confidentiality agreement, plus the time needed for possible discovery on these sensitive issues, would almost certainly require more than thirty (30) days for the Public to conduct a meaningful review. In addition, given the sixty (60) day time limit for the Commission to issue an order, the meaningfulness of our review is hampered by additional procedures that must be considered and invoked in order to ensure proper confidential handling of sensitive information. Again, the point simply being that the additional complexities of considering security improvements are better suited for a traditional rate case proceeding.

In response to Mr. Kaufman's concern that the review performed in a traditional rate case cannot be completed during the abbreviated process for a DSIC, Mr. Cutshaw stated that the DSIC process was not intended to and will not result in a final determination that the DSIC assets are in rate base for purposes of a general rate case and that the Public will have the opportunity to conduct a full rate base review in the utility's next general rate case. We note, however, that Petitioner's assertion that an imprudent investment can be subsequently removed from rate base does not justify its inclusion in a DSIC. If an investment is, in fact, subsequently excluded from rate base in a future rate case, then ratepayers will have paid both a return on and of an asset that was determined to be ineligible. It is unfair for ratepayers to have incurred such a cost. Moreover, if an asset does not belong in rate base then ratepayers should not have to pay a return on and of that asset. Given the limited time frame, DSIC eligible assets should only include assets that require a minimal review and whose inclusion in rate base is assumed to be reasonable.

For the foregoing reasons and without need to refer to specific categories or describe even in general terms Petitioner's security improvements and without need to make any determination as to the relative prudence of those improvements, we deny recovery of the security improvements in this DSIC proceeding. We find that, without regard to what component of a system they are designed to make secure, security improvements do not properly fall within the descriptor "distribution system improvement" and were not intended to be recovered in a DSIC proceeding regardless of their desirability. In so concluding, we also agree with the Public's testimony that a utility's undertaking of prudent security measures should not be dissuaded. With a heightened concern about terrorist attacks, we encourage utilities to take prudent measures to ensure that their facilities and employees are protected, and to ensure that a safe product can be delivered to consumers. Given, however, the need expressed by Petitioner to be sensitive to the need to maintain secrecy where appropriate, a DSIC case simply does not allow sufficient time to afford due process to the parties and adequate time for the Commission to balance the need for secrecy with the expedited review required by statute. Petitioner may seek to recover these expenditures in a subsequent general rate case.

In addition to the foregoing reasons to exclude security improvements as well as the other excluded items we believe our position here is reasonable given our practice of allowing utilities to recover depreciation of contributed property. In Cause No. 39595, the Commission stated on page 23, "The Commission's current policy of allowing the recovery of depreciation on the contributed property provides to the Company additional internally generated funds to cover at least part of the replacement cost." Indeed, Petitioner's last rate case, Cause No. 42029, had $60 million in CIAC on which depreciation was calculated and included in rates.

Also, We agree with the Public's recommendation that future DSIC proceedings should include a projection of plans to repair and rehabilitate the distribution system, but find Petitioner's suggestion that such a projection be limited to a 5-year forecast, as opposed to 10 years, to be more reasonable.

*G. Calculation of Distribution System Improvement Charges.* As to calculation of a DSIC, both Petitioner and the Public agree the before tax rate of return should be 10.81% on certain additions less the amounts contributed by INDOT. The Public further reduces the amount on which the return applies by the original cost of those assets that are now no longer in service as they have been replaced by the assets eligible for the DSIC. Petitioner has acknowledged Indiana allows a return on the Fair Value of assets. Petitioner also acknowledges that if such asset values were not eliminated in the DSIC calculation, Petitioner would earn a return on assets no longer in service as well as earning a return on the replacement of those assets. On cross-examination by the Public, Petitioner's witness Mr. Cutshaw indicated, under Petitioner's method of calculation, it will be earning a return on the fair value of the assets which have been retired as well as earning a return on these new assets, some of which were replacements for those assets retired. In its proposed order, the Public notes that Mr.

Cutshaw asserted in his rebuttal testimony that retirements should not be deducted from rate base additions in a DSIC because, under mass accounting rules, when a utility retires an asset it has no impact on the utilities net book value. We observe that such a rationale may be technically correct, but it is also irrelevant since such a factor would only apply in original cost ratemaking. Petitioner's rate base is based on the fair value of its assets. When any asset with a positive fair value is retired that will reduce the utility's fair value rate base. Thus, if retirements are ignored and a utility is allowed to earn a return on new plant through a DSIC, they will collect a return on both the new plant through its DSIC and on the retired asset through its return on the fair value rate base determination from the utility's last rate case. (We asked Mr. DeBoy if it could be determined when individual assets that have been retired were purchased. He indicated that it would be possible by pulling fixed asset records. We note that this information appears to be found in the response to data request question 33 included in *Attachment No. 3* to Mr. Kaufman's testimony.)

Petitioner did not provide the fair value determination from their last rate case for the items retired. We agree with the Public as to the net amount eligible to receive a return on. We therefore find Petitioner may receive a 10.81% before tax return on $5,859,778 of net additional plant.

In Cause No. 42029, the Commission determined that the fair value of Indiana American's rate base was $562,680,669. The Commission also determined that Indiana American's original cost rate base was $403,085,800. Mass accounting rules do not apply to the Commission's determination of a utility's fair value and any retirement of plant will impact the fair value rate base. In Cause No. 42029, Mr. Deboy used a replacement cost new less depreciation study to estimate Indiana American's fair value. His methodologies for the study are described on page 26 of our final order in that Cause. While aged plant that is retired may have a negligible original cost, the fair value of such retired assets may not be negligible and not so easily determined.

Both Petitioner and Public agree on the method of calculating depreciation. Each took what they considered DSIC eligible assets, deducted retirements, and applied the appropriate depreciation rates. The disagreement is in what constitutes DSIC eligible assets. Applying our previous decision as to what assets are DSIC eligible, we therefore find Petitioner may earn depreciation in the amount of $163,849.

As to Petitioner's objection to Ms. Gemmecke's unbundling of the Water Groups, the Commission notes that Ms. Gemmecke provided not only each water group on its own, but also as a total of all water groups. The Commission does not have a blanket stance on single-tariff pricing, but considers each case on it own merits. Ms. Gemmecke's schedules were helpful in determining if we should take the same stance in this case as we took in Cause 42029 regarding the movement toward single-tariff pricing for Indiana-American. This abbreviated proceeding does not allow us to re-visit that issue; therefore we have determined to apply the increase to the Groups as an average. We therefore find the calculations of eligible DSIC assets should be calculated and applied according to the schedule below:

**DSIC Calculation and Rate Schedule**

| | Total | Total Water Groups 1, 2, 3 | Wabash | Northwest | Mooresville | Warsaw | West Lafayette | Winchester |
|---|---|---|---|---|---|---|---|---|
| Additions subject to DSIC | $7,723,795 | $5,942,722 | $169,439 | $969,547 | $78,349 | $73,118 | $144,716 | $345,905 |
| Less Reimbursement by INDOT | 1,310,504 | 1,310,504 | 0 | 0 | 0 | 0 | 0 | 0 |
| Less Retirements | 553,513 | 406,378 | 23,638 | 83,146 | 6,974 | 3,566 | 16,027 | 13,784 |
| Net Investor supplied DSIC Additions | 5,859,778 | 4,225,840 | 145,801 | 886,401 | 71,375 | 69,552 | 128,689 | 332,121 |
| Pre-tax Rate of Return | 10.81% | 10.81% | 10.81% | 10.81% | 10.81% | 10.81% | 10.81% | 10.81% |
| Pre-Tax Return on Net DSIC Additions | 633,442 | 456,813 | 15,761 | 95,820 | 7,716 | 7,519 | 13,911 | 35,902 |
| Depreciation on DSIC Additions | 163,849 | 132,872 | 3,660 | 14,073 | 2,354 | 1,520 | 3,859 | 5,511 |
| Total DSIC Revenues | 797,291 | 589,685 | 19,421 | 109,893 | 10,070 | 9,039 | 17,770 | 41,413 |
| DSIC Rate per MGAL | **$0.0219** | **$0.0267** | **$0.0256** | **$0.0101** | **$0.0288** | **$0.0110** | **$0.0142** | **$0.2027** |
| DSIC Rate per CCF | **$0.0164** | **$0.0200** | **$0.0192** | **$0.0076** | **$0.0216** | **$0.0083** | **$0.0107** | **$0.1521** |

***H. Confidential Information.*** The December 30, 2002 Docket Entry issued in this Cause made a preliminary determination that security-related evidence received during the *in camera* portion of the Evidentiary Hearing would be handled and maintained as confidential pursuant to Indiana Code 5-14-3. This preliminary determination was based on the trade secret exception to disclosure found in Indiana Code 5-14-3-4, as well as the need to protect security-related information that, if disclosed to the public, would jeopardize a security system that is within the state's and national interest to protect. The Commission hereby makes a permanent determination that the record of the *in camera* portion of the Evidentiary Hearing conducted in this Cause on January 29, 2003, shall be handled and maintained as confidential in accordance with Indiana Code 5-14-3.

