

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

November 16, 2007

**ORDER**

Appeal of Consumer Assistance Division  
Decision of Customer Complaint #2005-18851  
Regarding Kennebunk, Kennebunkport and  
Wells Water District

Docket No. 2005-220

MAINE PUBLIC UTILITIES COMMISSION  
Investigation into System Development  
Charges for Kennebunk, Kennebunkport and  
Wells Water District

Docket No. 2006-315

ADAMS, Chairman; REISHUS and VAFIADES, Commissioners

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**I. SUMMARY**

In this Order, we find that the Kennebunk, Kennebunkport and Wells Water District has acted reasonably in requiring individual metering for each cottage at the Summer Village seasonal cottage complex, and that upon the filing of the modifications identified in this decision, the District's System Development Charge (SDC) will be just and reasonable as applied to Summer Village and to all of the District's ratepayers.

**II. BACKGROUND**

Quiland, Inc. (Quiland) is the real estate developer of Summer Village, a residential complex consisting of 247 individual cottages located on a 61 acre lot in Wells, Maine. Summer Village is organized as a condominium under Maine law. Eventually, each cottage will be individually owned with the common areas of the development owned and governed by a condominium association. Each cottage has either one or two bedrooms, a single bathroom, a kitchen and an enclosed porch. The square footage of each cottage will not exceed 600 square feet. Pursuant to local land use ordinance, Summer Village is classified as seasonal and thus the cottages may only be occupied from May 1 to October 31 each year.

In 2004, Quiland applied to the Kennebunk, Kennebunkport and Wells Water District (KKW or the District) for water service for the Summer Village complex to be delivered through a single 2 inch water meter. KKW informed Quiland that, pursuant to its policy regarding water meters (Metering Policy), service must be delivered to Summer Village through individual 5/8 inch meters installed at each of the 247 cottages and a System Development Charge (SDC) of \$1,318 would be assessed for each cottage.

On February 3, 2005, Quiland filed a complaint with the Commission's Consumer Assistance Division (CAD) challenging the District's decision that water service be delivered to Summer Village through 247 individual 5/8 inch meters as opposed to a single 2 inch meter. On April 1, 2005, CAD agreed with KKW's interpretation of its Metering Policy and found that Quiland must install an individual meter for each of the 247 Summer Village cottages and that the owner of each unit will be subject to the rates and charges as set forth in the District's tariff and terms and conditions. On May 10, 2005, we opened this de novo investigation following Quiland's appeal from the CAD decision.<sup>1</sup>

At a Technical Conference held on August 30, 2005, and again at a hearing held on September 27, 2005, Quiland presented the testimony of its Treasurer, Howard Hall and of its consulting engineer, William Dawson. KKW offered the testimony of its Superintendent, Normand Labbe and of its consulting engineer, Raymond Hammond. By Order of the Hearing Examiner, the transcript of the Technical Conference and the exhibits identified at the Technical Conference were made part of the record. Briefs were submitted on October 21, 2005. Although the parties waived the requirement that the Hearing Examiner's recommended decision be set forth in a written Examiner's Report, the Hearing Examiner, after concluding that the Commission would benefit from comments and exceptions filed by the parties, issued an Examiner's Report on February 16, 2006. The parties filed their exceptions on March 7, 2006.

On May 9, 2006, the Commission issued an order finding that the application by the District of its individual metering policy to the Summer Village project was not unreasonable, but that the methodology by which KKW calculates and assesses its System Development Charge must be revised to address the unreasonable disparity between the amount assessed against Quiland on 247 5/8 inch meters and the amount that would be assessed if Quiland were permitted to install a single 2 inch master meter at the Summer Village complex. The Commission also ordered that a separate investigation be opened to consider the required revisions to the District's SDC and that the parties, and potential intervenors, be afforded an opportunity to offer comments regarding the scope of the Commission's investigation into the revised SDC and on the merits of KKW's proposed revisions. KKW filed proposed revisions to the SDC on May 18, 2006, and the proceeding was docketed as 2006-315.

On May 30, 2006, Quiland filed a timely request for reconsideration of the Commission's May 9, 2006 Order in Docket No. 2005-220. The request was deemed denied by operation of law on July 25, 2006, and, on August 11, 2006, Quiland appealed from the Commission's May 9, 2006 Order in Docket No. 2005-220, to the Law Court, challenging the Commission's finding that the District had acted reasonably in applying its individual metering policy to the Summer Village project. *Quiland Inc., v. Public Utilities Commission*, 2007 ME 45. On appeal, Quiland did not challenge the

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<sup>1</sup> On May 18, 2005, we approved a partial stipulation resolving issues addressed in the CAD decision which concern ownership of the water mains and meters located at Summer Village. Those issues therefore are not addressed in this Order.

Commission's decision to require KKW to file a revised SDC. While the appeal was pending, Quiland filed comments with the Commission advocating for a broad investigation into KKW's SDC addressing not only whether KKW's revisions had remedied the disparity identified by the Commission in its May 9, 2006 Order, but also reexamining the basic assumptions regarding the cost of future capital improvements upon which the SDC was first approved in 1987. In an Order dated February 2, 2007, the Commission rejected Quiland's request and limited the scope of its investigation of KKW's revised SDC "to the issue of whether the revision reasonably addresses the specific defects identified in *Quiland I* [the Commission's May 9, 2006 Order in Docket No. 2005-220]: (1) the disparity between the total SDC assessed against a multi-unit residential complex in which each unit is served through an individual meter and the SDC that would apply if service were provided through a single master meter, and (2) the deficiencies in the SDC formula caused by the use of a peaking factor that is derived from the average year-round demand on the system (as opposed to average peak season demand) and used to estimate a customer's maximum day demand." See *Appeal of Consumer Assistance Division Decision of Customer #2005-18851 Regarding Kennebunk, Kennebunkport and Wells Water District, Docket 2005-220 (Quiland I)*, Order (May 9, 2006).

On March 22, 2007, the Law Court dismissed, as not ripe, Quiland's appeal from the May 9, 2006 Order. The Court reasoned that without a resolution of the issues concerning the SDC, the Commission's Order was not a final agency disposition of the "economic issues central to Quiland's challenge to the individual metering requirement," amenable to appeal to the Law Court. *Id.* at ¶¶ 1, 16, 18. The Court remanded the matter to the Commission with instructions to complete the SDC proceeding and to make factual findings tied to statutory criteria with respect to the issues related to the metering policy. *Id.* at ¶ 18.

