

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

New Landing Utility, Inc.	:	ICC Docket No. 04-0610
	:	
Proposed general increase in water and sewer rates.	:	
	:	

REVISED
MOTION TO STRIKE PORTIONS OF ARMSTRONG
DIRECT TESTIMONY

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), through its undersigned counsel, and pursuant to 83 Ill. Adm. Code Sec. 200.190, moves to strike portions of the direct testimony and schedules of New Landing Utility, Inc., (“New Landing,” “Company” or “NLU”) witness Gene L. Armstrong (“Mr. Armstrong “ or “Armstrong”). In support of this motion, Staff states as follows:

I. Introduction and Background

1. On September 3, 2004, New Landing Utility, Inc. filed tariffs for a proposed general increase in rates pursuant to Section 9-201 of the Public Utilities Act (“Act”). (220 ILCS 5/9-201) The Illinois Commerce Commission (“Commission”) entered an Order suspending the tariffs and initiating this proceeding, Docket No. 04-0610, on October 6, 2004.

2. Staff filed a Motion to Strike Portions of Armstrong Direct Testimony (“Motion”) on December 6, 2004. In less than three hours after having received the Motion, at a status hearing the same day, the Administrative Law Judge (“ALJ”) summarily denied Staff’s Motion without briefing or argument. The ALJ granted leave to refile a revised Motion, but instructed Staff to make specific reference to the statutory

language relied upon.¹ The ALJ also instructed Staff to attach a copy of the order in Docket Nos. 79-0673 and 79-0675 consolidated.² Finally, the ALJ directed Staff to cite to specific language in the mortgage note attached to the Motion to Strike.

3. In his direct testimony and schedules, Mr. Armstrong referred to a Mortgage Note, principal and interest, (“Mortgage Note”) that was previously approved by the Illinois Commerce Commission (“Commission”) in Docket Nos. 79-0673 and 70-0675 consolidated (Final Order entered January 14, 1981). (See Order in Docket Nos. 79-0673 and 70-0675 Cons. attached as Exhibit A; Mortgage Note attached as Exhibit B) Staff objects to the inclusion and use in this proceeding of these portions of the direct testimony and schedules of Mr. Armstrong filed on September 24, 2004.

4. Staff is moving to strike those portions of the direct testimony and schedules of Mr. Armstrong that make reference to and incorporate the Mortgage Note because, since the Commission’s Order in Docket Nos. 79-0673/79-0675 Cons. (Exhibit A), the holder and a term of the Mortgage Note have changed and for which New Landing never sought or obtained Commission approval of such changes.

5. New Landing is seeking to include in its capital structure a Mortgage Note, with a principal amount of \$170,534 and accrued interest through December 31, 2003 of \$430,273. (Armstrong Direct Testimony, p. 8) However, in its Order, the Commission approved a Mortgage Note that was “... payable 15 years from date...”. (Exhibit A, p. 14) Further, according to the Mortgage Note dated January 26, 1981, “... the final payment of principal and interest, if not sooner paid, shall be due on the 1st day of

¹ In its original Motion to Strike Staff had cited to, rather than quoted, the statutory provision.

² The order was attached to the original Motion to Strike as Exhibit A.

November, 1995". (Exhibit B, p. 1) As such, the Mortgage Note that New Landing now seeks to include in this filing should have been paid more than nine years ago.

6. The testimony states that "...Semi-annual installments due were never paid. Instead they were accrued..." (Armstrong Direct Testimony, p. 8) The Mortgage Note approved by the Commission in Docket Nos. 79-0673/79-0675 Cons. matured on November 1, 1995. Since the Mortgage Note is still on New Landing's balance sheet and accruing interest, the Mortgage Note, namely the maturity date, has been altered, i.e., without Commission approval, from what the Commission previously approved in Docket Nos. 79-0673/79-0675 Cons. (Exhibit A)

7. In addition, the Commission's Order in Docket Nos. 79-0673/79-0675 Cons. ("Order") (Exhibit A, p. 19) provided:

IT IS FURTHER ORDERED that the consent, authority and approval of this Commission be, and are hereby granted, pursuant to 8a of the Public Utilities Act, to ...