I. ***Settlement Agreement.*** The parties' *Stipulation and Settlement Agreement* filed in this proceeding proposes several significant findings that differ from the findings we have made herein. First, the *Stipulation and Settlement Agreement* proposes a finding that the Hobart Water Tower is an eligible DSIC project. Second, the Settlement Agreement proposes to include as DSIC eligible a pump station project ("Taft Street Pump Station") that is excluded from eligibility herein because it was not categorized by Petitioner as being within the distribution system, except for an individual pump station project that was categorized on Petitioner's matrix as being a "Main" project within "Transmission and Distribution." The remainder of the Taft Street Pump

Station projects were categorized as being within "Source of Supply/Pumping," and, therefore, excluded. Mr. DeBoy testified that the Taft Street Pump Station improves service to the distribution system. The Public, in its testimonial Proposed Order, states that the Taft Street Pump Station should be considered as being within the distribution system, though still DSIC ineligible because of testimony that it would increase the ability to connect to new customers. We are not convinced, however, that the best evidence shows anything other than a majority of the Taft Street Pump Station projects were correctly categorized as being outside of the distribution system. The third difference between the *Stipulation and Settlement Agreement* and our findings herein is the proposal that all security improvements, including tank security improvements, be excluded from DSIC recovery, but that the portion attributable to "tank security improvements" ($1,977,417) be allowed to accrue "post-in-service" allowance for funds used during construction ("AFUDC") and deferred depreciation.

AFUDC is a recognized accounting mechanism that allows a utility to accrue the cost of debt related to major construction projects during the construction period. Once an in-service project is approved in a general rate proceeding for inclusion in rate base, the utility can begin earning a return on the value of the project. However, economic erosion to the utility can occur if there is a significant lag between the time the project is placed in service and the time of the utility's next general rate proceeding. This is because once the project is placed in service, but before it is approved for inclusion in rate base as an asset of the utility, not only does AFUDC cease as an available accounting tool, but also depreciation commences which is ultimately subtracted from the net original cost of the project to determine its value in rate base. In order to avoid the economic erosion that would otherwise result to the utility, the Commission can authorize, during this lag period, the continued, or "post in-service," accrual of AFUDC as well as deferring depreciation.

Most cases brought before this Commission seeking post in-service AFUDC and deferred depreciation ("AFUDC Remedy") contemplate that remedy from the outset. The AFUDC Remedy in this proceeding, however, was apparently not contemplated, and obviously not sought, until the submission of the late-filed settlement agreement. In determining the appropriateness of the AFUDC Remedy, we have previously said: "The precedents are clear that the requested treatment (the AFUDC Remedy) is appropriate in the case of major projects being placed in service and when the denial of the requested relief would have severe financial ramifications." Cause No. 39150, June 19, 1991. Evidence of these criteria was not produced in this proceeding. While evidence of the value of the security improvements was produced, we do not have evidence to support whether or not these security improvements are "major" in the context of the AFUDC Remedy, or whether our denial of the AFUDC Remedy would have severe financial ramifications on Petitioner. The AFUDC Remedy is a different form of relief from the DSIC remedy sought in this proceeding.

The Parties' joint settlement agreement asserts that Petitioner's recovery under the settlement agreement will be less than what it sought under the DSIC remedy and, therefore, falls within Petitioner's original request as lesser included relief. As stated

above, and regardless of the amount to be recovered by Petitioner under either remedy, we consider the AFUDC Remedy to be distinct from the DSIC remedy, each requiring proof of different elements. Therefore, given our finding that the evidence does not support approval of either a DSIC or AFUDC for security improvements, we conclude that neither remedy is appropriate in this proceeding.

We do not find it in the public interest that an automatic rate increase be imposed on ratepayers for improvements that we do not find, based on the evidence, to be within the utility's distribution system, or that Petitioner be allowed to continue to accrue AFUDC and defer depreciation when eligibility for those remedies has been neither sought nor proven. Accordingly, we reject the *Stipulation and Settlement Agreement*.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:**

1. Indiana-American Water Company, Inc. is approved a Distribution System Improvement Charge that generates $797,291 in additional annual revenue.

2. We find that for purposes of determining the DSIC revenue, a before tax return of 10.81% should be applied to the net investor supplied DSIC eligible assets of $5,859,778. Such a figure includes distribution assets added since Petitioner's last rate case less reimbursements by Indiana Department of Transportation for line relocations, less the distribution assets retired and replaced since the last rate case.

3. Recovery of DSIC revenues through an adjustment of rates shall be in accordance with the DSIC Calculation and Rate Schedule found herein in Finding Paragraph No. 8G. Petitioner shall file with the Gas/Water/Sewer Division of the Commission, prior to placing into effect the DSIC rates herein approved, separate amendments to its rate schedule with reasonable reference therein reflecting that such charges are applicable to the rate schedules reflected on the amendment.

4. In accordance with Indiana Code 8-1-31-15, Petitioner shall file a revised rate schedule resetting the DSIC when the Commission issues an Order authorizing a general increase in rates and charges that includes the eligible distribution system in the utility's rate base.

5. In its next DSIC case, Indiana-American should file a five-year forecast of its distribution system replacement program.

6. This Order shall become effective upon and after the date of its approval.

**MCCARTY, LANDIS, RIPLEY AND ZIEGNER CONCUR; HADLEY ABSENT:**
**APPROVED:**

FEB 2 7 2003

I hereby certify that the above is a true
and correct copy of the Order as approved.

Nancy E. Manley
Secretary to the Commission

RECEIVED
MAR 10 2003

As Introduced

125th General Assembly
Regular Session
2003-2004

S. B. No. 44

Senator Robert Gardner

# A BILL

To amend section 4909.171 and to enact section 4909.172 of the Revised Code to authorize, subject to Public Utilities Commission approval, cost-based rate adjustments for water supplied to a waterworks utility by another waterworks utility, rate adjustment authority for a sewage disposal utility similar to the authority of a waterworks utility, and customer surcharges on waterworks or sewage disposal utility rates to cover specified costs associated with and a return on certain plant investment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4909.171 be amended and section 4909.172 of the Revised Code be enacted to read as follows:

Sec. 4909.171. (A) Any waterworks company ~~whose water supply is provided by a municipal corporation or other local governmental unit of this state whose rates are not subject to regulation by~~ or any sewage disposal system company may submit an application to the public utilities commission ~~shall request~~ for an increase or decrease in ~~rates when the~~ any rate or charge for, respectively, water or sewage treatment, if both of the following conditions are

met:

(1) The water or sewage treatment is provided to the company by either of the following:

(a) A municipal corporation or other local governmental unit of this state whose rates are not subject to regulation by the commission;

(b) Another waterworks company or another sewage disposal system company that is a public utility and whose rates for the water or the sewage treatment have been approved by the commission pursuant to an application filed under section 4909.18 of the Revised Code.

(2) The change in rate or charge is based solely on a change in the cost to the company of the water ~~imposed on the waterworks company by the municipal corporation or other governmental unit and, in such instance, sections~~ or the sewage treatment.