On April 2, 2007, the Hearing Examiner issued a Procedural Order consolidating the docket in which the Commission had addressed the metering policy, 2005-220, with the docket which it had previously opened to address modifications to SDC, 2006-351, and setting forth deadlines for the submission of additional pre-filed testimony related to the SDC issue and discovery on that issue. A technical conference was held on March 22, 2007. An evidentiary hearing was held before the Commission on June 21, 2007 at which Quiland offered the additional pre-filed testimony of its treasurer, Howard Hall, its consulting engineer, William Dawson, and also testimony of its expert regulatory consultant, John B. Wagner, and at which KKW offered additional pre-filed testimony of its superintendent, Normand Labbe. At the hearing, cross-examination was conducted of Messrs. Wagner, Hall, and Labbe.

### III. ARGUMENTS OF THE PARTIES

#### A. The Water District

##### 1. Metering Policy

KKW maintains that its decision to require individual metering of the Summer Village complex results from a reasonable application of its written water meter policy for the metering of multi-unit complexes and, as such, is entitled to considerable deference. KKW first adopted a written metering policy for “multifamily units (condominiums, apartments, mobile home parks) and commercial units (condominiums, shopping center and other leased units)” in 1990. That document provides that “[i]t is the policy of the District to meter each individual unit such as in mobile home parks or when multiple units either commercial or residential are located in the same building.” According to KKW, the policy was adopted for the purpose of sending price and usage signals to individual customers in order to encourage conservation. Although the District did not perform a cost-benefit study prior to implementing its metering policy, it points to a variety of industry reports and engineering textbooks which generally affirm that individual metering promotes conservation.

In 2002, KKW amended the metering policy to provide that “[m]ultiunit seasonal campgrounds and RV parks may be master metered.” This amendment was adopted in recognition of the fact that in certain circumstances individual metering is not an effective means of promoting conservation. As Mr. Labbe explained in his testimony:

It was becoming obvious that it was difficult to strictly apply the individual metering requirement to typical campgrounds and RV parks. These facilities are typically used by transient tourists, who lease sites on a short-term basis for portable campers, recreational vehicles, tents and other similar units. The transient nature of these users makes it difficult to achieve the benefits of individual metering. These users are less likely to respond to price signals to conserve water, [and] they are difficult to bill individually for water consumption (either by the utility or the campground owner).

According to KKW, Summer Village is a multi-family, multi-unit complex that falls squarely within the class of facilities (including condominiums, apartments and mobile home parks) that must be individually metered under the District’s metering policy. The District also asserts that the exception to the individual metering requirement, adopted in 2002, does not apply to the Summer Village project because it is neither a campground nor an RV park.

KKW maintains that it has consistently applied its metering policy to require individual metering at the two other seasonal cottage projects located in the

District's service territory, Seagull and Beach Dreams. KKW also asserts that of the 34 multi-unit complexes constructed since the implementation of the metering policy, all but 5 have been individually metered. Two of the master metered projects – the Moody Meadows RV Park and the Ogunquit Farm RV Park – fall squarely within the exception provided by the 2002 amendment because they are multi-unit seasonal RV parks. However, KKW explains that the installation of master meters at three other multi-unit complexes was inconsistent with its metering policy. The first is the Summer Hill RV Park, at which the District permitted the installation of a master meter before the metering policy was amended to exempt RV parks from the individual meter requirement. The second is the Merriland River Resort Condominium Campground, which obtained its master meter after the RV park exemption was adopted. Nonetheless, the District regrets the decision to permit master metering at Merriland because the complex caters to a new breed of so-called "Park Model RVs" -- large recreational vehicles that, while technically portable, are rarely removed from the park once they are installed. In the District's view, "Park Model RVs" are not transient structures and, consequently, do not qualify for the seasonal campground/RV park exception to the individual meter requirement.<sup>2</sup> The third complex permitted a master meter despite the requirements of the metering policy is the 32-unit Ross Road apartment complex. In 2001, the developer of Ross Road ignored the District's repeated instructions that individual meters be installed for each apartment unit and plumbed the building for a single master meter. As a result, it would have been extremely expensive to retrofit the building in order install individual meters, as required by the policy. In a settlement suggested by the Commission's CAD, the Ross Road complex was permitted to keep its master meter, but is billed quarterly for water consumption as if it actually had 32 individual meters. In addition, the developer was required to pay a SDC based on 32 separate SDC charges for 5/8 inch meters.

## 2. System Development Charge

At the original hearing in this matter (prior to remand by the Law Court), KKW conceded that the methodology by which it calculates its SDC creates the significant disparity between the \$1318 charge for 247 separate 5/8 inch meters at Summer Village (a gross sum of \$325,546) as compared to the SDC for a single 2 inch meter estimated by the District to be \$143,710. KKW also agreed that this disparity is at odds with the purpose of a system development charge – to recover accurately the capital costs of future system improvements made necessary by the increased demand on the system caused by new customers or by the significantly increased consumption

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<sup>2</sup> In its brief, KKW indicates that once the Commission issues its decision in this matter it will recommend to its Trustees that the metering policy once again be amended. The proposed amendment would clarify that the exception to the individual meter requirement apply to campgrounds and RV parks only to the extent that they are used by truly transient units, and not units, such as Park Model RVs, which are designed or used for long-term use at a single site.

of existing customers.<sup>3</sup> According to KKW, the disparity is caused by using “meter capacity” as a factor in establishing water usage estimates when setting the utility’s schedule of SDCs – a methodology that causes customers with large meters to pay a disproportionately small SDC relative to the SDC paid by customers served through smaller meters. The District agreed that this disparity “can and should be rectified by eliminating the use of meter capacity factor in the SDC calculation,” and proposed that it “submit an amendment to its tariff to change the design of its SDC” along the lines of a proposal outlined in Mr. Hammond’s Rebuttal Testimony. In the District’s view, a redesigned SDC should not apply to the those Summer Village cottages that have, to date, been provided water service but would apply to those units which will be provided service, for the first time, in the Spring of 2006.

The District filed a proposed revision to its SDC on May 18, 2006, nine days after the Commission issued its Order in *Quiland I*. In its filing, KKW revised the SDC to respond to the May 9, 2006 Order in two ways. First, in recalculating the SDC, it used only seasonal (and in the case of annual customers the peak 6-month period) consumption. Second, it eliminated the use of maximum capacity values based on meter size in the calculation of the SDC, so that the SDC for each meter size is based on actual historic consumption of customers served by that meter size. For the ½ inch eligible customers such as Summer Village condominium owners (customers served by a 5/8-inch meter but with a fixture value of less than 25), the District used 100 gallons per day as the assumed average consumption in this class, a figure proposed by Quiland’s engineer William Dawson in his prefiled testimony in *Quiland I*.<sup>4</sup> According to KKW, the May 18, 2006 revisions eliminate the inter-class disparities identified by the Commission in its *Quiland I* Order.

