

# ROTHFELDER STERN, L.L.C.

LAW OFFICES

MARTIN C. ROTHFELDER\*<sup>o</sup>\*<sup>o</sup>  
mcrothfelder@rothfelderstern.com

BRADFORD M. STERN\*  
bmstern@rothfelderstern.com

\*ALSO ADMITTED IN NH  
<sup>o</sup>ALSO ADMITTED IN MO  
\*ALSO ADMITTED IN PA  
<sup>o</sup>ALSO ADMITTED IN NY

December 28, 2010

625 CENTRAL AVENUE  
WESTFIELD, NJ 07090  
TELEPHONE (908) 301-1211  
FAX (908) 301-1212  
19 DOVE STREET  
SUITE 202  
ALBANY, NY 12210  
TELEPHONE (518) 253-8750

## VIA OVERNIGHT DELIVERY

Kristi Izzo, Secretary  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

**Re: The Possible Implementation of a Distribution System  
Improvement Charge (DSIC) for Water and  
Wastewater Utilities – Docket No. WO10090655**

Dear Secretary Izzo:

Enclosed please find the original and 10 copies of the Comments of the OIW Customer Coalition in the above referenced matter. We are also e-mailing a copy consistent with the notice in this docket dated October 25, 2010.

Also enclosed is an additional copy of the comments. Please file stamp the additional copy and return it to us in the self-addressed postage prepaid envelope provided.

Sincerely,



Martin C. Rothfelder

MCR/rma

cc: Dave Lucas  
Chris Seiple  
Tom Nyquist  
Joe Witkowski  
Robert Roesener  
Paul Franzetti  
Carol Kassay

**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

THE POSSIBLE IMPLEMENTATION OF A	)	
DISTRIBUTION SYSTEM IMPROVEMENT	)	DOCKET NO. WO10090655
CHARGE (DSIC) FOR WATER AND	)	
WASTEWATER UTILITIES	)	

**COMMENTS OF THE OIW CUSTOMER COALITION**

ConocoPhillips Company, Cogen Technologies Linden Venture, L.P., Rutgers, The State University of New Jersey, Princeton University, and Johanna Foods, Inc. (collectively "OIW Customer Coalition") hereby submit joint comments in this matter pursuant to the Board's Notice dated October 25, 2010.

The OIW Customer Coalition members are among the largest industrial customers of the New Jersey American Water Company ("NJAW"). They receive water supply service under Rate Schedule F, Optional Industrial Wholesale ("OIW") of NJAW's Tariff.<sup>1</sup> They have actively intervened in prior proceedings concerning a DSIC.<sup>2</sup>

The OIW Customer Coalition does not oppose a DSIC in concept, but submits that the specific provisions of any DSIC implementation must take into account a fair allocation of the recovered costs among the customer classes, based on cost of service and rate design principles. To date, cost recovery mechanisms previously proposed for a DSIC implementation in New Jersey have appeared to be based upon average, or "across-the-board" charges for the items of

---

<sup>1</sup> To qualify for service under the OIW Rate Schedule, a customer must be a high volume user and must use water efficiently (i.e., have a "low load factor"), per the requirements set forth therein.

<sup>2</sup> The OIW Customer Coalition presented testimony regarding the former Elizabethtown Water Company's DSIC proposal in BPU Docket No. WR06030257. One member of the Coalition participated in the DSIC proceeding initiated by NJAW in Docket No. WO08050358 and supported the pilot program proposed by Board Staff therein.

cost involved. While this type of recovery mechanism may be proper for recovery of purchased water costs (via a purchased water adjustment clause, or "PWAC"), it is not proper for recovery of capital costs, as would be the case under a DSIC. Disregard of the proper plant allocations to customer classes based on cost responsibility in designing the DSIC cost recovery mechanism will likely result in a substantial misallocation of costs to customer classes.<sup>3</sup>