Sections 4909.18 and 4909.19 of the Revised Code do not apply to any application filed under this section. ~~When the waterworks company requests a rate change, it shall file with the commission~~ An application shall be accompanied by evidence of the new rates ~~imposed by the municipal corporation or other governmental unit~~ and charges charged the company by a provider described in division (A)(1)(a) or (b) of this section.

(B) Pursuant to the filing of an application under division (A) of this section by a waterworks company or a sewage disposal system company, the commission shall approve appropriate ~~tariff~~ revisions, ~~without~~ in the schedule of the company filed under section 4905.30 of the Revised Code, which revisions shall reflect solely the change in the cost to the company of the water or the sewage treatment, as specified in division (A) of this section and no other cost, charge, or item, and shall not change ~~in~~ the

distribution of the revenue responsibility of the various classes of the company's customers, ~~which revisions shall become effective immediately~~.

(C) An increase authorized pursuant to division (B) of this section shall not be effective until ten days after the date the waterworks company or the sewage disposal system company has provided affected customers with notification of the increase, in such form and by such method as the commission shall prescribe.

Sec. 4909.172. (A) Subject to such customer notice as the public utilities commission shall prescribe, a waterworks company, or a sewage disposal system company, that is a public utility may file an application with the commission for approval to collect surcharges from all its customers to cover the company's costs of infrastructure plant incurred after March 1, 2003, including, but not limited to, depreciation expenses, and to provide a fair and reasonable rate of return on the valuation of that plant investment. Such infrastructure plant shall exclude any improvement providing the company with additional revenue other than any minimal revenue associated with the elimination of a dead end and shall consist of all of the following:

(1) In the case of a waterworks company, services for, and hydrants, mains, and valves installed as a part of, a replacement project for an existing facility; main extensions installed to eliminate dead ends or to resolve documented water supply problems presenting significant health or safety issues to then existing customers; and main cleaning or relining;

(2) In the case of a sewage disposal system company, mains and lift stations installed as part of a replacement project for an existing facility; main extensions installed to resolve documented sewage disposal problems presenting significant health or safety issues to then existing customers; and main cleaning.

inflow and infiltration elimination, or relining;

(3) Unreimbursed capital expenditures made by the waterworks company, or the sewage disposal system company, for waterworks, or sewage disposal, facility relocation required by a governmental entity due to a street or highway project;

(4) Minimum land or land rights acquired by the company as necessary for any service, equipment, or facility described in division (A)(1) to (3) of this section.

(B) The commission, independent of any other matter related to the waterworks company's or the sewage disposal system company's revenue requirement, may authorize by order the surcharges described in division (A) of this section pursuant to an application filed under that division, except that the commission shall not authorize any surcharge to be effective on or after January 1, 2015. Any surcharge authorized under this division shall be limited to not more than three per cent of the rates and charges in effect on the date of the application for each customer class of the company. A company for which a surcharge has been authorized under this division may file an application for another surcharge not sooner than twelve months after the filing date of its most recent application. The commission shall not authorize a company to have more than three surcharges in effect at any time.

(C) During the period that an authorized surcharge is in effect, the commission, by order and on its own motion or upon good cause shown, may reduce the surcharge to prevent the company from earning an excessive rate of return on its valuation under section 4909.15 of the Revised Code.

(D) An order issued by the commission deciding an application by a waterworks company or a sewage disposal system company for an increase in rates and charges pursuant to an application filed by the company under section 4909.18 of the Revised Code shall provide for the termination, as of the earlier of the effective date of the increase or the date specified in division (E) of this section, of any then existing surcharges of the company authorized under division (B) of this section.

(E) All surcharges authorized pursuant to this section shall terminate by operation of law not later than December 31, 2014.

(F) The commission may adopt such rules as it considers necessary to carry out this section.

Section 2. That existing section 4909.171 of the Revised Code is hereby repealed.

**Interrogatories and Requests for Production**
**Of Documents by the**
**Attorney General (Third Set)**
**To Tennessee-American Water Company**
**Rate Case No. 03-00118**

3. Q. In the CAPD's First Discovery Request, Interrogatory No. 53 we asked "Provide the capital structure of Tennessee-American's parent company, American Water Works, as of July 31, 2003." Although TAWC responded, we need further clarification. Please provide the interest rates payable to the note holders and the ratings of long-term debt.

Response: See Attached.

# AMERICAN WATER WORKS COMPANY
## Reconciliation of Account .181110
## Unamortized Debt Expense
## December 2002

| | |
|---|---|
| Balance per Amortization Schedule: | 46,439.13 |
| Balance per General Ledger: | 46,439.13 |
| Difference: | (0.00) |

AMORTIZATION OF DEBT EXPENSE (7.02 % Bond Financing) Due 8 / 2 / 2005 debt assumed from NEI