Following a technical conference held on March 22, 2007 – coincidentally, the same day on which the Law Court issued its decision on Quiland’s appeal -- the District offered a further revision to its SDC by way of the May 18, 2007 pre-filed testimony of Superintendent Labbe. In his testimony, Mr. Labbe proposes that the District perform a “true-up” of SDC charges for every large user (customers using 1397 GPD or more), including multi-unit complexes such as Summer Village to reflect the actual usage of the customer over a two-year period (years 2 and 3 after the customer is connect) as was previously performed for only customers within the 2-inch meter class. According to KKW, such a true-up would eliminate intra-class disparities resulting from variations in consumption among customers served by the same meter size – a concern which KKW states that Quiland raised during the March 22, 2007

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<sup>3</sup> Quiland asserts that the SDC for a 2 inch meter should be \$66,277 or, if based upon a literal reading of KKW’s rate schedule, \$74,896.

<sup>4</sup> See Q-1 Dawson Direct at p. 17. (“[w]e can reasonably estimate that Summer Village’s unit average daily consumption will be approximately 100 GPD per unit.”) In its initial CAD Complaint of February 2, 2005, Quiland submitted a report by William Dawson in which Mr. Dawson recommended the adoption of a seasonal daily average of 95.7 GPD per unit.

technical conference. In his testimony, Mr. Labbe states that KKW proposes 1397 GPD as the threshold consumption figure for the expanded true-up process because it is “the average consumption of all existing 1 inch metered customers...[and] that meter size...[is] the largest meter size being proposed with a fixed (not trued-up) SDC.” Administrative considerations were also kept in mind in light of the fact that “approximately 90% of the District’s customers use less than 1397 GPD,” with a result that, if historical usage trends continue, “approximately 20 true-ups per year” would need to be performed under the proposed usage threshold.<sup>5</sup>

B. Quiland

1. Metering Policy

Quiland’s argument against KKW’s decision to require that the Summer Village complex be served via 247 individual meters is two-fold. First, Quiland asserts that the District has incorrectly applied its metering policy and that the policy actually allows Summer Village to be master metered.<sup>6</sup> In the alternative, Quiland claims that even if the District’s application of its policy is correct, the policy leads to an unreasonable result as applied to Summer Village.

Quiland’s “textual” argument is straightforward: the KKW multi-unit metering policy does not apply to Summer Village because the policy makes absolutely no reference to “seasonal cottages complexes.” Instead, it refers and applies only to “multifamily units (condominiums, apartments, mobile home parks) and commercial units (condominiums, shopping centers and other leased units),” and, according to Quiland, it is to those types of structures that the policy applies.<sup>7</sup> Had the KKW trustees intended that the policy apply to seasonal cottages, they could easily have included

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<sup>5</sup> Notwithstanding the foregoing, the District concedes that setting the true-up threshold at 1397 GPD is “fairly arbitrary,” that “an argument certainly could be made that the District should true-up the SDC for a larger percentage of the 200-300 customers it adds each year, and that a “true-up of every SDC would entirely eliminate any intra-class disparity in the SDC charges, as each individual homeowner would pay an SDC based on that particular customer’s metered consumption.” While not advocating such a requirement, the District expresses its readiness to comply with whatever line might be drawn by the Commission.

<sup>6</sup> As a preliminary matter, Quiland notes that the metering policy was never submitted for Commission approval as a part of the District’s Terms and Conditions, and suggests that, as a result, the policy is unenforceable.

<sup>7</sup> Quiland argues that the reference to “condominiums” in the policy was intended only to make it clear that individual meters are required for all types of living units characterized by long term occupancy irrespective of whether the occupant owns or rents the unit. Quiland notes that the alternative reading – that any living unit owned under a condominium form of ownership must be individually metered – is too broad

specific language to that effect.<sup>8</sup> In Quiland's view, KKW should therefore be estopped from asserting that its trustees intended the policy to apply to seasonal cottages such as Summer Village.

Quiland also argues that even if the policy were interpreted to apply to all multi-unit complexes, including seasonal cottages, the 2002 amendment creating an exception for "multiunit seasonal campgrounds and RV parks" should apply to seasonal cottages. This is so, asserts Quiland, because seasonal cottages, such as Summer Village, bear a closer resemblance to multi-unit campgrounds and RV parks than they do to apartments and mobile homes in terms of those attributes that are most pertinent to the conservation aims of the District's metering policy. For instance, the square footage of a Summer Village cottage (600 sq. ft.) is much closer in size to an RV (400 sq. ft.) than to a typical residence (1800 sq. ft.) or a mobile home (900 sq. ft.) In addition, the American Water Works Association (AWWA) fixture count of each Summer Village cottage is just 23, as compared to the fixture count of 60 to 70 found in the typical residence.<sup>9</sup> The Summer Village complex will also rely on ponds and wells on the premises to satisfy its outdoor water needs – none of cottages will have water spigots on the outside of the unit. Finally, the cottages at Summer Village will be available for transient occupancy through a required active short-term rental program.

Regardless of whether the metering policy, as written, requires individual meters at Summer Village, Quiland contends that the policy is unreasonable as applied to its development because it is not a cost effective conservation measure to require individual meters at seasonal resorts and because the District has not applied the policy consistently or fairly.<sup>10</sup> On the issue of the cost effectiveness of the metering policy as applied to Summer Village, Quiland claims that the cost of installing 247 5/8 inch meters is \$123,500 (\$500 per unit)<sup>11</sup>, and that the annual maintenance cost (the

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and would be inconsistent with the District's decision to allow two RV parks, owned as condominiums, in its service territory to be served via a master meter.

<sup>8</sup> Quiland points to the explicit reference in the policy to "mobile home parks" and "multiple units in the same building" as examples of the Trustees' ability to be specific.

<sup>9</sup> The AWWA fixture count is a well established measurement of the relative water flow capacity of an appliance or fixture.

<sup>10</sup> Quiland also argues that the metering policy is not a necessary means of addressing problems the District had experienced in the areas of billing and collection. Although KKW identifies the resolution of such problems as a secondary reason supporting the metering policy, it does not, in its brief, advance an argument based upon billing and collection problems. We therefore do not address Quiland's rebuttal of an argument KKW has elected not to pursue.

