

12-1023

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 9<sup>th</sup> day of May 2012.

CASE NO. 09-0961-PSWD-GI

GENERAL INVESTIGATION INTO CAPACITY IMPROVEMENT FEES CHARGED BY THE BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT and BERKELEY COUNTY PUBLIC SERVICE DISTRICT dba BERKELEY COUNTY PUBLIC SERVICE WATER DISTRICT

**COMMISSION ORDER**

This Order discontinues the Capacity Improvement Fees used by the Districts and denies the request to refund the Capacity Improvement Fees previously paid.

**BACKGROUND**

Case No. 09-0192-PSWD-C

On February 27, 2009, Larry V. Faircloth and Larry V. Faircloth Realty, Inc. (Faircloth Realty), (collectively, Faircloth) filed a formal complaint against the Berkeley County Public Service Sewer District (Sewer District) and Berkeley County Public Service District dba Berkeley County Public Service Water District (Water District) (collectively, Districts), requesting that the Commission rescind the Capacity Improvement Fees (CIFs), as created by prior Commission orders. Faircloth asked that the Commission (i) rescind the CIFs until such time as the economic conditions under which CIFs were created return, and (ii) convene a hearing to determine that the CIFs charged by the Districts are reasonable, just, and do not discriminate against developers and builders in a way that prohibits growth.

Present Proceeding

On June 11, 2009, the Commission issued an order (i) describing a brief history of the CIFs applicable to the Districts, (ii) acknowledging three basic aspects of a CIF (i.e., need for the CIF, proper amount of the CIF, and use of CIF funds), (iii) initiating a general investigation to investigate the CIFs of the Districts, (iv) making Faircloth a party to the general investigation, (v) dismissing Case No. 09-0192-PSWD-C, (vi) requiring the parties to submit answers to specific questions regarding the use of collected CIF money, and (vii) setting this case for a hearing to address the use of the CIF funds.

On August 26 and 27, 2009, the Commission convened a hearing to take evidence on the use of the CIF money collected by the Districts. As the hearing progressed, however, the parties also presented evidence on the need for CIFs and the proper amount of the CIFs. (The August 26, 2009 hearing transcript will be referred to as "Tr. I" and the August 27, 2009 hearing transcript as "Tr. II.")

On September 4, 2009, the Commission issued an Order setting a briefing schedule to address all aspects of the CIFs applicable to the Districts. An October 8, 2009 request by Faircloth to stay or modify the briefing schedule was denied by a Commission Order issued October 9, 2009.

On October 13, 2009, Faircloth filed its Initial Brief arguing that (i) the Commission does not have constitutional or statutory authority to authorize the Districts to charge and collect a CIF against the Faircloths because Berkeley County has no zoning ordinance in place and does not have the requisite authority to impose impact fees, (ii) the current CIFs are not necessary, (iii) even if a CIF is authorized, it should be rescinded because of the failure of the Districts to prove the existence of a two percent growth rate in Berkeley County over the past two years, and (iv) the Districts should be required to give the Commission (a) a detailed accounting as to the exact amount of CIFs collected since 2004, (b) the exact use of those funds thus far, and (c) a statement of the planned future use of CIF funds, and (v) CIFs can only be used to satisfy the bond indebtedness that was created by the Districts for future growth.

On October 13, 2009, Commission Staff filed its Initial Brief. Staff cited W.Va. Code §24-2-3 and United Fuel Gas Co. v. Public Service Commission, 154 W.Va. 221, 174 S.E.2d 304 (1969) for the proposition that (i) the Commission has the power to enforce, originate, establish, change, and promulgate tariffs, rates, tolls, and schedules for all public utilities, and (ii) a rate fixed by the Commission is presumed to be valid and reasonable. Staff provided a brief overview of the Commission cases authorizing CIFs for the Districts and concluded that the Commission had authority to implement CIFs.

On October 13, 2009, the Water District filed its initial brief. The Water District argued that (i) CIFs address unprecedented growth in a part of the state that lacks the necessary infrastructure to meet the needs imposed by such growth, (ii) CIFs balance the interests of current rate payers against cost-causing future customers, (iii) growth in Berkeley County has slowed but is still running at or near two percent per year, (iv) sixty-four percent of recently constructed and near term capital needs are related to growth, and (v) there was no evidence presented at hearing to justify a change in the amount of the current CIF for the Water District.

On October 13, 2009, the Sewer District filed its initial brief. The Sewer District argued that (i) CIFs are needed in Berkeley County to permit the Districts to adequately address long-term growth, (ii) the existing CIF rate, calculated pursuant to the Georgia Tech Model, are appropriate, and (iii) its distribution of CIF funds were appropriate and had been authorized by the Commission in prior cases.

On November 2, 2009, Faircloth filed its reply brief along with a motion to strike any evidence submitted in this case after October 13, 2009.

On November 2, 2009, the Water District and the Sewer District filed their respective reply briefs.

#### Circuit Court and Supreme Court of Appeals of West Virginia Filings

In October 2009, Faircloth Realty filed a request for declaratory judgment action in the Circuit Court of Berkeley County, seeking essentially the same remedy sought from the Commission, i.e., relief from paying CIFs. That filing was designated as Berkeley County Circuit Court Civil Action No. 09-C-286.

On January 29, 2010, the Circuit Court of Berkeley County entered a Declaratory Judgment Order in which it determined that its exercise of jurisdiction in this matter was proper and ruled in favor of Faircloth Realty on the substantive issues. The Circuit Court of Berkeley County granted a stay of its declaratory judgment order pending appeal, and ordered the Districts to deposit all CIFs collected during the stay into a separate escrow account. An appeal to the Supreme Court of Appeals of West Virginia (WVSCA) followed, and, by order entered April 14, 2010, the WVSCA extended the aforementioned stay during the pendency of the appeal.

On April 30, 2010, the Commission petitioned the WVSCA to intervene as a party respondent. By order entered June 22, 2010, the WVSCA granted the motion to intervene.

On February 24, 2011, the WVSCA entered a memorandum decision finding that Faircloth Realty failed to exhaust its administrative remedies at the Commission. The Court held that the Circuit Court did not have jurisdiction in this matter and reversed the declaratory judgment order filed by the Circuit Court of Berkeley County.