| Period | Begin Bal. | Amort. | Ending Bal. |
|---|---|---|---|
| 1 JUN 99 | 110,853.99 | 1,498.02 | 109,355.97 |
| 2 JUL 99 | 109,355.97 | 1,498.02 | 107,857.95 |
| 3 AUG 99 | 107,857.95 | 1,498.02 | 106,359.93 |
| 4 SEP 99 | 106,359.93 | 1,498.02 | 104,861.91 |
| 5 OCT 99 | 104,861.91 | 1,498.02 | 103,363.89 |
| 6 NOV 99 | 103,363.89 | 1,498.02 | 101,865.87 |
| 7 DEC 99 | 101,865.87 | 1,498.02 | 100,367.85 |
| 8 JAN 00 | 100,367.85 | 1,498.02 | 98,869.83 |
| 9 FEB 00 | 98,869.83 | 1,498.02 | 97,371.81 |
| 10 MAR 00 | 97,371.81 | 1,498.02 | 95,873.79 |
| 11 APR 00 | 95,873.79 | 1,498.02 | 94,375.77 |
| 12 MAY 00 | 94,375.77 | 1,498.02 | 92,877.75 |
| 13 JUN 00 | 92,877.75 | 1,498.02 | 91,379.73 |
| 14 JUL 00 | 91,379.73 | 1,498.02 | 89,881.71 |
| 15 AUG 00 | 89,881.71 | 1,498.02 | 88,383.69 |
| 16 SEP 00 | 88,383.69 | 1,498.02 | 86,885.67 |
| 17 OCT 00 | 86,885.67 | 1,498.02 | 85,387.65 |
| 18 NOV 00 | 85,387.65 | 1,498.02 | 83,889.63 |
| 19 DEC 00 | 83,889.63 | 1,498.02 | 82,391.61 |
| 20 JAN 01 | 82,391.61 | 1,498.02 | 80,893.59 |
| 21 FEB 01 | 80,893.59 | 1,498.02 | 79,395.57 |
| 22 MAR 01 | 79,395.57 | 1,498.02 | 77,897.55 |
| 23 APR 01 | 77,897.55 | 1,498.02 | 76,399.53 |
| 24 MAY 01 | 76,399.53 | 1,498.02 | 74,901.51 |
| 25 JUN 01 | 74,901.51 | 1,498.02 | 73,403.49 |
| 26 JUL 01 | 73,403.49 | 1,498.02 | 71,905.47 |
| 27 AUG 01 | 71,905.47 | 1,498.02 | 70,407.45 |
| 28 SEP 01 | 70,407.45 | 1,498.02 | 68,909.43 |
| 29 OCT 01 | 68,909.43 | 1,498.02 | 67,411.41 |
| 30 NOV 01 | 67,411.41 | 1,498.02 | 65,913.39 |
| 31 DEC 01 | 65,913.39 | 1,498.02 | 64,415.37 |
| 32 JAN 02 | 64,415.37 | 1,498.02 | 62,917.35 |
| 33 FEB 02 | 62,917.35 | 1,498.02 | 61,419.33 |
| 34 MAR 02 | 61,419.33 | 1,498.02 | 59,921.31 |
| 35 APR 02 | 59,921.31 | 1,498.02 | 58,423.29 |
| 36 MAY 02 | 58,423.29 | 1,498.02 | 56,925.27 |
| 37 JUN 02 | 56,925.27 | 1,498.02 | 55,427.25 |
| 38 JUL 02 | 55,427.25 | 1,498.02 | 53,929.23 |
| 39 AUG 02 | 53,929.23 | 1,498.02 | 52,431.21 |
| 40 SEP 02 | 52,431.21 | 1,498.02 | 50,933.19 |
| 41 OCT 02 | 50,933.19 | 1,498.02 | 49,435.17 |
| 42 NOV 02 | 49,435.17 | 1,498.02 | 47,937.15 |
| 43 DEC 02 | 47,937.15 | 1,498.02 | 46,439.13 |
| 44 JAN 03 | 46,439.13 | 1,498.02 | 44,941.11 |
| 45 FEB 03 | 44,941.11 | 1,498.02 | 43,443.09 |
| 46 MAR 03 | 43,443.09 | 1,498.02 | 41,945.07 |
| 47 APR 03 | 41,945.07 | 1,498.02 | 40,447.05 |
| 48 MAY 03 | 40,447.05 | 1,498.02 | 38,949.03 |
| 49 JUN 03 | 38,949.03 | 1,498.02 | 37,451.01 |
| 50 JUL 03 | 37,451.01 | 1,498.02 | 35,952.99 |
| 51 AUG 03 | 35,952.99 | 1,498.02 | 34,454.97 |
| 52 SEP 03 | 34,454.97 | 1,498.02 | 32,956.95 |
| 53 OCT 03 | 32,956.95 | 1,498.02 | 31,458.93 |
| 54 NOV 03 | 31,458.93 | 1,498.02 | 29,960.91 |
| 55 DEC 03 | 29,960.91 | 1,498.02 | 28,462.89 |
| 56 JAN 04 | 28,462.89 | 1,498.02 | 26,964.87 |
| 57 FEB 04 | 26,964.87 | 1,498.02 | 25,466.85 |
| 58 MAR 04 | 25,466.85 | 1,498.02 | 23,968.83 |
| 59 APR 04 | 23,968.83 | 1,498.02 | 22,470.81 |
| 60 MAY 04 | 22,470.81 | 1,498.02 | 20,972.79 |
| 61 JUN 04 | 20,972.79 | 1,498.02 | 19,474.77 |
| 62 JUL 04 | 19,474.77 | 1,498.02 | 17,976.75 |
| 63 AUG 04 | 17,976.75 | 1,498.02 | 16,478.73 |
| 64 SEP 04 | 16,478.73 | 1,498.02 | 14,980.71 |
| 65 OCT 04 | 14,980.71 | 1,498.02 | 13,482.69 |
| 66 NOV 04 | 13,482.69 | 1,498.02 | 11,984.67 |
| 67 DEC 04 | 11,984.67 | 1,498.02 | 10,486.65 |
| 68 JAN 05 | 10,486.65 | 1,498.02 | 8,988.63 |
| 69 FEB 05 | 8,988.63 | 1,498.02 | 7,490.61 |
| 70 MAR 05 | 7,490.61 | 1,498.02 | 5,992.59 |