<sup>11</sup> KKW estimates that the cost of providing and installing 247 meters at summer village is approximately \$44,954 (\$182 per meter), based on its costs of meters and the

cost of removing the meters in the fall and reinstalling them in the spring and of maintaining and repairing them) will be approximately \$6,000. According to Quiland, the total net present value of the initial installation cost and the recurring annual maintenance costs (for 20 years) of 247 5/8 inch meters is \$212,765, compared to \$29,488 for a single 2 inch meter. Thus, the total net present value of the cost of applying the individual metering policy to Summer Village is \$183,277 (\$212,765 – \$29,488).

On the benefit side, Quiland begins its analysis by estimating that each cottage at Summer Village will use an average of 100 gallons per day. Based upon KKW's present average cost of water of \$.052/hcf, Quiland estimates that the total value of all of the water that the Summer Village complex will use over the next 20 years is \$62,582.<sup>12</sup> The potential conservation benefits that individual metering at Summer Village might conceivably encourage do not, in Quiland's view, justify the costs. According to Quiland's analysis, Summer Village would have to conserve roughly three times the amount that it is likely to use in order for the conservation benefits of individual metering to actually exceed its cost. Quiland notes that KKW's expert, Mr. Hammond, testified that individual metering at Summer Village could produce, at best, a 30% savings in water consumption and, at worst, a 10% savings. Assuming the 30% savings figure, at KKW's present cost of water, the benefits of individual metering would be \$21,000, significantly less than Quiland's estimate of the policy's present value cost of \$183,277.<sup>13</sup>

On remand from the Law Court, Quiland revised its benefit-side analysis of the individual metering policy. Specifically, in his pre-filed direct testimony in *Quiland II*, Mr. Wagner testified that a conservative analysis of the actual consumption data from the 2006 season for Summer Village reveals that the average consumption is approximately 56 GPD per cottage. Wagner Quiland II pre-filed Direct at 8.<sup>14</sup> Based

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labor rates that it would charge for setting the meter if it set the meters (a service which it does not provide). Quiland counters that its figure of \$500 per meter is not an estimate but rather the amount that it has actually spent to install meters at Summer Village.

<sup>12</sup> Noting that Quiland's analysis assumes a fixed cost of water at current rates, KKW contends that, in light of "inflation, a limited water supply, increased growth projected in the region, and increased treatment obligations under Federal law, the notion that the District's rates will remain unchanged over the next 20 years is untenable."

<sup>13</sup> KKW faults Quiland's cost-benefit analysis for failing to address the effect that conservation has on reducing summer peak day demand on the District's system and the necessity for incurring capital costs to increase supply, treatment and distribution facilities.

<sup>14</sup> Two hearings were held in this case – one prior to Quiland's appeal to the Law Court, and one after remand from the Law Court, and several of the witnesses offered pre-filed testimony at both hearings. For ease of identification, we refer to the former

upon these figures, Mr. Dawson suggests, in his *Quiland II* prefiled testimony, that the monetary value of the conservation benefits of the individual metering policy would be cut roughly in half, further demonstrating that the policy, as applied to Summer Village, is not and cannot be cost-effective.

Quiland also suggests several reasons why individual metering at Summer Village is unlikely to induce conservation of the magnitude estimated by the District.<sup>15</sup> First, individual meters at Summer Village would be placed some distance from the point of interconnection with the utility's water main thereby impeding the detection of leaks that may occur within the complex's distribution lines. Second, a significant portion (projected by Quiland to be 50%) of the occupants at Summer Village will be transients who will not receive a water bill and thus will be immune from any price induced incentive to conserve. Third, KKW charges its seasonal customers a minimum rate which includes a minimum allowance of 2400 cf – less than most cottages are likely to use. Indeed, as Mr. Hall observes in his pre-filed testimony in *Quiland II*, only 5 cottage owners actually exceeded KKW's minimum usage allowance in 2006. As a result, these customers will have no price induced incentive to conserve. Fourth, KKW's seasonal customers receive a single bill at the beginning of the season for the minimum charge. Those that do exceed the minimum allowance receive bills for the overage at the end of the season. Consequently, any price-induced incentive to conserve will be substantially muted by the passage of time from the end of one season to the beginning of the next. Fourth, Summer Village has already taken the most effective conservation measures such as installing low flow showerheads, efficient appliances and fixtures, and prohibiting outside spigots. Fifth, the recorded average usage at Summer Village of 56 GPD per cottage is, according to Quiland, a realistic if not conservative prediction of consumption. Sixth, because Quiland paid all the individual water bills sent to residents of Summer Village in 2006, no cottage owner has ever received a price signal to conserve. Seventh, and finally, master metering would still induce conservation even if service is provided through a master meter because the Summer Village condominium association has employed a professional manager whose job is to minimize the operating expenses of the complex.

Quiland also argues that KKW has not been applying its metering policy consistently or rationally. According to Quiland, the District has permitted master metering at six complexes where the circumstances presented a far more compelling

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hearing as Quiland I, and to the latter as Quiland II, noting that both hearings are a part of the record in a single consolidated case.

<sup>15</sup> Mr. Hammond, the District's expert, initially testified that individual meters could induce conservation in the range of 10-30%. *Quiland I*, H. Tr. at 330 Ins. 23-25. As Quiland notes in its post-hearing reply brief, dated July 27, 2007, the District's superintendent, Mr. Labbe, testified, more recently, that Mr. Hammond's estimate is "a little aggressive," and that the conservation impact of the individually metering policy is more likely to be in the 10-20% range. *Quiland II*, H. Tr. at 97 Ins 8-15.

case for individual metering than does Summer Village.<sup>16</sup> Five of the complexes are seasonal RV parks that, in Quiland's view, have similar indoor water requirements as the cottages at Summer Village. The RVs at these complexes -- particularly the park model RVs -- are essentially permanent structures that remain on site for the entire season. In contrast to Summer Village, however, the RV parks are not required to have short-term rental programs and do not actively encourage transient occupancy. Also, the RV parks typically have outside spigots, unlike the cottages at Summer Village. The last two attributes make the RV parks even better candidates for individual metering than Summer Village. Finally, the District permitted service to the Ross Road Apartment complex through a master meter after the developer ignored the District's instructions that individual meters be installed during construction -- a concession which, to Quiland, demonstrates that KKW is less than rigorous, or fair, in applying its metering policy.

## 2. System Development Charge

Prior to its appeal to the Law Court, Quiland argued that the SDC KKW seeks to impose upon Summer Village is too high, and that the method by which it is calculated does not further the purpose of such charges, which is to place the cost of system improvements upon those customers whose water use creates the need for such improvements. As evidence that there is a problem in the way the SDC is calculated, Quiland pointed to the disparity between the charge associated with the 247 individual 5/8 inch meters that the District is demanding (\$325,546) and the charge that would apply if Summer Village were served through a single 2 inch meter (\$66,277)<sup>17</sup>. According to Quiland, this disparity cannot be justified by common sense or economics. Moreover, Quiland argued that if individual metering does, indeed, encourage conservation, then the SDC associated with 247 5/8 inch meters should be less than that for a single 2 inch meter at Summer Village. This is so because the increased conservation induced by individual metering would tend to reduce Summer Village's impact on the capacity of the District's system and the need for capital improvements to the system.