(5) ... and the issuance and delivery to AMI [Associated Mortgage Investors] of its long-term debt security (Note) to the aggregate principal amount of not more than \$170,534 and the granting to AMI of a first mortgage and security agreement-chattel mortgage intended to secure payment of said Note, all of which shall be subject to the terms and conditions heretofore set forth...

In Ordering Paragraph 18 of the Order, the Commission found "... said Note should not be transferable without prior Commission approval...". (Exhibit A, p. 17) The Company testimony in the present docket states that the Mortgage Note is due to Associated Companies. (Armstrong Direct Testimony, p. 8) Associated Companies refers to DAME Co., the current owner of all common stock issued by New Landing. (See attached Exhibit C, Applicant's Response to Staff DR FD-7). Thus, the current holder of

the Mortgage Note is contrary to and in violation of the approval granted in Docket Nos. 79-0673/79-0675 Cons.

8. Section 6-104 of the Act provides in pertinent part:

“... all stock and every stock certificate, and every bond, note or other evidence of indebtedness of a public utility not payable within 12 months, issued with the authorization of the Commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the Commission to contain, shall be void;...”. (220 ILCS 5/6-104, formerly Ill. Rev. Stat. 1983, ch. 111 2/3, par. 23)

9. The Mortgage Note currently on New Landing’s balance sheet fails to conform with the Commission’s Order in Docket Nos. 79-0673/79-0675 Cons. in two respects: the maturity date has been extended beyond 15 years and the holder of the Mortgage Note is no longer AMI.

10. Although the transfer of the note was completed prior to the filing of the current proceeding, New Landing must seek Commission approval regarding this transfer. Prior Commission decisions clearly establish the principle that the Commission’s authority to review and approve the transaction is not affected by the fact that the transaction had already been consummated. For example, in November 1999, United Water Resources, Inc. (“UWR”) and United Water Illinois, Inc. (“UWI”), a public utility, filed a petition seeking alternatively, either a declaratory ruling by the Commission that approval was not required or a Commission ruling granting approval of the transaction under Section 7-204, for a February 1999 transaction pursuant to which UWI was shifted from being a wholly-owned fourth-tier subsidiary of UWR to being a wholly-owned second tier subsidiary of UWR. (Docket No. 99-0642, Order, January 26, 2000) On November 25, 2002, Commonwealth Edison Company (“ComEd”) filed a petition requesting that the Commission reopen Docket 00-0078 and modify the

Commission's Order to reflect ComEd's agreement to pay a \$ 900,000 fee, as required by Section 6-102 of the Act, on a financing completed by ComEd two years earlier on September 14, 2000. (Docket No. 00-0078, Order, December 4, 2002) In yet another instance, on September 16, 2002, Illinois Gas Company ("Illinois Gas") filed a petition pursuant to Section 6-102(b) of the Act seeking an order authorizing indebtedness of \$ 32,781.24 aggregate principal amount of promissory notes, that were entered into on December 6, 2001 to finance the purchase of a vehicle used for supervision of engineering and construction jobs. (Docket No. 02-0603, Petition, Exhibit A, and Order, November 20, 2002) Thus, although in each of the above instances the utility had already completed the transaction at the time it filed its petition seeking Commission approval, the Commission appropriately exercised its authority to review and approve the transaction.