| 71 APR 05 | 5,992.59 | 1,498.02 | 4,494.57 |
| 72 MAY 05 | 4,494.57 | 1,498.02 | 2,996.55 |
| 73 JUN 05 | 2,996.55 | 1,498.02 | 1,498.53 |
| 74 JUL 05 | 1,498.53 | 1,498.53 | (0.00) |

# AMERICAN WATER WORKS COMPANY
## Reconciliation of Account .181110
## Unamortized Debt Expense
## December 2002

| | |
|---|---|
| Balance per Amortization Schedule: | 240,687.00 |
| Balance per General Ledger: | 240,687.00 |
| Difference: | 0.00 |

AMORTIZATION OF DEBT EXPENSE (4.92 % Bond Financing)

| Period | Begin Bal. | Amort. | Ending Bal. |
|---|---|---|---|
| 1 JAN 02 | 266,477.95 | 4,491.95 | 261,986.00 |
| 2 FEB 02 | 261,986.00 | 4,517.00 | 257,469.00 |
| 3 MAR 02 | 291,926.87 | 5,150.87 | 286,776.00 |
| 4 APR 02 | 286,776.00 | 5,121.00 | 281,655.00 |
| 5 MAY 02 | 281,655.00 | 5,121.00 | 276,534.00 |
| 6 JUN 02 | 276,534.00 | 5,121.00 | 271,413.00 |
| 7 JUL 02 | 271,413.00 | 5,121.00 | 266,292.00 |
| 8 AUG 02 | 266,292.00 | 5,121.00 | 261,171.00 |
| 9 SEP 02 | 261,171.00 | 5,121.00 | 256,050.00 |
| 10 OCT 02 | 256,050.00 | 5,121.00 | 250,929.00 |
| 11 NOV 02 | 250,929.00 | 5,121.00 | 245,808.00 |
| 12 DEC 02 | 245,808.00 | 5,121.00 | 240,687.00 |
| 13 JAN 03 | 240,687.00 | 5,121.00 | 235,566.00 |
| 14 FEB 03 | 235,566.00 | 5,121.00 | 230,445.00 |
| 15 MAR 03 | 230,445.00 | 5,121.00 | 225,324.00 |
| 16 APR 03 | 225,324.00 | 5,121.00 | 220,203.00 |
| 17 MAY 03 | 220,203.00 | 5,121.00 | 215,082.00 |
| 18 JUN 03 | 215,082.00 | 5,121.00 | 209,961.00 |
| 19 JUL 03 | 209,961.00 | 5,121.00 | 204,840.00 |
| 20 AUG 03 | 204,840.00 | 5,121.00 | 199,719.00 |
| 21 SEP 03 | 199,719.00 | 5,121.00 | 194,598.00 |
| 22 OCT 03 | 194,598.00 | 5,121.00 | 189,477.00 |
| 23 NOV 03 | 189,477.00 | 5,121.00 | 184,356.00 |
| 24 DEC 03 | 184,356.00 | 5,121.00 | 179,235.00 |
| 25 JAN 04 | 179,235.00 | 5,121.00 | 174,114.00 |
| 26 FEB 04 | 174,114.00 | 5,121.00 | 168,993.00 |
| 27 MAR 04 | 168,993.00 | 5,121.00 | 163,872.00 |
| 28 APR 04 | 163,872.00 | 5,121.00 | 158,751.00 |
| 29 MAY 04 | 158,751.00 | 5,121.00 | 153,630.00 |
| 30 JUN 04 | 153,630.00 | 5,121.00 | 148,509.00 |
| 31 JUL 04 | 148,509.00 | 5,121.00 | 143,388.00 |
| 32 AUG 04 | 143,388.00 | 5,121.00 | 138,267.00 |
| 33 SEP 04 | 138,267.00 | 5,121.00 | 133,146.00 |
| 34 OCT 04 | 133,146.00 | 5,121.00 | 128,025.00 |
| 35 NOV 04 | 128,025.00 | 5,121.00 | 122,904.00 |
| 36 DEC 04 | 122,904.00 | 5,121.00 | 117,783.00 |
| 36 JAN 05 | 117,783.00 | 5,121.00 | 112,662.00 |
| 37 FEB 05 | 112,662.00 | 5,121.00 | 107,541.00 |
| 38 MAR 05 | 107,541.00 | 5,121.00 | 102,420.00 |
| 39 APR 05 | 102,420.00 | 5,121.00 | 97,299.00 |
| 40 MAY 05 | 97,299.00 | 5,121.00 | 92,178.00 |
| 41 JUN 05 | 92,178.00 | 5,121.00 | 87,057.00 |
| 42 JUL 05 | 87,057.00 | 5,121.00 | 81,936.00 |
| 43 AUG 05 | 81,936.00 | 5,121.00 | 76,815.00 |
| 44 SEP 05 | 76,815.00 | 5,121.00 | 71,694.00 |
| 45 OCT 05 | 71,694.00 | 5,121.00 | 66,573.00 |
| 46 NOV 05 | 66,573.00 | 5,121.00 | 61,452.00 |
| 47 DEC 05 | 61,452.00 | 5,121.00 | 56,331.00 |
| 48 JAN 06 | 56,331.00 | 5,121.00 | 51,210.00 |
| 49 FEB 06 | 51,210.00 | 5,121.00 | 46,089.00 |
| 50 MAR 06 | 46,089.00 | 5,121.00 | 40,968.00 |
| 51 APR 06 | 40,968.00 | 5,121.00 | 35,847.00 |
| 52 MAY 06 | 35,847.00 | 5,121.00 | 30,726.00 |
| 53 JUN 06 | 30,726.00 | 5,121.00 | 25,605.00 |
| 54 JUL 06 | 25,605.00 | 5,121.00 | 20,484.00 |
| 55 AUG 06 | 20,484.00 | 5,121.00 | 15,363.00 |
| 56 SEP 06 | 15,363.00 | 5,121.00 | 10,242.00 |
| 57 OCT 06 | 10,242.00 | 5,121.00 | 5,121.00 |
| 58 NOV 06 | 5,121.00 | 5,121.00 | 0.00 |