Quiland also took issue with KKW's estimate of what the SDC for Summer Village would be if the complex were served through a 2 inch meter. The first error in KKW's calculation, claimed Quiland, is the application of a peaking factor which is derived from the average year-round demand on the system and used to estimate a

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<sup>16</sup> These complexes are the Merriland River Resort Condominium Campground, Moody Meadows RV Park, Ogunquit Farm RV Park, Summer Hill RV Park, and the Ross Road Apartments.

<sup>17</sup> KKW disagrees with Quiland's calculation of the SDC for a 2 inch meter, claiming that the correct charge is \$143,710.

customer's maximum day demand.<sup>18</sup> According to Quiland, a peaking factor that is derived from average-year round consumption is too large when applied to Summer Village. This is so, claimed Quiland, because the occupants of Summer Village consume water only in the summer months and, as a result, their average daily consumption is closer to maximum day demand than the average daily consumption of customers who are served both in the summer and in the off-season. The second error in the SDC calculation, according to Quiland, is that KKW's formula makes no adjustment in the maximum day demand calculation to reflect the fact that Summer Village will not use KKW water for outdoor irrigation. By failing to make such an accommodation to its formula, KKW fails to distinguish Summer Village from the majority of its customers whose outdoor water consumption increases dramatically in the summer months. In *Quiland I*, Quiland's expert witness, William Dawson, recommended adjustments to the 2 inch meter SDC formula to correct the two flaws identified in KKW's calculation. The result is a SDC of \$66,277. Correcting only for KKW's allegedly incorrect reliance on average seasonal use to establish an estimated max day demand, Mr. Dawson calculates a 2 inch meter SDC for Summer Village of \$74,896.

In *Quiland II*, Quiland offered additional testimony of William Dawson in which he opines that the Summer Village complex could, and should, be served through a single 1½ inch meter rather than the 2 inch meter that Quiland had originally requested when it first applied for service prior to construction of the complex. See Q-II, Dawson Direct at 1. Accord to Mr. Dawson, the results of a controlled, scientific test of water flow at two Summer Village cottage units that he conducted on April 24, 2007 demonstrate that a single 1½ inch master meter is capable of satisfying, within margins of safety recommended by the American Water Works Association, the maximum possible instantaneous demand for water that could theoretically be placed on the KKW system by the 247 cottages at Summer Village. *Id.* at 2-3. Based upon Mr. Dawson's opinion as reflected in this testimony, Quiland argues that it is the SDC that is applicable for customers served through a 1½ meter that should be assessed against Summer Village. Further, Quiland argues that the only way to remove the disparity between the SDC assessed by KKW based upon 247 individual meters, and the SDC that would be assessed were an individual master meter permitted, as identified by the Commission in *Quiland I*, is to require that KKW charge an SDC for Summer Village of no more than the SDC that was applicable to service through a 1½ meter in 2005 (\$18,173).<sup>19</sup> Any other result, according to Quiland, would be tantamount to a penalty imposed by KKW for challenging its metering policy before the Commission and would be anathema to the Commission's Order in *Quiland I* that the "disparity" in alternative SDC charges (master meter vs. 247 individual meters) be removed. See Quiland Br. at 17.

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<sup>18</sup> Maximum day demand is the amount of water used by a customer on the day in which the system experiences its greatest demand of the year.

<sup>19</sup> KKW's tariff reflects that the SDC for a 1½ inch meter, as of August 1, 2005, was \$19,458. The lower figure, cited by Quiland, refers to the previously effective tariff.

#### IV. DECISION

##### A. Legal Standard

The applicable legal standard to this case is found in 35-A M.R.S.A. §1306, which provides that if the Commission finds that a rate, term, condition, practice, act or service of a water utility to be unjust, unreasonable or unjustly discriminatory the Commission may by order establish the rates, terms, conditions, practices or acts it finds to be just and reasonable. Likewise, 35-A M.R.S.A. §301(2) directs that rates and charges for any public utility shall be just and reasonable, and 35-A M.R.S.A. §301(3) prohibits any charge for utility service that is unjust or unreasonable. Further, 35-A M.R.S.A. §6105(2) requires that water district rates and charges be just and reasonable, and 35-A M.R.S.A. § 1303(1)(A) authorizes the Commission to investigate where it believes that a rate or charge is unjust or unreasonable.

Pertinent also is 35-A M.R.S.A. §6107, which provides that a consumer-owned water utility may establish a system development charge to provide funds to finance capital outlays for water system expansion caused by an increase in demand for service and that such a charge must be found by the Commission to be just and reasonable.

The “just and reasonable” standard is therefore the lodestar by which we judge this case. We also take heed of the direction of the Law Court that the economic issues central to Quiland’s challenge to the individual metering requirement must be determined, and tested against the just and reasonable standard, in conjunction with our resolution of the SDC issue.

##### A. Metering Policy

As a preliminary matter, we reject Quiland’s suggestion that the District is precluded from relying on its written metering policy because it failed to file that policy with the Commission for our approval. Without reaching the issue of whether the policy should have been filed as part of the District’s general Terms and Conditions of service, we hold that its failure to do so, even if required, is not fatal in this case for two reasons. First, the record reflects that the District was advised by Commission staff that the policy need not be filed with the Commission. More fundamentally, Quiland suffers no prejudice as a result of the District’s decision not to file the policy with the Commission because it has had a full opportunity to challenge that policy in these proceedings.

We also disagree with the notion that the metering policy, as written, cannot be applied to seasonal cottage complexes where each unit is individually owned. Admittedly, the policy is not a model of clarity on this point. However, the policy is intended to serve only as a guide to the District in determining when individual meters should be required. There is no question, moreover, that the policy applies to individually owned condominium units in a single building. To find, by analogy, that the

policy could be applied to condominium cottage units is, in our view, at least consistent with the conservation goals of the metering policy.

We find that the District correctly relied on the fact that the cottages at Summer Village are individually owned in deciding that individual meters should be required. The goal of the metering policy is conservation, and it is axiomatic that an owner who knows that his water bill will increase with the amount he consumes will tend to conserve. This incentive persists, although perhaps to a lesser degree, even where the owner rents his unit for the season to persons whose use is not directly influenced by the size of the utility bill. In such cases, the owner has an incentive to install water efficient devices and keep them well maintained and in that way could impose conservation on his tenants. It is only where an entire residential complex is owned by a single person that the incentive to conserve is no greater with individual meters than with a single master meter.