11. Staff is unaware of, and the Company has failed to provide information, documentation or evidence of the Commission ever approving the Mortgage Note with the new maturity date or the transfer of the Mortgage Note to DAME Co as required by the Commission's Order in Docket Nos. 79-0673/79-0675 Cons. (Exhibit A, pp. 14 and 17)

12. The failure of New Landing to seek Commission approval for the change in the Mortgage Note's maturity date and holder pursuant to the Commission's Order (Exhibit A) can be analogized to the facts in Metro Utility Company v. Illinois Commerce Commission, 262 Ill. App. 3d 266, 634 N.E. 2d 377, (1994). In the Metro case, the public utility appealed from a Commission Order excluding, from test year expenses in a

rate case, expenses that originated from unapproved contracts between the utility and an affiliate.. (See Metro, p. 270, 380) The Commission order stated:

...The Commission is of the opinion that an unapproved affiliated interest contract is void and the Commission is not required to recognize in a rate case the expenses pertaining to such an unapproved transaction. This is especially true in a case such as this where Metro has a history of failing to obtain approval of affiliated interest contracts. Id., at 273, 381

In affirming the Commission's decision, the Illinois Appellate Court concluded that under Section 7-101 of the Act, the Commission was required to disallow Metro's unapproved affiliated interest contracts in Metro's ratemaking case because the plain language of Section 7-101(3) provides that every public utility contract or arrangement with an affiliated interest not approved by the Commission shall not be effective and is void. Further, it held that since the unapproved contracts were of no effect and void, they could not serve as the basis for test year expenses. (Id., at 274, 382)

The Illinois Appellate Court supported its finding with a discussion of public policy and legislative intent:

We also conclude that reading the statute as a whole favors this interpretation of section 7-101. If a public utility could fail to seek approval for contracts with affiliates, as required by section 7-101, and still rely on those contracts in ratemaking proceedings, the utility would, to a great extent, be allowed to circumvent section 7-101 rendering it a nullity.

Metro's argument that it is being penalized twice is unpersuasive because it could have avoided any double penalty by simply doing what section 7-101 required it to do--seek approval for the contracts--before it sought its rate increases.

In sum, the plain language of section 7-101 shows a clear legislative intent that public utilities obtain Commission approval for any contract with an affiliated interest. Under section 7-101 if approval is not obtained, then the contract is void and ineffective. (Id., at 274-275, 382-283)

In Metro, the Commission was required to disallow Metro's unapproved affiliated interest contracts in the ratemaking case because the contracts were rendered void when Metro failed to obtain Commission approval of the contracts. In the current proceeding, New Landing's failure to obtain Commission approval for changes to the Mortgage Note rendered the Mortgage Note void under Section 6-104 of the Act. As a result, in this rate case, New Landing cannot now rely on the Mortgage Note as a component of its capital structure. Permitting New Landing to use the Mortgage Note, as a component of its capital structure, would allow it to circumvent the Commission's explicit Orders in Docket Nos. 79-0673/79-0675 Cons. (Exhibit A) and Section 6-104 of the Act.

Further, the plain language of Section 6-104 of the Act shows a clear legislative intent that all notes not payable within 12 months issued with the Commission's authorization but not conforming in its provisions with the provisions required by the Commission's authorization are void. For New Landing to avoid a finding that the Mortgage Note is void, New Landing must provide evidence that changes to the Mortgage Note were submitted to and approved by the Commission in compliance with the Commission's Order in Docket Nos. 79-0673/79-0675 (Exhibit A).

13. Cost of debt and percentage of debt are components of New Landing's capital structure. New Landing failed to seek Commission approval to change the maturity date of the Mortgage Note or to transfer of the Mortgage Note to Dame Co. pursuant to the Order in Docket Nos. 79-0673/0675 Cons. (Exhibit A) Pursuant to Section 6-104 of the Act, New Landing's failure to obtain Commission approval

rendered the Mortgage Note void. Thus, the Mortgage Note has no relevance to New Landing's capital structure and all references to it should be stricken.

II. CONCLUSION

WHEREFORE, for the foregoing reasons Staff respectfully requests the Commission to:

1. Strike the last two paragraphs on page 8 and the first paragraph on page 9 of the direct testimony of Gene L. Armstrong;

The Mortgage Note- Principle. The Commission authorized NLU to issue its Mortgage Note in the principal amount of \$170,534. Semi-annual installments due were never paid. Instead, they were accrued. As the balance due recorded for the Mortgage Note decreased, the amount due as Accounts Payable to associated Companies increased by like amount. As such, the entire principal amount due remains unpaid.