# AMERICAN WATER WORKS COMPANY
## Reconciliation of Account .181110
## Unamortized Debt Expense
## December 2002

| | |
|---|---|
| Balance per Amortization Schedule: | 10,145.28 |
| Balance per General Ledger: | 10,145.28 |
| Difference: | 0.00 |

AMORTIZATION OF DEBT EXPENSE (7.41 % Bond Financing) Closed 3 / 93, Due 5 / 1 / 03

| Period | Begin Bal. | Amort. | Ending Bal. |
|---|---|---|---|
| 1 MAR 93 | 309,429.86 | 2,536.31 | 306,893.55 |
| 2 APR 93 | 306,893.55 | 2,536.31 | 304,357.24 |
| 3 MAY 93 | 304,357.24 | 2,536.31 | 301,820.93 |
| 4 JUN 93 | 301,820.93 | 2,536.31 | 299,284.62 |
| 5 JUL 93 | 299,284.62 | 2,536.31 | 296,748.31 |
| 6 AUG 93 | 296,748.31 | 2,536.31 | 294,212.00 |
| 7 SEP 93 | 294,212.00 | 2,536.31 | 291,675.69 |
| 8 OCT 93 | 291,675.69 | 2,536.31 | 289,139.38 |
| 9 NOV 93 | 289,139.38 | 2,536.31 | 286,603.07 |
| 10 DEC 93 | 286,603.07 | 2,536.31 | 284,066.76 |
| 11 JAN 94 | 284,066.76 | 2,536.31 | 281,530.45 |
| 12 FEB 94 | 281,530.45 | 2,536.31 | 278,994.14 |
| 13 MAR 94 | 278,994.14 | 2,536.31 | 276,457.83 |
| 14 APR 94 | 276,457.83 | 2,536.31 | 273,921.52 |
| 15 MAY 94 | 273,921.52 | 2,536.31 | 271,385.21 |
| 16 JUN 94 | 271,385.21 | 2,536.31 | 268,848.90 |
| 17 JUL 94 | 268,848.90 | 2,536.31 | 266,312.59 |
| 18 AUG 94 | 266,312.59 | 2,536.31 | 263,776.28 |
| 19 SEP 94 | 263,776.28 | 2,536.31 | 261,239.97 |
| 20 OCT 94 | 261,239.97 | 2,536.31 | 258,703.66 |
| 21 NOV 94 | 258,703.66 | 2,536.31 | 256,167.35 |
| 22 DEC 94 | 256,167.35 | 2,536.31 | 253,631.04 |
| 23 JAN 95 | 253,631.04 | 2,536.31 | 251,094.73 |
| 24 FEB 95 | 251,094.73 | 2,536.31 | 248,558.42 |
| 25 MAR 95 | 248,558.42 | 2,536.31 | 246,022.11 |
| 26 APR 95 | 246,022.11 | 2,536.31 | 243,485.80 |
| 27 MAY 95 | 243,485.80 | 2,536.31 | 240,949.49 |
| 28 JUN 95 | 240,949.49 | 2,536.31 | 238,413.18 |
| 29 JUL 95 | 238,413.18 | 2,536.31 | 235,876.87 |
| 30 AUG 95 | 235,876.87 | 2,536.31 | 233,340.56 |
| 31 SEP 95 | 233,340.56 | 2,536.31 | 230,804.25 |
| 32 OCT 95 | 230,804.25 | 2,536.31 | 228,267.94 |
| 33 NOV 95 | 228,267.94 | 2,536.31 | 225,731.63 |
| 34 DEC 95 | 225,731.63 | 2,536.31 | 223,195.32 |
| 35 JAN 96 | 223,195.32 | 2,536.31 | 220,659.01 |
| 36 FEB 96 | 220,659.01 | 2,536.31 | 218,122.70 |
| 37 MAR 96 | 218,122.70 | 2,536.31 | 215,586.39 |
| 38 APR 96 | 215,586.39 | 2,536.31 | 213,050.08 |
| 39 MAY 96 | 213,050.08 | 2,536.31 | 210,513.77 |
| 40 JUN 96 | 210,513.77 | 2,536.31 | 207,977.46 |
| 41 JUL 96 | 207,977.46 | 2,536.31 | 205,441.15 |
| 42 AUG 96 | 205,441.15 | 2,536.31 | 202,904.84 |
| 43 SEP 96 | 202,904.84 | 2,536.31 | 200,368.53 |
| 44 OCT 96 | 200,368.53 | 2,536.31 | 197,832.22 |
| 45 NOV 96 | 197,832.22 | 2,536.31 | 195,295.91 |
| 46 DEC 96 | 195,295.91 | 2,536.31 | 192,759.60 |
| 47 JAN 97 | 192,759.60 | 2,536.31 | 190,223.29 |
| 48 FEB 97 | 190,223.29 | 2,536.31 | 187,686.98 |
| 49 MAR 97 | 187,686.98 | 2,536.31 | 185,150.67 |
| 50 APR 97 | 185,150.67 | 2,536.31 | 182,614.36 |
| 51 MAY 97 | 182,614.36 | 2,536.31 | 180,078.05 |
| 52 JUN 97 | 180,078.05 | 2,536.31 | 177,541.74 |
| 53 JUL 97 | 177,541.74 | 2,536.31 | 175,005.43 |
| 54 AUG 97 | 175,005.43 | 2,536.31 | 172,469.12 |
| 55 SEP 97 | 172,469.12 | 2,536.31 | 169,932.81 |
| 56 OCT 97 | 169,932.81 | 2,536.31 | 167,396.50 |
| 57 NOV 97 | 167,396.50 | 2,536.31 | 164,860.19 |
| 58 DEC 97 | 164,860.19 | 2,536.31 | 162,323.88 |
| 59 JAN 98 | 162,323.88 | 2,536.31 | 159,787.57 |
| 60 FEB 98 | 159,787.57 | 2,536.31 | 157,251.26 |
| 61 MAR 98 | 157,251.26 | 2,536.31 | 154,714.95 |
| 62 APR 98 | 154,714.95 | 2,536.31 | 152,178.64 |
| 63 MAY 98 | 152,178.64 | 2,536.31 | 149,642.33 |
| 64 JUN 98 | 149,642.33 | 2,536.31 | 147,106.02 |
| 65 JUL 98 | 147,106.02 | 2,536.31 | 144,569.71 |
| 66 AUG 98 | 144,569.71 | 2,536.31 | 142,033.40 |
| 67 SEP 98 | 142,033.40 | 2,536.31 | 139,497.09 |
| 68 OCT 98 | 139,497.09 | 2,536.31 | 136,960.78 |
| 69 NOV 98 | 136,960.78 | 2,536.31 | 134,424.47 |
| 70 DEC 98 | 134,424.47 | 2,536.31 | 131,888.16 |
| 71 JAN 99 | 131,888.16 | 2,536.31 | 129,351.85 |
| 72 FEB 99 | 129,351.85 | 2,536.31 | 126,815.54 |
| 73 MAR 99 | 126,815.54 | 2,536.31 | 124,279.23 |
| 74 APR 99 | 124,279.23 | 2,536.31 | 121,742.92 |
| 75 MAY 99 | 121,742.92 | 2,536.31 | 119,206.61 |
| 76 JUN 99 | 119,206.61 | 2,536.31 | 116,670.30 |
| 77 JUL 99 | 116,670.30 | 2,536.31 | 114,133.99 |
| 78 AUG 99 | 114,133.99 | 2,536.31 | 111,597.68 |
| 79 SEP 99 | 111,597.68 | 2,536.31 | 109,061.37 |
| 80 OCT 99 | 109,061.37 | 2,536.31 | 106,525.06 |
| 81 NOV 99 | 106,525.06 | 2,536.31 | 103,988.75 |
| 82 DEC 99 | 103,988.75 | 2,536.31 | 101,452.44 |
| 83 JAN 00 | 101,452.44 | 2,536.31 | 98,916.13 |
| 84 FEB 00 | 98,916.13 | 2,536.31 | 96,379.82 |
| 85 MAR 00 | 96,379.82 | 2,536.31 | 93,843.51 |
| 86 APR 00 | 93,843.51 | 2,536.31 | 91,307.20 |
| 87 MAY 00 | 91,307.20 | 2,536.31 | 88,770.89 |
| 88 JUN 00 | 88,770.89 | 2,536.31 | 86,234.58 |
| 89 JUL 00 | 86,234.58 | 2,536.31 | 83,698.27 |
| 90 AUG 00 | 83,698.27 | 2,536.31 | 81,161.96 |
| 91 SEP 00 | 81,161.96 | 2,536.31 | 78,625.65 |
| 92 OCT 00 | 78,625.65 | 2,536.31 | 76,089.34 |
| 93 NOV 00 | 76,089.34 | 2,536.31 | 73,553.03 |
| 94 DEC 00 | 73,553.03 | 2,536.31 | 71,016.72 |
| 95 JAN 01 | 71,016.72 | 2,536.31 | 68,480.41 |
| 96 FEB 01 | 68,480.41 | 2,536.31 | 65,944.10 |
| 97 MAR 01 | 65,944.10 | 2,536.31 | 63,407.79 |
| 98 APR 01 | 63,407.79 | 2,536.31 | 60,871.48 |
| 99 MAY 01 | 60,871.48 | 2,536.31 | 58,335.17 |
| 100 JUN 01 | 58,335.17 | 2,536.31 | 55,798.86 |
| 101 JUL 01 | 55,798.86 | 2,536.31 | 53,262.55 |
| 102 AUG 01 | 53,262.55 | 2,536.31 | 50,726.24 |
| 103 SEP 01 | 50,726.24 | 2,536.31 | 48,189.93 |
| 104 OCT 01 | 48,189.93 | 2,536.31 | 45,653.62 |
| 105 NOV 01 | 45,653.62 | 2,536.31 | 43,117.31 |
| 106 DEC 01 | 43,117.31 | 2,536.31 | 40,581.00 |
| 107 JAN 02 | 40,581.00 | 2,536.31 | 38,044.69 |
| 108 FEB 02 | 38,044.69 | 2,536.31 | 35,508.38 |
| 109 MAR 02 | 35,508.38 | 2,536.31 | 32,972.07 |
| 110 APR 02 | 32,972.07 | 2,536.31 | 30,435.76 |
| 111 MAY 02 | 30,435.76 | 2,536.31 | 27,899.45 |
| 112 JUN 02 | 27,899.45 | 2,536.31 | 25,363.14 |
| 113 JUL 02 | 25,363.14 | 2,536.31 | 22,826.83 |
| 114 AUG 02 | 22,826.83 | 2,536.31 | 20,290.52 |
| 115 SEP 02 | 20,290.52 | 2,536.31 | 17,754.21 |
| 116 OCT 02 | 17,754.21 | 2,536.31 | 15,217.90 |
| 117 NOV 02 | 15,217.90 | 2,536.31 | 12,681.59 |
| 118 DEC 02 | 12,681.59 | 2,536.31 | 10,145.28 |
| 119 JAN 03 | 10,145.28 | 2,536.31 | 7,608.97 |
| 120 FEB 03 | 7,608.97 | 2,536.31 | 5,072.66 |
| 121 MAR 03 | 5,072.66 | 2,536.31 | 2,536.35 |
| 122 APR 03 | 2,536.35 | 2,536.35 | 0.00 |