In theory, unfair and inappropriate allocations of plant costs under a DSIC, which could develop between base rate cases, are correctible in the ensuing base rate cases. Correcting a significant misallocation of costs under a DSIC in an ensuing base rate case could require that the customer class(es) unfairly allocated plant costs in the DSIC receive a substantially smaller rate increase (or perhaps even a rate decrease) in the base rate case. However, mitigating the circumstances in which a customer class is paying far too much or far too little for service in relation to properly allocated costs is typically undertaken over a series of base rate cases under the equitable doctrine of gradualism.<sup>4</sup> Thus, misallocation of costs of service under a DSIC could have long-term consequences that should be avoided by establishing fair cost recovery mechanisms thereunder.

---

<sup>3</sup> For example, if upgrading fire hydrant plant is among the projects included in the DSIC for cost recovery, an across-the-board rate that is charged to all customers would result in an allocation of rate base costs for hydrants to customers that are not normally allocated such costs in the rate design part of a base rate proceeding.

<sup>4</sup> See: *Re Jersey Central Power and Light Company*, BRC Docket No. ER91121820J, 146 P.U.R. 4th 127, 94 N.J.A.R. 2d 49 (June 15, 1993) ("It has been the long-standing policy of the Board to temper interclass revenue allocations with the concern for rate gradualism; i.e., customers should not be saddled with burdensome bill increases for the sake of moving class rates to unity sooner rather than later."); and *Re: New Jersey-American Water Company, Inc.*, BPU Docket No. WR95040165 (April 1, 1996) (Board found that the evidence showed that the Manasquan Customer Group rates were at least 20 percent too high, but provided that only about half of the overpayment should be addressed in the case.).

The foregoing position of the OIW Customer Coalition has been previously stated of record. In the former Elizabethtown Water Company's 2006 base rate case (Docket No. WR06030257), the Coalition sponsored the following testimony by expert witness Steven Gabel:

- Q. How has [the Company] proposed that the Distribution System Improvement Charge ("DSIC") be charged to its customers?
- A. [The Company] has proposed a very simple approach in which the DSIC would be charged to its customers based upon a surcharge on the bills of each customer.
- Q. Please comment upon this approach.
- A. The approach proposed by [the Company] has the virtue of being simple to apply. The DSIC should include a revenue allocation that is consistent with the way in which base rates are developed.
- Q. How would you propose the DSIC be charged to customers?
- A. I would develop a charge for each customer class based upon the cost of service allocation of the investments to be recovered through the DSIC. For example, if the DSIC were used to only recover costs related to distribution mains, for customer classes like the OIW rate class and the SOS rate class that primarily do not use the distribution main system, the DSIC should not be charged to these classes.

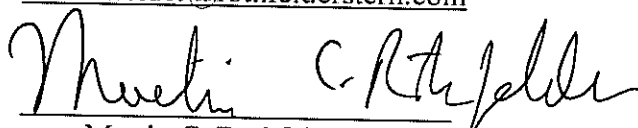
In sum, the OIW Customer Coalition submits that any DSIC implementation approved by the Board must comport with basic concepts of utility rate design in order to charge customers only for their fairly apportioned cost of service.

On behalf of the OIW Customer Coalition, we thank the Board for the opportunity to submit the foregoing comments.<sup>5</sup>

Respectfully submitted,

**CONOCOPHILLIPS COMPANY  
COGEN TECHNOLOGIES LINDEN VENTURE, L.P.  
RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY  
PRINCETON UNIVERSITY  
JOHANNA FOODS, INC.**

By Counsel: Rothfelder Stern, L.L.C.  
625 Central Avenue  
Westfield, NJ 0709  
(908) 301-1211  
[mrothfelder@rothfelderstern.com](mailto:mrothfelder@rothfelderstern.com)

  
\_\_\_\_\_  
Martin C. Rothfelder

Date: 12/27/2010

---

<sup>5</sup> Each member of the OIW Customer Coalition reserves the right to submit additional comments on the rate design or any other aspects of the specific DSIC proposals made in this proceeding.