#### Present Proceeding (continued)

On July 8, 2011, Faircloth filed a motion requesting an expedited ruling in this case. Faircloth reiterated the procedural history of this case and the related Circuit Court and WVSCA filings, stating that Faircloth intended to seek a writ of mandamus or of prohibition if the Commission did not issue a final, appealable Order within fifteen days.

On July 19, 2011, the Commission issued an Order requiring recommendations by the parties regarding how to proceed. After noting that population growth data in this case was over eighteen months old, the Commission directed the parties to provide updated growth data. The Commission also noted that the October 2009 Faircloth brief asserted that additional evidence was necessary in this case. The Commission directed

the parties to state whether they believed additional evidence or hearings would be necessary.

On August 4, 2011, Faircloth filed in response to the July 19, 2011 Commission Order. Regarding population growth, Faircloth filed documentation asserting (i) a twenty-five percent decrease in population growth from 2005 through June 30, 2011 and (ii) a decrease in population growth over the past ten years of 7.15 percent. Faircloth noted that the Commission had not reviewed population growth statistics for the Districts every three years or required the Districts to show that existing capacity reserves will be depleted within five to seven years, both as required by the Commission decision in Willow Spring Public Service Corporation, Case No. 06-1180-S-CN-PW-PC (Commission Order May 15, 2007). Faircloth incorporated by reference its arguments as previously presented in this case and in its filing before the Circuit Court of Berkeley County. Faircloth asserted that additional testimony and evidence is not necessary or helpful in allowing the Commission to rule in this matter. Faircloth also objected in detail to the population growth data submitted by the Districts.

Faircloth requested that (i) all CIFs and increases thereto implemented by the Districts and approved by the Commission be rescinded effective February 27, 2009 (the date of the original complaint filed by Faircloth in this matter), and (ii) the Commission require the Districts to refund to Faircloth all CIFs, with interest, paid by Faircloth to the respective Districts for all CIF payments made on and after February 27, 2009.

On August 4, 2011, the Districts filed population growth data from 2000 through 2010 and population growth forecasts for the period 2010 through 2015. The Districts asserted that additional evidence was not necessary in this case.

On August 12, 2011, the Water District filed a motion to strike the Faircloth objection to the population growth data submitted by the Districts. The Water District recommended that, because the parties had stated that no further hearings were necessary, the case should be submitted on the evidence and arguments previously made in this case as supplemented solely by the growth information requested by the July 19, 2011 Commission Order.

On August 12, 2011, Faircloth filed an objection to the Water District motion to strike. Faircloth denied that its filing exceeded the information requested by the Commission.

On September 30, 2011, the Commission issued an Order. Noting that the parties had been unable to agree on population and customer growth data applicable to the Districts, the Commission (i) required the parties to submit direct and rebuttal testimony and (ii) set this matter for hearing.

On October 17, 2011, Faircloth filed an application for temporary injunctive relief, asking that the Commission enjoin the Districts from imposing or collecting the CIF of

\$6,770 per new home at the time that the developer applies for a building permit from the Berkeley Planning Commission, or otherwise obstructing Faircloths' application for building permits for residential homes in Berkeley County, until such time as the Commission issues a final and appealable order in this case. In the alternative, Faircloth asked that the Commission grant injunctive relief for each new home constructed and sold by Faircloth until Faircloth applies for final inspection of the constructed home and requests that the meter be set by the Districts.

On October 18, 2011, the Sewer District filed a response recommending that the Commission deny the Faircloth application. In support of its recommendation the District stated that (i) Faircloth provided the parties with insufficient notice of its application, (ii) Faircloth did not seek resolution with the Sewer District prior to filing the application, and (iii) the application failed to meet the burden for granting injunctive relief in that (a) payment of a Commission-approved fee does not constitute irreparable harm and (b) Faircloth has not shown that it is likely to prevail in this matter.

On October 19, 2011, the Water District filed a response recommending that the Commission deny the application. In support of its recommendation the District stated that Faircloth failed to make a case that it will be irreparably harmed by being required to pay the authorized CIF to the District in order to get a (i) letter of service from the District and (ii) permit from the Berkeley County Planning Commission, to build a home.

On October 20, 2011, the Commission issued an Order concluding that Faircloth had not proven the elements necessary to prevail on its application. The Commission denied the application for temporary injunctive relief as filed by Faircloth.

#### Faircloth Petition to the Supreme Court of Appeals of West Virginia

On October 25, 2011, Faircloth filed a petition with the Supreme Court of Appeals of West Virginia praying for a stay and a writ of mandamus to be directed against the Commission.

On November 14, 2011, the Court entered an order denying the writ and the stay.

#### Present Proceeding (continued)

On November 10, 2011, the Sewer District filed the prepared direct testimony of Curtis B. Keller, Christine Thiel, P.E., Glenn D. Pearson, P.E., and John Stump.

Mr. Keller testified regarding (i) the current amount of the CIF, (ii) uses of CIF funds, (iii) long-term strategic plans for the Sewer District, (iv) the capital improvement plan for the next five to seven years, (v) past and future population and utility growth rates (using data supplied by Ms. Thiel), and (vi) exhaustion of plant capacity.

Mr. Pearson testified regarding the proper amount of the Sewer District CIF as of June 30, 2011, calculated using the Georgia Tech model. According to Mr. Pierson, the present CIF is \$3,650 per Equivalent Dwelling Unit (EDU). The Georgia Tech model results in a calculated CIF of \$4,113.58.

On November 10, 2011, the Water District filed the prepared direct testimony of Paul S. Fisher, Glenn D. Pearson, P.E., Christine Thiel, P.E., and John Stump.

Mr. Fisher testified (i) regarding the allocation of costs between growth and non-growth and (ii) that the Water District does not seek an increase in the CIF rate even though the Georgia Tech model shows that a small increase would be justified.

Mr. Pearson testified as to the proper amount of the CIF as of June 30, 2011, calculated using both the American Waterworks Association (AWWA) System Development Charge (SDC) method (the basis for the existing CIF rate) and the Georgia Tech model. Mr. Pearson noted that the currently approved Water District CIF is \$3,120 per EDU. The AWWA-SDC model yielded a CIF of \$3,123.45 per EDU. The Georgia Tech model yielded a CIF of \$3,131.14 per EDU.