# AMERICAN WATER WORKS COMPANY
## Reconciliation of Account .181110
## Unamortized Debt Expense
## December 2002

| | |
|---|---|
| Balance per Amortization Schedule: | 91,630.01 |
| Balance per General Ledger: | 91,630.01 |
| Difference: | 0.00 |

AMORTIZATION OF DEBT EXPENSE (6.21%, 6.28%, & 6.32%) LAST BOND TO MATURE 7/2/2004

| | Period | Begin Bal. | Amort. | Ending Bal. |
|---|---|---|---|---|
| 1 | JUL 98 | 352,051.49 | 4,822.62 | 347,228.87 |
| 2 | AUG 98 | 347,228.87 | 4,822.62 | 342,406.25 |
| 3 | SEPT 98 | 342,406.25 | 4,822.62 | 337,583.63 |
| 4 | OCT 98 | 337,583.63 | 4,822.62 | 332,761.01 |
| 5 | NOV 98 | 332,761.01 | 4,822.62 | 327,938.39 |
| 6 | DEC 98 | 327,938.39 | 4,822.62 | 323,115.77 |
| 7 | JAN 99 | 323,115.77 | 4,822.62 | 318,293.15 |
| 8 | FEB 99 | 318,293.15 | 4,822.62 | 313,470.53 |
| 9 | MAR 99 | 313,470.53 | 4,822.62 | 308,647.91 |
| 10 | APR 99 | 308,647.91 | 4,822.62 | 303,825.29 |
| 11 | MAY 99 | 303,825.29 | 4,822.62 | 299,002.67 |
| 12 | JUN 99 | 299,002.67 | 4,822.62 | 294,180.05 |
| 13 | JUL 99 | 294,180.05 | 4,822.62 | 289,357.43 |
| 14 | AUG 99 | 289,357.43 | 4,822.62 | 284,534.81 |
| 15 | SEPT 99 | 284,534.81 | 4,822.62 | 279,712.19 |
| 16 | OCT 99 | 279,712.19 | 4,822.62 | 274,889.57 |
| 17 | NOV 99 | 274,889.57 | 4,822.62 | 270,066.95 |
| 18 | DEC 99 | 270,066.95 | 4,822.62 | 265,244.33 |
| 19 | JAN 00 | 265,244.33 | 4,822.62 | 260,421.71 |
| 20 | FEB 00 | 260,421.71 | 4,822.62 | 255,599.09 |
| 21 | MAR 00 | 255,599.09 | 4,822.62 | 250,776.47 |
| 22 | APR 00 | 250,776.47 | 4,822.62 | 245,953.85 |
| 23 | MAY 00 | 245,953.85 | 4,822.62 | 241,131.23 |
| 24 | JUN 00 | 241,131.23 | 4,822.62 | 236,308.61 |
| 25 | JUL 00 | 236,308.61 | 4,822.62 | 231,485.99 |
| 26 | AUG 00 | 231,485.99 | 4,822.62 | 226,663.37 |
| 27 | SEPT 00 | 226,663.37 | 4,822.62 | 221,840.75 |
| 28 | OCT 00 | 221,840.75 | 4,822.62 | 217,018.13 |
| 29 | NOV 00 | 217,018.13 | 4,822.62 | 212,195.51 |
| 30 | DEC 00 | 212,195.51 | 4,822.62 | 207,372.89 |
| 31 | JAN 01 | 207,372.89 | 4,822.62 | 202,550.27 |
| 32 | FEB 01 | 202,550.27 | 4,822.62 | 197,727.65 |
| 33 | MAR 01 | 197,727.65 | 4,822.62 | 192,905.03 |
| 34 | APR 01 | 192,905.03 | 4,822.62 | 188,082.41 |
| 35 | MAY 01 | 188,082.41 | 4,822.62 | 183,259.79 |
| 36 | JUN 01 | 183,259.79 | 4,822.62 | 178,437.17 |
| 37 | JUL 01 | 178,437.17 | 4,822.62 | 173,614.55 |
| 38 | AUG 01 | 173,614.55 | 4,822.62 | 168,791.93 |
| 39 | SEPT 01 | 168,791.93 | 4,822.62 | 163,969.31 |
| 40 | OCT 01 | 163,969.31 | 4,822.62 | 159,146.69 |
| 41 | NOV 01 | 159,146.69 | 4,822.62 | 154,324.07 |
| 42 | DEC 01 | 154,324.07 | 4,822.62 | 149,501.45 |
| 43 | JAN 02 | 149,501.45 | 4,822.62 | 144,678.83 |
| 44 | FEB 02 | 144,678.83 | 4,822.62 | 139,856.21 |
| 45 | MAR 02 | 139,856.21 | 4,822.62 | 135,033.59 |
| 46 | APR 02 | 135,033.59 | 4,822.62 | 130,210.97 |
| 47 | MAY 02 | 130,210.97 | 4,822.62 | 125,388.35 |
| 48 | JUN 02 | 125,388.35 | 4,822.62 | 120,565.73 |
| 49 | JUL 02 | 120,565.73 | 4,822.62 | 115,743.11 |
| 50 | AUG 02 | 115,743.11 | 4,822.62 | 110,920.49 |
| 51 | SEPT 02 | 110,920.49 | 4,822.62 | 106,097.87 |
| 52 | OCT 02 | 106,097.87 | 4,822.62 | 101,275.25 |
| 53 | NOV 02 | 101,275.25 | 4,822.62 | 96,452.63 |
| 54 | DEC 02 | 96,452.63 | 4,822.62 | 91,630.01 |
| 55 | JAN 03 | 91,630.01 | 4,822.62 | 86,807.39 |
| 56 | FEB 03 | 86,807.39 | 4,822.62 | 81,984.77 |
| 57 | MAR 03 | 81,984.77 | 4,822.62 | 77,162.15 |
| 58 | APR 03 | 77,162.15 | 4,822.62 | 72,339.53 |
| 59 | MAY 03 | 72,339.53 | 4,822.62 | 67,516.91 |
| 60 | JUN 03 | 67,516.91 | 4,822.62 | 62,694.29 |
| 61 | JUL 03 | 62,694.29 | 4,822.62 | 57,871.67 |
| 62 | AUG 03 | 57,871.67 | 4,822.62 | 53,049.05 |
| 63 | SEPT 03 | 53,049.05 | 4,822.62 | 48,226.43 |
| 64 | OCT 03 | 48,226.43 | 4,822.62 | 43,403.81 |
| 65 | NOV 03 | 43,403.81 | 4,822.62 | 38,581.19 |
| 66 | DEC 03 | 38,581.19 | 4,822.62 | 33,758.57 |
| 67 | JAN 04 | 33,758.57 | 4,822.62 | 28,935.95 |
| 68 | FEB 04 | 28,935.95 | 4,822.62 | 24,113.33 |
| 69 | MAR 04 | 24,113.33 | 4,822.62 | 19,290.71 |
| 70 | APR 04 | 19,290.71 | 4,822.62 | 14,468.09 |
| 71 | MAY 04 | 14,468.09 | 4,822.62 | 9,645.47 |
| 72 | JUN 04 | 9,645.47 | 4,822.62 | 4,822.85 |
| 73 | JUL 04 | 4,822.85 | 4,822.85 | 0.00 |

# AMERICAN WATER WORKS COMPANY, INC.

*Recap of Debt Discount and Expense*

| *Long-term Debt* | | 7.02 Senior Note | | 6.28-6.32 % Bonds | | 7.41 % Bonds | | 4.92 % Bonds | | Total |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Amort. | Unamort. Expense | Amort. | Unamort. Expense | Amort. | Unamort. Expense | Amort. | Unamort. Expense | Unamort. Expense |
| 2001 | DEC | 1,498.02 | 64,415.37 | 4,822.62 | 149,501.45 | 2,536.31 | 40,581.00 | 0.00 | 300,935.82 | 254,497.82 |
| 2002 | JAN | 1,498.02 | 62,917.35 | 4,822.62 | 144,678.83 | 2,536.31 | 38,044.69 | 4,491.95 | 296,443.87 | 542,084.74 |
| 2002 | FEB | 1,498.02 | 61,419.33 | 4,822.62 | 139,856.21 | 2,536.31 | 35,508.38 | 4,517.00 | 291,926.87 | 528,710.79 |
| 2002 | MAR | 1,498.02 | 59,921.31 | 4,822.62 | 135,033.59 | 2,536.31 | 32,972.07 | 5,150.87 | 286,776.00 | 514,702.97 |
| 2002 | APR | 1,498.02 | 58,423.29 | 4,822.62 | 130,210.97 | 2,536.31 | 30,435.76 | 5,121.00 | 281,655.00 | 500,725.02 |
| 2002 | MAY | 1,498.02 | 56,925.27 | 4,822.62 | 125,388.35 | 2,536.31 | 27,899.45 | 5,121.00 | 276,534.00 | 486,747.07 |
| 2002 | JUN | 1,498.02 | 55,427.25 | 4,822.62 | 120,565.73 | 2,536.31 | 25,363.14 | 5,121.00 | 271,413.00 | 472,769.12 |
| 2002 | JUL | 1,498.02 | 53,929.23 | 4,822.62 | 115,743.11 | 2,536.31 | 22,826.83 | 5,121.00 | 266,292.00 | 458,791.17 |
| 2002 | AUG | 1,498.02 | 52,431.21 | 4,822.62 | 110,920.49 | 2,536.31 | 20,290.52 | 5,121.00 | 261,171.00 | 444,813.22 |
| 2002 | SEP | 1,498.02 | 50,933.19 | 4,822.62 | 106,097.87 | 2,536.31 | 17,754.21 | 5,121.00 | 256,050.00 | 430,835.27 |
| 2002 | OCT | 1,498.02 | 49,435.17 | 4,822.62 | 101,275.25 | 2,536.31 | 15,217.90 | 5,121.00 | 250,929.00 | 416,857.32 |
| 2002 | NOV | 1,498.02 | 47,937.15 | 4,822.62 | 96,452.63 | 2,536.31 | 12,681.59 | 5,121.00 | 245,808.00 | 402,879.37 |
| 2002 | DEC | 1,498.02 | 46,439.13 | 4,822.62 | 91,630.01 | 2,536.31 | 10,145.28 | 5,121.00 | 240,687.00 | 388,901.42 |

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**Interrogatories and Requests for Production**
**Of Documents by the**
**Attorney General (Third Set)**
**To Tennessee-American Water Company**
**Rate Case No. 03-00118**

4. Q. In the CAPD's Second Discovery Request, Interrogatory No. 14 was incomplete. We requested TAWC "Provide the location of all additional locations providing services to TAWC or affiliates in the Chattanooga area. Provide the functions (similar to (f) and (g) above in Request No. 3) performed from the location, number of square foot utilized, the number of personnel at 12/31/1997 vs today, if the property is owned vs rented/leased.: TAWC response dated May 9, 2003 indicated employees by facility. However, the response related to number of personnel presently employed. Therefore, kindly provide the number of personnel at 12/31/1997 and today. Additionally, kindly respond to these additional questions "What is the square footage of each facility?" and "Distinguish whether each property is owned or rented."

Response: See Attached.