We also find that that the District has attempted to be consistent in applying its policy to developments where the incentive to conserve exists although, as it concedes, it has made mistakes in a few instances – most notably in its belated recognition that the incentive to conserve exists in complexes containing “park model” RV’s. However, the fact that the District may have made a mistake in a few cases does not mean that it should be prohibited from applying the policy correctly to Summer Village, especially where there is no evidence that the deviations were intentional or that decisions were made in bad faith. We expect that the District will exercise even more care in the future in applying its metering policy, especially in light of the apparent increase in high-cost seasonal development within the service territory.

We reject Quiland’s suggestion that the District should be prohibited from applying its metering policy to the Summer Village project because it failed to demonstrate that individual meters will, in fact, be cost effective for this particular development. To require a cost-benefit analysis be performed with respect to each individual development is not practical, and the District should be accorded considerable discretion in applying its policy to individual developments. It is not practical for various types of seasonal developments be classed into subgroups and that a cost-benefit analysis be performed for each subgroup before the metering policy may be applied to those developments. There are simply too many variables -- -- square footage, fixture count, efficiency of devices that use water, rental practices, restrictions on water use contained in the condominium agreement – to make a subclass-by-subclass analysis practical. There is also no guarantee that the salient characteristics of a particular sub-class of seasonal development that might justify a master meter would not change after the metering decision is made. Ultimately, any uniform conservation policy, such as the District’s individual metering requirement, has a similar effect on a particular customer as does a utility’s rate design – its costs and benefits will be borne and achieved more or less depending upon how closely that customer’s consumption is to that of the average consumer. The existence of such a variance is, standing alone, insufficient to demonstrate that the individual metering policy is unjust or unreasonable as applied to the residents of Summer Village.

We also decline to mandate that the District perform a generic cost-benefit analysis as a prerequisite to requiring individual metering of seasonal cottage complexes in general. It is simply impossible to expect much precision in this area because it is difficult to predict how future seasonal cottage complexes will be developed and how the individual units will be used. The testimony introduced in this case demonstrates just how far apart experts can be when the characteristics of a particular project are known and defined, and that it would be even more difficult to predict with any degree of precision the water usage and conservation characteristics of complexes that have not yet been developed.

There is considerable precedent, both in the literature and in practice, in support of individually metering premises that are individually owned. Even though this precedent involves year-round premises, it is reasonable for the District to extend it to cover seasonal cottages in the District's service territory, especially as the high seasonal use of the units occurs during the District's peak demand period – the summer months.<sup>20</sup> That seasonal units in general, and the Summer Village cottages in particular, will be placed on the rental market does not require a different result because the incentive for the installation of efficient devices still exists with rental properties; and, in any event, it is impossible to know how many units will actually be rented and for what period of time.

We find that the KKW's metering policy is a just and reasonable term, condition, practice or act of the District and that it therefore satisfies the statutory standard set forth in 35-A M.R.S.A. §1306(2). We also find that the financial impact of the metering policy on the rates and charges of the District does not render those rates and charges unjust, unreasonable, or discriminatory or otherwise in violation of the statutory standard set forth in 35-A M.R.S.A. §§1306(1), 301(2), 301(3), 6105(2), and 1303(1)(A). We are mindful that application of the metering policy to seasonal complexes brings with it the added cost (as compared to application of the policy to year-round customers) of annually removing and reinstalling the meters. Based upon the testimony of the District's superintendent, we find that this incremental expense of removing and reinstalling a 5/8 inch meter is \$24.29 per meter per year. We also find, based upon the testimony of Mr. Hall that the one-time cost of purchasing and installing a single 5/8 inch meter is \$500.<sup>21</sup> We find that the District's individual metering policy,

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<sup>20</sup> The potential for dramatic growth in usage during the District's peak demand period also justifies erring on the side of doing all that it reasonably can to conserve the resource even if it is impossible to have a definitive cost-benefit analysis to support individual metering.

<sup>21</sup> Mr. Labbe testified that based on its cost of purchasing a meter and the labor rates that it would charge for setting the meter if it set meters (a service which it does not provide) the per-meter cost for a 5/8 inch meter with installation is \$182. Quiland counters that the cost is \$500 per meter and that its figure is based on the amount that it actually spent to pay a contractor to install meters at Summer Village.

which has the result of imposing these two costs upon all of its seasonal customers, including those residing at Summer Village, is just and reasonable.

When first presented to us for review, KKW's decision requiring that Summer Village be served through individual meters profoundly effected the amount of the SDC charged to Quiland as compared to the SDC that would have been assessed had a single master meter been allowed. As is described in greater detail in section B, below, the revisions to the SDC that we order KKW to undertake removes the linkage between the calculated amount of the SDC assessed in connection with Summer Village and the number of meters through which it is served. In other words, the measure of the SDC charged to Summer Village, or any other seasonal complex, is no longer a financial consequence of the decision to require that such complexes be individually metered. In fact, our ordered revisions to the SDC include a requirement that the SDC charged to every customer be trued up based upon a period of actual measured use – something that is possible only if each customer is served through an individual meter. This provides yet another reason why the District's metering policy is just and reasonable.

Our conclusion here, that KKW had not acted unreasonably by requiring that seasonal cottage complexes be individually metered, does not mean that the District had selected the best approach. The District might have decided, for example, to allow master metering of seasonal cottage complexes subject to the condition that if the complex consumes more than a certain amount of water per cottage for two consecutive years, the District would have the right to require the condominium association to install individual meters at the association's expense. In certain cases, this might provide an incentive for developers to install water conserving devices and adopt water conserving policies in order to avoid the added costs of individual metering, while protecting the District's interests if the usage limits were not met. It is, of course, possible that such an approach might not work, and that we raise it merely to suggest that there may be other, less expensive means to achieve conservation than individual metering. Nonetheless, we find that the approach taken by the District of requiring individual metering at individually owned seasonal cottage complexes is not unreasonable and does not lead to unjust, unreasonable, or discriminatory rates.