Mr. Stump testified about the rate impact on the Water District and the Sewer District of a discontinuance of the CIFs by the Commission.

Ms. Thiel testified as to past and expected future growth in Berkeley County and customer growth experienced by the Water District and the Sewer District.

On November 10, 2011, Staff filed the prepared direct testimony of Joseph Marakovitz in support of the Staff position in this case.

On November 10, 2011, Faircloth referenced the testimony and verified statements as previously filed on August 4, 2011.

On December 1, 2011, Staff and Faircloth each filed rebuttal testimony. Neither of the Districts filed rebuttal testimony.

On December 8 and 9, 2011, the Commission heard testimony on the question of need for the CIFs and the appropriate amount of the CIFs. (The December 8, 2011 hearing transcript will be referred to as "Tr. III" and the December 9, 2011 hearing transcript as "Tr. IV.")

On January 20, 2012, each party filed a second initial brief. The Districts and Faircloth each filed a reply brief on January 31, 2012.

## DISCUSSION

CIFs were developed for a specific purpose: rapid population growth in portions of West Virginia was projected to overload the capacity of existing water and sewer plants long before originally expected and long before those plants reached the end of their operational useful lives. CIFs provided a temporary means of accumulating at least part of the funds necessary to expand capacity, thus reducing the rate impact on all customers.

CIFs are not, and were never intended to be, a permanent means of funding all on-going plant replacement or capacity expansion or a permanent departure from the Commission's traditional ratemaking approach. CIFs are intended to address only rapid and unexpected capacity depletion that can be traced to extreme growth levels from new customers. Absent the compelling circumstances of (i) rapid and continued population growth, and (ii) a near-term exhaustion of system-wide capacity, CIFs are not warranted. To that end the Commission created criteria to determine whether it was appropriate to charge a CIF. The recent economic downturn has slowed growth, and the Districts are no longer in immediate danger of exhausting the capacity of their respective treatment plants. Because the Districts no longer meet the criteria that were set by the Commission and accepted by the District, it is appropriate to discontinue those fees.

Prior to explaining our decision to discontinue the CIFs, the Commission will address the jurisdictional, due process, and related arguments raised by Faircloth regarding Commission authority to initiate and implement CIFs.

### **I. Commission Authority to Implement CIFs**

#### **Faircloth Position Regarding Commission Authority to Implement CIFs**

Faircloth argued that the CIFs are unconstitutional based on (i) the testimony of the Honorable Craig Blair (Delegate, Berkeley County, District 52), and (ii) the deprivation of the equal protection and due process rights through the taking of private property without compensation in violation of the Fifth Amendment of the United States Constitution.

At the August 27, 2009 hearing, Delegate Blair testified that the CIFs were unconstitutional because (i) they are not applied equally to all customers or potential customers of the Districts (Tr. II at 202-203) and (ii) the Commissioners are not constitutionally elected officers and thus have no authority to implement the CIFs. Tr. II at 163-164.

Mr. Faircloth testified that (i) in his capacity as a contractor he had given approximately \$600,000 worth of infrastructure to the Districts, but had not received any compensation therefrom (although Faircloth had rescinded that portion of its prayer for relief) (Tr. II at 170-173, 225-226) and (ii) the Districts had double-collected from customers and developers. Tr. II at 176.

In its October 13, 2009 and January 20, 2012 initial briefs, Faircloth argued that the Commission is not authorized by statute to empower the Districts to assess and collect CIFs. W.Va. Code §16-13A-9 permits a public service district board to establish rates, fees, and charges, but the statute does not authorize districts to charge a capacity improvement fee. Likewise, W.Va Code §§24-2-1 et seq., does not authorize charging “capacity improvement fees” but confines the Commission to “enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules.” According to Faircloth, the CIFs were introduced as a matter of expediency during a flush real estate market, but are not authorized by statute.

Faircloth argued that W.Va. Code §§7-20-1 et seq., the “Local Powers Act,” authorizes the establishment of impact fees against a development project to fund capacity improvements and public services. The first step in assessing and collecting this impact fee is for a county to implement a comprehensive zoning ordinance. Berkeley County has not passed such an ordinance and thus is not authorized to charge impact fees. Tr. I at 76. Tr. II at 20-21. Faircloth asserted that other utility providers in close proximity to the Districts charge CIFs, but that each is authorized to do so by law. Faircloth argued that the Commission rate authority must be read in conjunction with the Local Powers Act. Of the two West Virginia Counties with CIFs, only Jefferson County has adopted a comprehensive zoning ordinance, and thus, according to Faircloth, only Jefferson County may charge a CIF. Tr. II at 113.

Faircloth cited City of Huntington v. Public Service Commission, 89 W.Va. 703, 110 S.E. 192 (1921) and Bluefield Waterworks & Improv. Co. v Public Service Commission, 89 W.Va. 736, 110 S.E. 205 (1921) for the proposition that a public utility has no right to a rate sufficient to cover the cost of expenditures for additions to its plant in advance of the actual installation of such extensions or additions and their employment in the public service.

#### Staff Position Regarding Commission Authority to Implement CIFs

In its October 13, 2009 and January 20, 2012 initial briefs, Staff cited W.Va. Code §24-2-3 and United Fuel Gas Co. v. Public Service Commission, 154 W.Va. 221, 174 S.E.2d 304 (1969) for the proposition that the Commission has the power to enforce, originate, establish, change and promulgate tariffs, rates, tolls and schedules for all public utilities and that a rate fixed by an authorized rate-making body for a public utility is presumed to be valid and reasonable. Staff provided a brief overview of the Commission cases authorizing CIFs for the Districts and concluded that the Commission had authority to implement CIFs.

