



Since implementation, the DSIC has incentivized water companies to replace worn infrastructure, as it was designed to do. On December 12, 2016, the Board proposed a rulemaking to continue the DSIC program in order to benefit New Jersey. Notwithstanding the Board's specific action and proposal to continue the DSIC program, pending that rulemaking process, the Board is concerned that N.J.A.C. 14:9-10.1(e) and 10.7(a)(3) may be read to limit the program pending the outcome of the rulemaking.

## **DISCUSSION AND FINDINGS**

In considering whether to waive N.J.A.C. 14:9-10.1(e) and 10.7(a)(3), the Board applies the two-pronged test set forth at N.J.A.C. 14:1-1.2(b)(1): first, whether the request is in accord with the general purposes and intent of the rules; and second, whether full compliance with the rules would adversely affect ratepayers, the utility, or the public interest.

To determine the general purpose and intent of its rules, the Board looks to the policy underlying the rule(s) in question. The purpose of N.J.A.C. 14:9-10.1(e) and 10.7(a)(3) was to establish the DSIC rules on an interim basis to allow the Board to evaluate whether the program was successful and deserving of continuing. Pursuant to the DSIC rules, the water companies have quickened the replacement rate of the State's aging water infrastructure. The old and worn infrastructure is being replaced regularly by the water companies who typically file projects about every six months with the Board, seeking DSIC treatment. In contemplating proposing amendments to the DSIC rules, Board staff had a public process with relevant stakeholders. The Board, by approving the notice of proposal on December 12, 2016 to amend N.J.A.C. 14:9-10.1 et seq. has determined that the DSIC program shall remain in effect. Nonetheless, in accordance with the APA, a final determination whether to remove the time limit contained in N.J.A.C. 14:9-10.1(e) will be removed, should be reviewed by the Board after a public comment period. As such, by waiving N.J.A.C. 14:9-10.1(e) and 10.7(a)(3) the Board is allowing the status quo to continue, pending the outcome of the rulemaking proposed on December 12, 2016. Therefore, the Board **FINDS** that the waiver complies with the general purpose and intent of these rules.

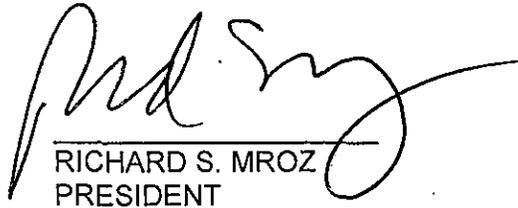
The Board also considers whether full compliance with the rule would adversely affect the interest of the public. See N.J.A.C. 14:1-1.2(b)(1). DSIC is a surcharge to rate-payer's water bills that can be recovered by the companies; roughly seven and a half months after the projects are in the ground and useful. This expedited rate recovery incentivizes utilities to make additional investments in infrastructure. Additionally, if future DSIC projects were suspended by operation of N.J.A.C. 14:9-10.1(e) and 10.7(a)(3), this would not eliminate the current DSIC surcharge. The practical effect of allowing the DSIC to lapse would be that new projects which are benefiting ratepayers through improved infrastructure would be halted pending the rulemaking process. Given that the DSIC program has promoted the timely rehabilitation and replacement of certain non-revenue producing and critical water distribution components which create jobs enhance safety, reliability and/or conservation and speeds the rate of renewal of this aging infrastructure, failing to waive these rules will adversely affect the interest of the public. The Board **HEREBY FINDS** that approving the waiver of N.J.A.C. 14:9-10.1(e) and 10.7(a)(3) will further benefit the ratepayers and the regulated water utilities.

Therefore, based on the above, the Board **HEREBY WAIVES** N.J.A.C. 14:9-10.1(e) and 10.7(a)(3), which established a DSIC program time limit, and allows the DSIC rules to continue.

This Order shall be effective on December 22, 2016.

DATED: 12/12/16

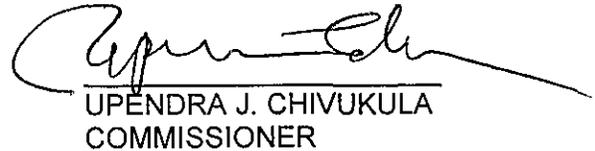
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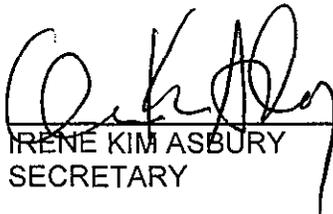
  
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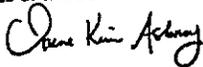
  
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IRENE KIM ASBURY  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities



**IN THE MATTER OF THE BOARD'S WAIVER OF N.J.A.C. 14:9-10.1(e) AND 14:9-10.7(a)(3)**

**DOCKET NO. WW16111080**

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