We are mindful that the recent evidence presented by Quiland following the remand from the Law Court strongly suggests that the consumption actually experienced at Summer Village is, on average, far less than 100 GPD as originally anticipated. The testimony of Mr. Wagner and Mr. Hall and also consumption data based upon KKW's meter readings at Summer Village, would support a finding that the average consumption of each cottage at Summer Village is 56 GPD. See Q-II Wagner Test. p. 8, Exh. JBW-3; Q-II Hall Test. p.3-10.<sup>22</sup> The significance of such evidence, according to Quiland, is that whatever might have been the conservation benefits of application of the metering policy to Summer Village under the previously assumed

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<sup>22</sup> KKW's attempt to impeach this evidence is not particularly compelling. See Q-II Hr. Tr. p. 87; Q-II Labbe Test. p. 7, ln. 45 – p. 8., ln 41.

consumption figure of 100 GPD, those benefits are reduced nearly in half in light of recent, actual consumption at the complex. In addition, as Mr. Hall testified, the installation of water conservation appliances in the Summer Village cottages, and other water conservation measures unique to Summer Village, may serve to further diminish the conservation benefits to be achieved by applying the metering policy to Summer Village as compared to other seasonal complexes. Indeed, at the most recent hearing in this matter, Mr. Labbe conceded that individual metering at Summer Village is not likely to result in conservation at the rate previously advanced by KKW (as high as 30%).

Notwithstanding the foregoing, we affirm our earlier conclusion that the District has acted reasonably in establishing and applying a general individual metering policy that is applicable to all condominium developments within its service territory, and that it is not necessary that a cost-benefit analysis be performed in order to justify the application of that policy to any particular class or sub-class of condominium development or to Summer Village in particular. Most, if not all, general terms of utility service that are intended to encourage conservation will achieve varying degrees of success depending upon the particular and unique attributes of the consumer to whom those terms are applied and it is possible, in specific circumstances and cost environments, that the costs of compliance with a general requirement, such as individual metering, will outweigh the monetary value of immediately foreseeable conservation benefits. That Quiland has presented a case that, as applied to it, the individual metering policy costs more than it saves does not establish that uniform, non-discriminatory application of that policy to the District's customers is unjust or unreasonable.

B. System Development Charge

The purpose of the system development charge statute is to permit a consumer-owned water utility to assess a charge on those customers who increase demand on the water system in order to accumulate funds from which to finance capital outlays for water system expansion. 35-A M.R.S.A. § 6107(1), (3). The charge may be assessed on customers who either require new connections to the water system or who substantially increase their demand for water. 35-A M.R.S.A. § 6107(4). In a perfect world, the amount of the SDC assessed on each customer would be precisely equal to the present value of the capital improvements made necessary by the customer's new or increased demand. Precision of this sort is, of course, not possible. On the other hand, the facts of this case demonstrate that the method by which the District has been calculating its SDC results in a significant disparity between the amount of SDC assessed against Summer Village if individual meters are installed as compared to the SDC if the project is master metered. To permit such a disparity to persist would be to condone a SDC that is unjust and unreasonable and that violates the legislative command of 35-A M.R.S.A. §6107 that such charges be just and reasonable.

In *Quiland I*, we directed that KKW file a revised SDC that, at a minimum, addresses the disparity between that SDC that would be assessed against Quiland on

247 5/8 inch meters and the SDC that would be charged if master metering were permitted. We noted especially two discrete problems which Quiland had identified as contributing to this disparity : (i) the use of maximum capacity values based on meter size as provided in AWWA Manual 22 in the calculation of the SDC; and (ii) the application of a peaking factor which is derived from the average year-round (as opposed to peak season) demand on the system and used to estimate a customer's maximum day demand. We subsequently reaffirmed, in our February 2, 2007 Corrected Order, that our investigation into the reasonableness of KKW's SDC would be focused on whether its proposed revisions correct the disparity between the total SDC assessed against a multi-unit residential complex in which each unit is served through an individual meter and the SDC that would apply if service were provided through a single master meter, and also the deficiencies in the SDC formula caused by the use of a peaking factor that is derived from the average year-round demand on the system (as opposed to average peak season demand) and used to estimate a customer's maximum day demand.

We find that KKW's proposed revisions to the SDC, including its May 18, 2006 filing and its proposals related to the SDC calculation as set forth in the May 18, 2007 pre-filed testimony of Mr. Labbe, address precisely the deficiencies in the SDC that we identified in *Quiland I* and are sufficient and necessary to ensure that the SDC meets the statutory requirement that it be just and reasonable. See 35-A M.R.S.A. §6107.

First, KKW's May 18, 2006 compliance filing fully addresses the deficiencies in the SDC formula cause by the use of a peaking factor that it derived from the average year-round demand on the system (as opposed to average peak season demand) and used to estimate a customer's maximum day demand. As noted in Mr. Labbe's May 18, 2007 testimony:

[T]he District used only seasonal (and in the case of annual customers the peak six-month period) consumption figures in calculating the SDC, as reflected in spreadsheet pages A and I with the filing.

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On the spreadsheet contained in the May 18, 2006 filing identified as Page A is a summary of all 2005 consumption by meter size, including both seasonal and annual customers... Page A of the filing shows, for example, that there were a total of 2,435 5/8-inch seasonal customers in 2005 with total consumption during the six-month summer season of 65,615,301 gallons, resulting in an average summer season consumption of 146 gallons per day. The same Page A shows that there were 8,836 annual 5/8 inch customers in 2005 with 6-month summer peak consumption of 296,203,512 gallons, resulting in an

average summer season consumption of 182 gallons per day. Annual customers have four billing cycles, so for purposes of this analysis we used consumption from the two billing cycles most closely corresponding to the summer season. Combining both 5/8 inch seasonal and annual customers, as shown on Page A, results in a weighted average consumption per 5/8 inch meter of 174 gallons per day during the peak 6-month season.

Q-II Labbe Direct at 4. Thus, in recalculating the SDC, the District measured average consumption of all customer classes and meter sizes based on a six-month peak summer period, rather than using annual data from some customers and seasonal data for others. *Id.* at 9. This fully complies with the Commission's May 9, *Quiland I* Order. Indeed, Quiland did not challenge this revision at any time during this proceeding, and has acknowledged that it complies with the May 9 Order. See Quiland Motion to Compel of June 8, 2007 at page 3: "As far as the adjustment for seasonal versus year round usage is concerned, it is a very simple adjustment...KKW made this adjustment in a reasonably straight forward manner."