#### Sewer District Position Regarding Commission Authority to Implement CIFs

The Sewer District addressed in its November 2, 2009 reply brief the legal authority of the Commission to implement CIFs, arguing that:

1. Equal protection is not an issue with respect to the CIFs because CIFs are levied against all new construction with only limited exceptions and all developers, not just Faircloth, are required to pay the CIFs.
2. The Faircloth due process argument is without merit because the Commission proceedings that originally implemented the CIF charges were duly noticed and Faircloth chose not to object at that time.
3. CIFs are a fee for service and are not related to Commission-approved transfers of water or sewer infrastructure made pursuant to a cooperative venture agreement or similar undertaking by a developer and a utility.
4. Under W.Va. Code §24-3-3, the Commission has the “power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities.. .”
5. In Syl. Pt. 1, United Fuel Gas Co. et al. v. Public Service Commission, 154 W.Va. 221, 174 S.E.2d 304 (1969), the WVSCA held that a utility tariff established in a rate proceeding before the Commission is “presumed to be reasonable in the absence of proof to the contrary,” thus placing the burden on Faircloth to prove that the CIFs are unreasonable.
6. As a graduated fee based on the size of the customer’s water meter the CIF is appropriate under W.Va. Code §16-13A-9(a)(1)(B) or (E).
7. The Sewer District and the Berkeley County Commission are separate public entities and the laws applicable to county commissions do not apply to public service districts. The lack of a zoning ordinance in Berkeley County does not impact the case at hand because CIFs are not impact fees promulgated by the Berkeley County Commission.

#### Water District Position Regarding Commission Authority to Implement CIFs

The November 2, 2009 Water District reply brief addressed the legal authority of the Commission to implement CIFs, arguing that:

1. W.Va. Code §24-2-3 affords the Commission the power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities.
2. The Legislature enacted Chapter 24 of the W.Va. Code for an express legislative purpose “to confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of

public utilities.” Berkeley County Public Service Sewer District v. The Public Service Commission, 204 W.Va. 279, 286, 512 S.E.2d 201 208 (1998).

3. The Commission may employ such methods for determining utility rates as it deems suitable as long as the end result guarantees West Virginia consumers good service at fair rates and enables utilities to earn a competitive return for their stockholders on their investment in West Virginia. Syl. Pt. 1, VEPCO v. Public Service Commission, 161 W.Va. 423, 242 S.E.2d 698 (1978).

4. W.Va. Code §24-2-3 authorizes the Commission to reduce or increase rates whenever it finds that the existing rate is unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of W.Va. Code §24-1-1, et seq. Syl. Pt. 2, Central West Virginia Refuse v. Public Service Commission, 190 W.Va. 416, 438 S.E.2d 596 (1993).

5. The Commission implemented the initial Water District CIF, and a subsequent increase to that CIF, through publicly noticed proceedings. The CIF is consistent with Commission obligations pursuant to W.Va. Code §24-1-1, in that the CIF is fair, encourages the well-planned development of utility resources, is just, is reasonable, and will be applied without unjust discrimination or preference. Case No. 04-1767-PWD-T (Commission Order August 12, 2005) at 5; see also Case No. 07-0167-PWD-T (Final Order August 15, 2007).

6. The Local Powers Act argument raised by Faircloth would have the effect of removing regulatory authority from the Commission and placing it in the control of the counties of this state under of W.Va. Code §7-20-1 et seq. The WVSCA rejected a similar argument in State ex rel. Water Development Authority v. Northern Wayne County Public Service District, 195 W.Va. 135, 464 S.E.2d 777 (1995), in which the Court rejected the efforts of the West Virginia Water Development Authority to impose an increased tap fee on customers of the Northern Wayne County Public Service District, after the Commission had ordered Northern Wayne County Public Service District to reduce its tap fee.

7. The October 13, 2009 Faircloth initial brief argues that the fact that the term “CIF” is not included in either the Constitution or the statute means that the Commission is without authority to authorize the Water District to impose such charges. In Northern Wayne the WVSCA was addressing a “tap fee” a charge that, similar to the CIF, does not appear in the Constitution or the West Virginia Code.

8. The Local Powers Act does not apply to the Water District. The provisions of the Local Powers Act are applicable to “capital improvements” as that term is defined in the Act. W.Va. Code §7-20-3(a) defines “capital improvements” to mean “public facilities or assets that are owned, supported or established by county government”. W.Va. Code §7-20-11(b) defines “capital improvements” to

mean “public facilities or assets that are owned, supported or established by a county commission.” The creation of the Water District itself was proposed and approved by the County Commission under the provisions of W.Va. Code §16-13A-2. The creation of all public service districts, however, is subject to the approval of the Commission. See, Berkeley County Public Service Sewer District v. The Public Service Commission, 204 W.Va. 279, 512 S.E.2d 201 (1998). Once the Water District was created, it became a public corporation and separate political subdivision. W.Va. Code §16-13A-3. The Water District owns or will own all of the facilities through which it provides service; the County does not own or support such facilities. The water treatment and delivery facilities were not established by county government, or by the county commission.

#### Commission Decision Regarding Its Authority to Implement CIFs

W.Va. Code §24-1-1(a), in pertinent part, provides that:

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the public service commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

(4) Ensure that rates and charges for utility services are just and reasonable.

This statutory provision unequivocally expresses legislative intent to confer on the Commission the jurisdiction to review and establish all utility rates and charges whether it is a rate for the utility commodity delivered, or for one-time fees and charges.

W.Va. Code §24-2-2 provides that:

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; . . . The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable.

Complimenting the clear statement of legislative intent contained in W.Va. Code §24-1-1, W.Va. Code §24-2-2 grants power to the Commission to regulate utility rates and charges.

W.Va. Code §24-2-4a, addressing utility applications to establish or change rates or charges (such as the CIF applications), states that “the commission may either upon complaint or upon its own initiative without complaint enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice” and “may make

such order in reference to such rate, charge, classification, regulation or practice as would be proper.”

W.Va. Code §24-2-9 provides that:

The commission may at any time require persons, firms, companies, associations, corporations or municipalities, subject to the provisions of this chapter, to furnish any information which may be in their possession, respecting rates, tolls, charges or practices.

W.Va. Code §24-3-1 requires that “[a]ll [public utilities] charges, tolls and rates shall be just and reasonable.”

In addition, W.Va. Code §16-13A-9 authorizes public service districts to establish rates and charges while W.Va. Code §16-13A-21 specifically provides that the authority of public service districts to establish rates and charges in no way affects the functions, powers and duties of the Commission, including the power to review and establish utility rates and charges.