**Further response to the Attorney General's Letter dated May 21, 2003, Item number 4.**

**The Company's response provided on May 21, 2003, @ 1:08 pm included the items requested: (1) Number of personnel at 12/31/1997 and currently, (2) Square footage of each facility, and (3) identified each property, other than the office, as being owned by the Company.**

**Interrogatories and Requests for Production**
**Of Documents by the**
**Attorney General (Third Set)**
**To Tennessee-American Water Company**
**Rate Case No. 03-00118**

5. Q. In the CAPD's Second Discovery Request, Interrogatory No. 9(d) was not properly answered by TAWC. We stated "Regarding the company's response to Item 54 of the CAPD's first requests, provide the capital structure of RWE, for each bond or note held in the category "liabilities." (d) the note's interest rate payable to the note holder." TAWC only indicated "fixed" or "floating." Kindly provide a proper response to 9(d).

Response: See Attached.

**RWE**
**Capital Structure**
**Consumer Advocate DR 2 Discovery Request No. 9**

**For each bond or note held in the category "Liabilities" provide:**

Bond or LTD Issue
Face Amount
Curren cy
Date Issued
Maturity Date
Interest Rate
No. of yearly payments made each year to note
Earliest date note can be called for early redemption
Unamortized Balances
Monthly Amortization
Gain/Loss on reacquired long-term debt
Amount Company must pay to note holders in event of early redemption
Amount rolled into note for early redemption of notes that have already been retired
Book value of assets pledged against the note
Name & business address of Co or persons who own the assets
Minimum equity ratio
TIER ratio
Any other condition or term which must be met by Co to comply with notes covenants
Indicate if note is senior or subordinated debt

pp/np= pari passu / negative pledge

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 75.00 | 150.00 | 50.00 | 5,000.00 | 250.00 | 100.00 | 200.00 | 550.00 | 125.00 | 3, |
| USD | EUR | EUR | JPY | EUR | | | | EUR | |
| 12/12/01 | 1/23/2002 | 8/13/2002 | 9/5/2002 | 5/17/2002 | 11.06.02 tap 1 | 05.09.02 tap 2 | | 5/28/2002 | 1/3 |
| 12/12/03 | 1/23/2004 | 2/13/2004 | 3/5/2004 | 5/24/2002 | | | | 5/28/2004 | 1/3 |
| **3.72** | **3.08** | **2.92** | **1.52** | **3.08** | | | | **2.95** | |
| 1 | 2 | 4 | 4 | 4 | | | | 4 | |
| 12/12/03 | 1/23/04 | 2/13/2004 | 05/03/04 | 5/24/2002 | | | | 5/28/2004 | 1/3 |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| different | different | different | different | different | different | different | different | different | d |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | |
| senior | senior | senior | senior | senior | senior | senior | senior | senior | |

Bond or LTD Issue
Face Amount
Curren cy
Date Issued
Maturity Date
Interest Rate
No. of yearly payments made each year to note
Earliest date note can be called for early redemption
Unamortized Balances
Monthly Amortization
Gain/Loss on reacquired long-term debt
Amount Company must pay to note holders in event of early redemption
Amount rolled into note for early redemption of notes that have already been retired
Book value of assets pledged against the note
Name & business address of Co or persons who own the assets
Minimum equity ratio
TIER ratio
Any other condition or term which must be met by Co to comply with notes covenants
Indicate if note is senior or subordinated debt

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | **RWE Finance B.V. (guara** | |
| 250.00 | 100.00 | 350.00 | 2,500.00 | 2,000.00 | 1,500.00 | 250.00 | 1750.00 | 750.00 | |
| GBP | | | EUR | EUR | EUR | | | GBP | |
| 4/20/2001 | 10/10/2002 | | 4/26/2002 | 4/18/2001 | 4/26/2002 | 15.10.02 tap 1 | | 4/26/2002 | 4/2 |
| 4/20/2006 | | | 10/26/2007 | 4/18/2008 | 10/26/2012 | | | 6/3/2013 | |
| **5.75** | | | **5.50** | **5.375** | **6.125** | | | **6.375** | |
| 1 | | | 1 | 1 | 1 | | | 1 | |
| 4/20/2006 | | | 10/26/2007 | 4/18/2008 | 10/26/2012 | | | 6/3/2013 | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| different | different | different | different | different | different | different | different | different | d |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | |
| senior | senior | senior | senior | senior | senior | senior | senior | senior | |

Amounts are not converted - see web site http://finance.yahoo.com/m3

**RWE**
**Capital Structure**
**Consumer Advocate DR 2 Discovery Request No. 9**

**For each bond or note held in the category "Liabilities" provide:**

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Bond or LTD Issue | 350.00 | 100.00 | 150.00 | 2,000.00 | 5,000.00 | 385.00 | 100.00 | 350.00 | 100.00 | 750 |
| Face Amount | EUR | GBP | EUR | CZK | JPY | HKD | EUR | NOK | EUR | E |
| Curren cy | 6/14/2002 | 12/21/2001 | 1/29/2002 | 5/22/2002 | 8/28/2002 | 9/10/2002 | 6/3/2002 | 10/28/2002 | 11/15/2002 | 2/14/2( |
| Date Issued | 6/14/2005 | 12/21/2005 | 1/29/2007 | 5/22/2007 | 8/28/2007 | 9/10/2007 | 6/3/2009 | 10/28/2009 | 11/15/2017 | 2/14 |
| Maturity Date | **2.84** | **5.50** | **4.75** | **3.39** | **2.90** | **1.76** | **5.625** | **3.68** | **3.00** | **5** |
| Interest Rate | 4 | 1 | 1 | 2 | 2 | 2 | 1 | 2 | 1 | |
| No. of yearly payments made each year to note | 6/14/2005 | 12/21/2005 | 1/29/2007 | 5/22/2007 | 8/28/2007 | 9/10/2007 | 6/3/2009 | 10/28/2009 | 11/15/2017 | 2/14 |
| Earliest date note can be called for early redemption | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Unamortized Balances | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Monthly Amortization | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Gain/Loss on reacquired long-term debt | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Amount Company must pay to note holders in event of early redemption | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Amount rolled into note for early redemption of notes that have already been retired | different | different | different | different | different | different | different | different | different | differ |
| Book value of assets pledged against the note | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Name & business address of Co or persons who own the assets | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | |
| Minimum equity ratio | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp/np | pp |
| TIER ratio | senior | senior | senior | senior | senior | senior | senior | senior | senior | sen |
| Any other condition or term which must be met by Co to comply with notes covenants | | | | | | | | | | |
| Indicate if note is senior or subordinated debt | | | | | | | | | | |

pp/np= pari passu / negative pledge

| | | | | | |
|---|---|---|---|---|---|
| Bond or LTD Issue | 350.00 | 225.00 | 75.00 | 650.00 | 800.00 |
| Face Amount | | GBP | | | GBP |
| Curren cy | 4/20/2001 | 26.10.01 tap 1 | 15.10.02 tap 2 | | 4/26/2002 |
| Date Issued | | 4/20/2021 | | | 06/03/30 |
| Maturity Date | | **6.5** | | | **6.25** |
| Interest Rate | | 1 | | | 1 |
| No. of yearly payments made each year to note | | 4/20/2021 | | | 06/03/30 |
| Earliest date note can be called for early redemption | n/a | n/a | n/a | n/a | n/a |
| Unamortized Balances | n/a | n/a | n/a | n/a | n/a |
| Monthly Amortization | n/a | n/a | n/a | n/a | n/a |
| Gain/Loss on reacquired long-term debt | n/a | n/a | n/a | n/a | n/a |
| Amount Company must pay to note holders in event of early redemption | n/a | n/a | n/a | n/a | n/a |
| Amount rolled into note for early redemption of notes that have already been retired | different | different | different | different | different |
| Book value of assets pledged against the note | n/a | n/a | n/a | n/a | n/a |
| Name & business address of Co or persons who own the assets | n/a | n/a | n/a | n/a | n/a |
| Minimum equity ratio | pp/np | pp/np | pp/np | pp/np | pp/np |
| TIER ratio | senior | senior | senior | senior | senior |
| Any other condition or term which must be met by Co to comply with notes covenants | | | | | |
| Indicate if note is senior or subordinated debt | | | | | |

Amounts are not converted - see web site http://finance.yahoo.com/m3