Second, KKW's proposed revisions to its SDC as set forth in its May 18, 2006 filing, eliminate entirely the use of meter capacity in the calculation of the SDC, so that, as revised, the SDC calculated for each meter size is based solely on the average consumption of the customers served by that meter size, rather than the capacity of the meter. As Mr. Labbe testified, the District in its revised filing "eliminated the use of Manual M-22 capacity factors in calculating usage factors for each meter size," relying instead "on actual measured consumption by meter size class. Q-II Labbe Direct at 8-9. This change, along with the use of seasonal consumption data for all customers, largely eliminates the disparity between the SDC as calculated for multi-unit complexes that are individually metered versus a similar complex with a single master meter. Indeed, we agree with KKW's observation that the May 18, 2006 proposed SDC revision would eliminate any difference in the SDC for Summer Village caused by the metering policy if its actual per unit consumption actually matched the 100 GPD originally proposed by Quiland and used by the District in its calculations. As Mr. Labbe testified, "[f]or Summer Village, the SDC charges under the District's May 18, 2006 revised filing are \$930 per condominium unit, for a total of \$229,710 for all 247 units. If a single 2" meter were installed at Summer Village, and assuming the average consumption of 100 GPD per unit, the SDC charge would be \$229,682. The difference is rounding only." *Id.* at 9.

Third, we agree with the observation of KKW that while elimination of the use of Manual M-22 capacity would eliminate the inter-class disparities created under the SDC methodology as it existed in *Quiland I*, nonetheless, for all meter sizes other than the 2-inch meter class, the District's May 18, 2006 revisions would continue to establish fixed SDC charges for each meter size with the SDC calculated based upon the average consumption of customers in that class. In other words, unless the SDC charge is "trued up" based on the customer's (or complex's) actual metered consumption over time, the complex's total SDC will only be identical to a master

metered complex if, coincidentally, its consumption is identical to the average consumption of customers with the same sized meter. This “intra-class” disparity is, in light of the fact that it can be readily reduced if not eliminated through the adoption by KKW of a “true up” process, unjust, unreasonable, and unduly discriminatory.

Although KKW proposes, in its May 18, 2007 testimony, to address the “intra-class” disparity by establishing a “true up” process for every customer with a meter size greater than 1 inch, we find that for every customer subject to the SDC the charge should be trued up after a period based upon the actual measured usage of that customer, irrespective of the size of the meter through which service is provided. The adoption of such a process should ensure that every customer’s SDC is based on its own, actual consumption thereby eliminating any intra-class disparity in the SDC calculation for all customers.

The testimony of Quiland’s expert witness, John Wagner, supports these revisions. As Mr. Wagner testified, the District’s “underlying cost driver” is “actual consumption, not the size of the meter.” Q-II Wagner Test., p. 12; Q-II Hr. Tr. p. 19. In his prefiled testimony, Mr. Wagner noted that the District’s May 2006 proposed revision (which did not include a true up mechanism for Summer Village, creates a “disparity that penalizes Summer Village and other multi-unit residential complexes for complying with [the District’s] Metering Policy.” Q-II Wagner Test., p. 5. Moreover, at the hearing in this case, Mr. Wagner confirmed that this disparity results from the failure to true up the SDC based on a customer’s actual consumption. Q-II Hr. Tr. p. 23, lines 8-12. He also testified that Summer Village should have its SDC based on its “actual consumption in year two and three” and not pay a higher SDC that “results from a substantial overestimate of its usage.” Q-II Wagner Test., p. 7; Q-II Hr. Tr. p. 24. Mr. Wagner also agreed that applying a true up of the Summer Village SDC charge based on actual consumption at the complex “is certainly a more fair and equitable result for all stakeholders than the District’s May 2006 proposal.” *Id.* at 24. According to Mr. Wagner, a true up approach is more fair and equitable even if it produces charges that are less or greater than the original estimate. *Id.* Finally, Mr. Wagner agreed that a customer “shouldn’t be penalized or rewarded for the difference between his usage and the average usage in the class.” *Id.* at 25. We agree with each of these observations.

We also agree with Mr. Wagner’s observation, made at the hearing, that the use of an average GPD consumption figure in calculating the SDC for customers served by a particular meter size creates the problematic situation that if a customer’s usage is significantly above the average, it will be substantially undercharged, and if its usage is significantly below the average, it will be substantially overcharged. Q-II Hr. Tr. at 26. As Mr. Wagner stated, “it’s no less of a disparity...for a customer to use substantially more than a hundred gallons per day and be undercharged than it is a disparity for a customer who uses substantially less than a hundred gallons per day and is over charged...[t]hey’re both disparities.” *Id.* Indeed, Mr. Wagner agreed that the approach we adopt in this order – a requirement that the District true up the SDC for all customers, irrespective of meter size – “is a reasonable approach.” Q-II Wagner Test. at 13. This is so, according to Mr. Wagner, because “customers would pay for the cost

of their demand based upon their actual consumption – that customer’s actual consumption.” Q-II Hr. Tr. at 33.

We recognize that the application of a true up procedure for all SDC’s assessed by the District could result in performing as many as 300 true up calculations per year and that in the case of single family units served by 5/8 inch meters, it will require diligence on the part of the District in performing the necessary administrative activities related to refunding amounts of SDC that, after true up, have been overpaid and to collecting additional amounts due from each customer several years after they have first paid the estimated SDC. As the District recognizes, however, any line drawn as to the type of customer for whom a true up should be performed is necessarily fairly arbitrary. KKW Br. at 13. Should, after the District has had significant experience administering the true up process we impose in this order, these administrative obligations prove unduly burdensome, the District may seek, by application to the Commission of a limited waiver, modification of our requirement that the SDC for all customers be subject to true up. As KKW concedes, “[a] true-up of every SDC would entirely eliminate any intra-class disparity in the SDC charges, as each individual homeowner would pay an SDC based on that particular customer’s metered consumption.” We agree, and believe that this is the result for which the District should strive.<sup>23</sup>

We find that the adoption of each of the revisions of the SDC described above are necessary to eliminate defects and disparities that, in the absence of those revisions, cause the charge to be unjust and unreasonable in general and as applied to Summer Village in particular. Upon adoption of the these revisions, and the calculation of an estimated SDC pursuant to those revisions, and the subsequent true up of the SDC for Summer Village pursuant to those revisions, the SDC charged to Summer Village, and indeed to all customers subject to the charge, will be unaffected by the number, and indeed the size<sup>24</sup>, of the meter through which water service is delivered. Further, the disparity and defects identified by Quiland, and giving rise to this investigation, will have been remedied, and the District’s SDC will be just and reasonable as required by §35-A M.R.S.A. §6107 because the charges will reflect that actual projected capital outlays caused, in part, by each particular consumer.

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<sup>23</sup> As noted above, the effectiveness of the individual-customer true up procedure is advanced by the District’s policy of requiring that each customer be served through an individual meter.

<sup>24</sup> With the SDC revisions we impose today, the engineering issue raised by Quiland regarding whether Summer Village might, theoretically, qualify for service through a 1½ meter becomes academic in terms of the effect of meter size on the amount of the SDC to be assessed on the complex.



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.