Finally, W.Va. Code §8-13-13 provides that a municipality may enact ordinances to establish “reasonable rates, fees and charges,” but that municipal authority is subordinate to Commission review and jurisdiction over rates and charges under Chapter 24 of the Code. Delardes v. Morgantown Water Commission, 148 W.Va. 776, 137 S.E.2d 426 (1964).

Generally, a utility rate is a price charged for each unit of commodity consumed. For example, a rate for water or sewer consumption would be a dollar amount per each thousand gallons of water consumed. In contrast, a charge is a one-time fee imposed on a customer designed to recover a particular cost element. For example, a charge would appear as a fixed dollar amount in a utility tariff and could apply to disconnections, re-connections, bad check charges, tap fees, or capacity impact fees. As defined in Webster’s II New College Dictionary, Third Edition, a “rate” is the “cost per unit of a service or commodity”; a “charge” is “to set or ask (a given amount) as a price”; and, a “fee” is “a fixed charge.”

Virtually all utilities in this State have tariffs on file with the Commission with approved “charges” that are not “continuous,” including CIFs, customer deposits, tap fees, re-connection charges, bad check charges, disconnect charges, and administrative charges. Each of these charges has as its basic underpinning the rationale of attempting, where it can be identified, to recover costs from cost causers. These charges are consistent with the statutory authority and duty of the Commission to ensure fair regulation of public utilities in the interest of the public, to ensure that rates and charges for utility service are just and reasonable, and to appraise and balance the interests of current and future utility customers and the interests of public utilities. W.Va. Code §24-1-1(a) and (b).

None of these charges, by name, are specifically authorized by statute to be approved by the Commission. All of these charges represent the recovery of costs to the utilities, generally from the customer causing or imposing the costs. Elimination of "charges" from a tariff necessarily means that the cost responsibility shifts to other customers resulting in higher rates. This also renders moot the concern regarding double recovery.

In addition to the overwhelming legislative authority establishing Commission authority over utility rates and charges, various orders of the WVSCA have long recognized and held that the Commission has primary jurisdiction over rate-making matters involving public utilities. Syl. Pts. 5 and 6, City of Wheeling v. Renick, 145 WV 640, 116 S.E. 2d 763 (1960) (the policy of this state is that all public utilities shall be subject to the supervision of the Commission, and that the Commission has the statutory power and authority to control the charges of all public utilities); Syl. Pt. 3, Delardes v. Morgantown, 148 W.Va. 776, 137 S.E. 2d 426, 433 (1964), (the Legislature has authorized the Commission to exercise the predominant power of the State with respect to utility charges which is paramount to the rights given to the city by general statute); C & P Telephone Co. v. City of Morgantown, 144 W.Va. 149, 107 S.E. 2d 489, 496 (1959) (the paramount design of pertinent West Virginia statutes to place regulation of public utilities exclusively with the Commission has been long recognized by this Court (cities omitted)).

In a particularly relevant decision that involved the subject matter of establishing a tap fee (a charge), the WVSCA found that although a separate statute authorized the Water Development Authority to impose on a public service district certain service charges, its authority to do so was subject to a regulatory review and approval of this Commission. Syl. Pt. 5, State of West Virginia ex rel Water Development Authority v. Northern Wayne County Public Service District and PSC, 464 S.E.2d 777 (1995). The decision in the Water Development Authority case is instructive because the WVSCA reaffirmed primary rate jurisdiction of the Commission over public utilities (Id. at 782), and specifically reaffirmed that authority with respect to a "charge." The charge in that case involved the payment of a tap fee, approved by the Commission in a utility tariff. The tap fee requires a new customer to pay a one-time charge (it does not reoccur) to connect to the utility system. The basis for that charge is that it is reasonable for the customer or customers causing the cost of the connection to pay a significant portion of the cost rather than shifting the cost to other customers. A tap fee and a CIF are both charges associated with the provision of utility service. A tap fee helps defray present costs of connecting a customer, while a CIF helps defray future capital costs that will be necessary to provide service.

The establishment of the CIF was in response to rate applications filed by the Districts. W.Va. Code §24-2-4a, not §24-2-3, applies to rate applications and that section of the W.Va. Code specifically references applications for changes to "rates or charges." As previously stated, there are numerous other sections of the W.Va. Code that reference

the responsibility and primary authority of the Commission to establish rates and charges. In its Water Development Authority decision, the WVSCA stated:

A statute should be so read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith. [Cites omitted]

Syl. Pt. 3, Water Development Authority, *supra*.

A CIF is a charge, not a tax, allowed by the Commission designed to recover a particular cost element caused by the addition of numerous new, not existing, customers to the utility system. Case No. 04-0153-PSD-T (Commission Order August 31, 2004), at 20.

The WVSCA has had the opportunity to determine whether a municipal fee is a fee or a tax. Observing legislative authority allowing municipalities to impose on users of municipal service “reasonable, rates, fees and charges” (as provided in W.Va. Code §8-13-13, which is the same section that allows the establishment of municipal utility rates, charges and fees), the WVSCA found that a municipal fee on owners of buildings at an annual rate plus a percentage based on square footage of each structure to defray the cost of fire and flood protection services is a user fee rather than a tax. Syl. Pt. 6, City of Huntington v. Bacon, 473 S.E.2d 743, 751-753, (1996). In so holding, the WVSCA observed that “[T]he primary purpose of a tax is to obtain revenue for the government, while the primary purpose of a fee is to cover the expense of providing a service or of regulation and supervision of certain activities.” Id. 473 S.E.2d at 752 (citations omitted). Furthermore, the WVSCA emphasized that “[t]he character of a tax is determined not by its label but by analyzing its operation and effect.” Id., 473 S.E.2d at 752 (citations omitted). The WVSCA concluded that the fee was not a tax because it was not an assessment on property by reason of ownership, but rather was a fee imposed on property owners by reason of their use of fire and flood protection services. Id., 473 S.E.2d at 753.

Municipal authority to establish “rates, fees and charges” is the same authority granted to public service districts to establish “rates, fees and charges for the services and facilities it furnishes.” W.Va. Code §16-13A-9. The CIF that is the subject of this case is charged to users of utility water and sewer services. It is not for the purpose of raising general governmental revenues. The fee is used to pay for future required capital additions to serve those customers and only after approval by the Commission. Clearly, the CIF was established for the purpose of defraying the cost of providing a utility service.

Based on the above, the Commission concludes that it has the necessary authority to order the use of CIFs.

#### Due Process

The Faircloth allegation that implementation of the CIFs violated due process is without merit. The proceedings that approved CIFs for the Districts included published public notice and opportunity for public comment and an evidentiary hearing. See, Berkeley County Public Service Sewer District, Case No. 04-0153-PSD-T (Commission Order August 31, 2004) and Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 04-1767-PWD-T (Commission Order August 12, 2005).

#### Equal Protection and Discrimination

The Commission concludes that implementation of CIFs did not, and does not, violate the equal protection rights of developers and is not discriminatory or unfairly applied as alleged by Faircloth, because the CIFs are applied to all similarly situated developers. In the August 31, 2004 Order in Case No. 04-0153-PSD-T, the Commission determined that the CIFs would not apply to individuals building their own homes because those individuals do not impose the same burden on infrastructure as does a large multi-residence developer. Case No. 04-0153-PSD-T (Commission Order August 31, 2004) at 21-22. The Commission determined that CIFs should apply to developers because of the immediate impact on capacity caused by the large number of water and sewer customers that would come on-line within a short period of time once a housing development was constructed and occupied. Later orders refined the definition of a developer. Case No. 04-0153-PSD-T (Commission Order March 28, 2005) and Case No. 04-1767-PWD-T (Commission Order August 12, 2005).

#### City of Huntington and Bluefield Water Works Cases

The prohibition in Huntington and Bluefield against public utilities implementing rates sufficient to cover the cost of expenditures for additions to plant in advance of the actual installation of such extensions or additions and their employment in the public service, is not applicable to this case.

As noted above, the CIF is not a rate, but is a charge that represents a cost to the utility and its existing customers caused by the addition of extreme levels of new load. Some charges are collected after the cost is incurred (e.g., a bad check charge). In other instances, the charge is collected in advance of the cost-causing event (e.g., CIFs and tap fees). The cases cited by Faircloth, City of Huntington and Bluefield Waterworks, addressed questions of rate-making and were not reviewing charges such as are before the Commission in this case. Money collected from customers through a rate can generally be used for any item within the utility cost of service. The CIF, as noted above,

is a charge (like a tap fee) that is applicable to specific costs. The CIF, once collected, is required to be placed in a segregated account. Further, the Commission requires the Districts to obtain permission from the Commission prior to spending CIF funds to assure appropriate use of those monies. The decisions in the Huntington and Bluefield cases did not address a charge such as the CIF in this case.

### Refund of CIFs

Faircloth requested that the Districts refund all CIF payments made by Faircloth on and after February 27, 2009. Commission-approved rates and charges are presumed to be valid and reasonable. United Fuel Gas Co. v. Public Service Commission, 154 W.Va. 221, 174 S.E.2d 304 (1969). Once the Commission determines that a rate or charge is no longer reasonable and should be modified, as here, that change may only be made on a prospective basis and is not subject to refund. W.Va. Code §24-2-3. The Commission will deny the Faircloth request to refund the previously paid CIFs.

## II. Need for CIFs

CIFs were introduced as a solution at a time when the Districts were experiencing “explosive growth,” “rapid, expansive growth,” and “extremely rapid growth.” Case No. 04-0153-PSD-T (Commission Order August 31, 2004) at Conclusion of Law Nos. 2 and 4, pages 36-37, and Case No. 04-1767-PWD-T (Commission Order August 12, 2005) at Exhibit A, paragraph 1. Testimony in the Sewer District case showed that absent additional treatment capacity, capacity at the four existing sewer treatment facilities would be exhausted in five years. Id. at Finding of Fact No. 18. The Districts faced a crisis brought on by rapid growth that would have impacted the Districts and their respective customers as a whole. To that end, the CIFs allowed the Districts to collect funds to help lower the rate impact on all customers of needed expansion of capacity, without creating a detrimental impact on growth. However, the near-term treatment capacity exhaustion that justified application of the CIFs no longer exists.

The need for CIFs is governed by the criteria set forth by the Commission in prior orders. In the initial implementation of a CIF for the Sewer District, the Commission concluded:

The Commission agrees with Staff that the Commission should require applicants to prove population growth of 2% per year or 20% over ten years, coupled with reasonable expectations that existing capacity reserves will be depleted within 5-7 years.

Case No. 04-0153-PSD-T (Commission Order August 31, 2004) at Conclusion of Law No. 6.

A subsequent decision approving a CIF for the Water District applied the above criteria. Case No. 04-1767-PWD-T (Commission Order August 12, 2005) at Conclusions of Law 2 and 3.

In Willow Spring Public Service Corporation, Case No. 06-1180-S-CN-PW-PC (Commission Order May 15, 2007) the Commission applied a refined set of criteria to all future CIF cases. The Commission stated:

The Commission's review of Willow Spring's CIF application and its review of future CIF applications should be guided by the original Berkeley County case criteria as expressly stated or implied in the Commission's prior orders:

a. The Commission shall require applicants to prove population growth of 2% per year or 20% over ten years, coupled with reasonable expectations that existing capacity reserves will be depleted within five to seven years.

\* \* \* \*

e. CIFs shall be allowed only in cases of extraordinary growth and identifiable exhaustion of existing water supply or sewage treatment capacity. Applicants must show a future expected customer growth of two percent (2%) per year over an extended period of time. Applicants must also show that existing capacity will be depleted within seven years or less.

Willow Spring at Conclusion of Law No. 14.

In Case No. 07-0167-PWD-T (Commission Order August 15, 2007), the Commission increased the Water District CIF noting that the Willow Spring criteria remained the appropriate standard for determining need.

The Districts Do Not Face a Depletion of Capacity Within Five To Seven Years

The Districts have not met the criteria regarding the depletion of existing capacity. At hearing, Water District witness Fisher noted additions and improvements to the Water District treatment plant, concluding,

When you add all those things together, we now have the water available for customers at the current growth rate for more than seven years. What that means is, we can't meet that criteria as it's laid out specifically. But we still require that revenue stream to pay for the facilities that provided the water to meet that criteria. So it's an interesting situation that we're in right now.

We have documentation that indicates it will not be depleted ... in seven years or less.

Tr. III at 36-38. Under examination from the Commission, Mr. Fisher stated that the Water District will have adequate capacity in five years because of expansions paid for using a bond anticipation note funded by the CIF. Tr. III at 46-47.

Mr. Fisher asserted that growth impacts both treatment and storage, as well as distribution, (Tr. III at 31-32), noting that bottlenecks in the Water District distribution system reflected capacity problems that will surface at the end of the five to seven year period. Tr. III at 28-30, 60-61.

Mr. Marakovitz agreed that transmission lines and storage facilities were included in the CIF calculation for the Water District, but testified that the Water District had not shown that its capacity would be depleted within seven years. Tr. IV at 16-17 Marakovitz Rebuttal Testimony at 2.

As primary proof of capacity depletion, Sewer District witness Keller testified that the United States Environmental Protection Agency 2010 Chesapeake Bay Initiative total maximum daily load limits requires upgrades to the sewer treatment plants. Absent upgrades, the capacity of the sewer treatment plants would effectively decrease because of the extra time necessary to treat the sewage under the standards set by the Chesapeake Bay Initiative. Tr. III at 71-72, 75, 87-89. Keller Direct testimony at 6-7. Mr. Keller agreed that on a global basis the Sewer District could be considered as having sufficient capacity, but that the Woods Lagoon Treatment Plant is currently near capacity and there are a number of pump stations within that system that create capacity bottlenecks. Tr. III at 71-74.

Staff witness Marakovitz testified that the Sewer District would not exhaust its capacity within five to seven years. Tr. IV at 11. Mr. Marakovitz agreed that sewer plant capacity would be depleted within seven years if the Sewer District did not implement the Chesapeake Bay Initiative total maximum daily load limits. Tr. IV at 14. Mr. Marakovitz asserted that the Chesapeake Bay Initiatives are not related to growth. Rebuttal Testimony at 3.

The Chesapeake Bay Initiative is a creature of regulatory oversight. Failing to upgrade its sewer treatment plants to address the Chesapeake Bay Initiative would immediately impact the capacity of the Sewer District treatment plants. The Chesapeake Bay Initiative, however, would impact capacity at the treatment plants even if the Sewer District had not experienced two percent, or greater, growth over the last several years. The total maximum daily load limits of the Chesapeake Bay Initiative impact all customers.

As noted above, CIFs were introduced to address a growth-related crisis impacting capacity on a system-wide basis. The Districts attempted to single out examples of capacity depletion, such as a single wastewater treatment plant, several pump stations, and various bottlenecks. These isolated instances are not the type of problems for which the CIF was developed and do not justify the continuation of the CIFs.

The Commission will discontinue the CIFs of each of the Districts because the Districts have not satisfied a critical requirement by showing that existing capacity will be depleted within seven years or less. Berkeley County Public Service Sewer District, Case No. 04-0153-PSD-T (Commission Order August 31, 2004) at Conclusion of Law No. 6; Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 04-1767-PWD-T (Commission Order August 12, 2005) at Conclusions of Law 2 and 3; Willow Spring Public Service Corporation, Case No. 06-1180-S-CN-PW-PC (Commission Order May 15, 2007); and Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 07-0167-PWD-T (Commission Order August 15, 2007).

Because a lack of capacity depletion is sufficient reason to discontinue the CIF, it is unnecessary to address the population and customer growth aspects of the Commission criteria for continuation of CIFs.

#### Rate Impact of Discontinuing the CIFs

The Commission understands that discontinuing the CIFs may necessitate the filing of rate proceedings by the Districts. See testimony of Mr. Stump, Tr. III at 156-180. The Commission reminds the Districts that CIFs were implemented as an innovative means of addressing explosive growth resulting in rapidly depleting capacity. Absent such circumstances, CIFs are not warranted. When a utility fails to meet an established critical criteria of CIFs, the inclusion of CIFs in the financial planning of the utility is not sufficient reason to continue the CIF, although its elimination may require a rate increase.

### III. Appropriate Use of the CIFs

The current uses of CIFs by the Districts were authorized by prior Commission Orders. See, Case Nos. 06-0242-PSD-PC (Commission Order May 19, 2006) (Sewer District); 06-0340-PSD-CN (Commission Order August 11, 2006) (Sewer District); 06-0375-PWD-CN (Commission Order November 20, 2006) (Water District); and 07-2113-PSD-PC (Commission Order January 10, 2008) (Sewer District).

The Districts are on notice that they may not in any way use or commit CIF funds for any purpose without first obtaining the permission of the Commission. The Commission will review future requests to use CIF funds on a case-by-case basis, mindful that the purpose of the CIF is to help offset the capital cost the utility will be

required to incur to expand and construct the capacity to meet and serve new, unexpected demand, usually by increasing the size (the capacity) of treatment facilities.

### FINDINGS OF FACT

1. CIFs were introduced as a solution at a time when the Districts were experiencing “explosive growth,” “rapid, expansive growth,” and “extremely rapid growth.” Case No. 04-0153-PSD-T (Commission Order, August 31, 2004) at Conclusion of Law Nos. 2 and 4, pages 36-37, and Case No. 04-1767-PWD-T (Commission Order, August 12, 2005) at Exhibit A, paragraph 1.

2. The proceedings that approved CIFs for the Districts included published public notice and, for the Sewer District, public comment and evidentiary hearings. See, Berkeley County Public Service Sewer District, Case No. 04-0153-PSD-T (Commission Order August 31, 2004) and Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 04-1767-PWD-T (Commission Order August 12, 2005).

3. Except for isolated capacity issues on portions of the system, the Water District does not face depletion of existing capacity of its system within seven years or less. Tr. III at 36-38 and 46-47.

4. The Chesapeake Bay Initiative total maximum daily load limits impact treatment capacity and will require upgrades to the sewer treatment plants. Tr. III at 71-72, 75, 87-89. Keller Direct testimony at 6-7; Tr. IV at 14.

5. Although the Woods Lagoon Treatment Plant is currently near capacity and there are a number of pump stations within that system that create capacity bottlenecks, the Sewer District will not deplete its existing capacity within seven years or less. Tr. III at 72-74; Tr. IV at 11.

6. The current uses of CIFs by the Districts were authorized by prior Commission Orders. See, Case Nos. 06-0242-PSD-PC (Commission Order May 19, 2006) (Sewer District); 06-0340-PSD-CN (Commission Order August 11, 2006) (Sewer District); 06-0375-PWD-CN (Commission Order November 20, 2006) (Water District); and 07-2113-PSD-PC (Commission Order January 10, 2008) (Sewer District).

### CONCLUSIONS OF LAW

1. A utility rate is a price charged for each unit of commodity consumed. Webster’s II New College Dictionary, Third Edition,

2. A charge is a one-time fee imposed on a customer designed to recover a particular cost element. Webster’s II New College Dictionary, Third Edition,

3. A CIF is a charge, not a tax, allowed by the Commission designed to recover a particular cost element caused by the addition of numerous new, not existing, customers to the utility system. Case No. 04-0153-PSD-T (Commission Order August 31, 2004), at 20.

4. The Commission has primary jurisdiction over public utility rates and charges. Syl. Pt. 5, State of West Virginia ex rel Water Development Authority v. Northern Wayne County Public Service District and PSC, 464 S.E. 2d 777 (1995), at 782; and W.Va. Code §§16-13A-21, 24-2-3, 24-1-1, 24-2-2, 24-2-4a, 24-2-9, and 24-3-1.

5. Orders of the WVSCA recognize Commission primary jurisdiction over rate-making matters involving public utilities. See, City of Wheeling v. Renick, 145 WV 640, 116 S.E. 2d 763 (1960); C & P Telephone Co. v. City of Morgantown, 144 W.Va. 149, 107 S.E. 2d 489, 496 (1959); Delardes v. Morgantown Water Commission, 148 W.Va. 776, 137 S.E.2d 426 (1964); and State of West Virginia ex rel Water Development Authority v. Northern Wayne County Public Service District and PSC, 464 S.E.2d 777 (1995).

6. The primary purpose of a tax is to obtain revenue for the government, while the primary purpose of a charge is to cover the expense of providing a service or regulation and supervision of certain activities. City of Huntington v. Bacon, 473 S.E.2d 743, at 752 (1996).

7. The CIF was not established for the purpose of raising general governmental revenues, but instead to be used to pay for future required capital additions needed to serve a growing load and only following approval of the Commission. The CIF was established for the purpose of defraying the cost of providing a utility service.

8. The due process allegations are without merit because the proceedings that approved CIFs for the Districts included published public notice and opportunity for public comment and an evidentiary hearing. See, Berkeley County Public Service Sewer District, Case No. 04-0153-PSD-T (Commission Order August 31, 2004) and Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 04-1767-PWD-T (Commission Order August 12, 2005).

9. CIFs do not violate the equal protection rights of developers because they are applied to all similarly situated developers.

10. The CIF is a charge that represents a cost to the utility and its existing customers caused by the addition of extreme levels of new load.

11. The CIF is (i) a charge applicable to specific costs, (ii) required to be placed in a segregated account, and (iii) subject to Commission approval prior to expenditure. The CIF is therefore differentiable from the decisions in the Huntington and Bluefield regarding rates developed in a rate case.

12. Commission-approved rates and charges are presumed to be valid and reasonable. United Fuel Gas Co. v. Public Service Commission, 154 W.Va. 221, 174 S.E.2d 304 (1969).

13. Because it has jurisdiction to establish a CIF and has previously established CIFs for the Districts, the Commission discontinuance of the CIFs is made on a prospective basis and is not subject to refund. W.Va. Code §24-2-3.

14. The need for CIFs is governed by the criteria set forth by the Commission in prior orders. Berkeley County Public Service Sewer District, Case No. 04-0153-PSD-T (Commission Order August 31, 2004) at Conclusion of Law No. 6; Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 04-1767-PWD-T (Commission Order August 12, 2005) at Conclusions of Law 2 and 3; Willow Spring Public Service Corporation, Case No. 06-1180-S-CN-PW-PC (Commission Order May 15, 2007); and Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 07-0167-PWD-T (Commission Order August 15, 2007).

15. The total maximum daily load limits of the Chesapeake Bay Initiative are a cost borne by all customers.

16. Isolated instances of capacity depletion do not justify continuation of the CIFs.

17. It is reasonable to discontinue the CIFs of each of the Districts because the Districts have not satisfied a critical requirement by showing that existing capacity will be depleted within seven years or less. Berkeley County Public Service Sewer District, Case No. 04-0153-PSD-T (Commission Order August 31, 2004) at Conclusion of Law No. 6; Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 04-1767-PWD-T (Commission Order August 12, 2005) at Conclusions of Law 2 and 3; Willow Spring Public Service Corporation, Case No. 06-1180-S-CN-PW-PC (Commission Order May 15, 2007); and Berkeley County Public Service District dba Berkeley County Public Service Water District, Case No. 07-0167-PWD-T (Commission Order August 15, 2007).

18. When the utility fails to meet an established critical criteria of CIFs, the inclusion of CIFs in the financial planning of the utility is not sufficient reason to continue the CIF, although its elimination may require a rate increase.

19. The Districts may not in any way use or commit CIF funds for any purpose without first obtaining the permission of the Commission.

**ORDER**

IT IS THEREFORE ORDERED that the Capacity Impact Fee no longer meets the criteria established by the Commission and shall be struck from the tariff of the Sewer District effective as of the date of this Order.

IT IS FURTHER ORDERED that within thirty days of the date of this Order the Sewer District shall submit an original and six copies of its revised tariff.

IT IS FURTHER ORDERED that the Capacity Impact Fee no longer meets the criteria established by the Commission and shall be struck from the tariff of the Water District effective as of the date of this Order.

IT IS FURTHER ORDERED that within thirty days of the date of this Order the Water District shall submit an original and six copies of its revised tariff.

IT IS THEREFORE ORDERED that the Faircloth request that the Districts refund previously paid CIFs, is denied.

IT IS FURTHER ORDERED that on entry of this Order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy. Text:

  
Sandra Jucine  
Executive Secretary

JJW/slc  
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