The Mortgage Note – Interest. For the same reason, substantially all of the interest that became due on the Mortgage Note was not paid. Instead, it was accrued. As of December 31, 2003, this accrued interest due totaled \$430,273.;

2. On NLU Exhibit ISA – 1, strike the entire line for Account 427 under the heading Expenses: Interest Expense for years 2001, 2002 and 2003;
3. On NLU Exhibit ISA – 2, strike:
 - (a) the entire line for Account 427 under the heading Expenses on pages 1, 2 and 3, for the years 2004 through 2012; and
 - (b) under the heading Other Payments, strike the entire lines for Long-Term Debt Pymts and for Accrued Interest Pymts for the years 2004 through 2012;
4. On NLU Exhibit CBS, pages 1 and 2, strike:

(a) the entire line for Account 233, Accts Pay. Assoc. Co., for years 2000 through 2003;

(b) the entire line for Account 237 Accrued Interest for the years 2000 through 2003; and

(c) the entire line for *Total Current/Accrued Liabilities*;

5. Order Respondent, New Landing Utility to refile the affected schedules after they have been corrected to remove any effects from the stricken material; and

6. Allow such other and further relief as this Commission deems appropriate.

Respectfully submitted,

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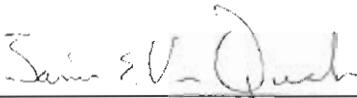
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December 17, 2004

*Counsel for the Staff of the
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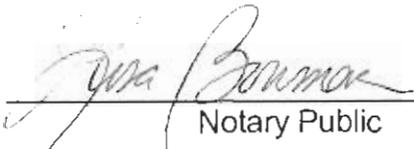
VERIFICATION

I, Janis E. Von Qualen, being first duly sworn, depose and state that I am an attorney for the Staff of the Illinois Commerce Commission; that I have read the foregoing Revised Motion to Strike and know the contents thereof; and that the statements contained in the Motion are true, correct to the best of my knowledge, information and belief.



Janis E. Von Qualen
Illinois Commerce Commission

Subscribed and sworn to before me
this 17th day of December, 2004.



Notary Public



EXHIBIT A

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

NEW LANDING UTILITY, INC. :
:
Petition for consent to and : 79-0673 ✓
approval of certain trans- :
actions and contractual :
arrangements. :
:
NEW LANDING UTILITY, INC. : Cons.
:
Application for an Order :
authorizing the issuance of :
Three Hundred Thousand Dollars :
(\$300,000.00) of its Common :
Stock and certain long-term :
debt securities, approving a : 79-0675
first mortgage, and a security :
agreement-chattel mortgage :
approving an agreement to re- :
pay advances in aid of con- :
struction, and determining the :
original cost of certain :
utility facilities and :
property. :

ORDER

By the Commission:

On November 30, 1979, New Landing Utility, Inc. ("Petitioner"), filed its verified petition for consent to and approval of certain transactions and contractual arrangements with Associated Mortgage Investors ("AMI"), an affiliated interest within the meaning of Section 8a of the Illinois Public Utilities Act. This case, Docket No. 79-0673, will be referred to as the "affiliated interest case." On the same date, Petitioner filed its verified application in which it seeks authority to issue common stock and long-term debt securities, approval of a first mortgage and an agreement to repay advances in aid of construction, and a determination of the original cost of certain utility facilities and property. This case, Docket No. 79-0675, will be referred to as the "securities case." Amended applications were filed in the affiliated interest case and in the securities case on April 10 and 14, 1980, respectively.

On June 18, 1980, a Petition for Leave to Intervene was filed by counsel on behalf of the Lost Nation Property Owners Association ("Intervenor"). Said association represents collectively owners of real estate and residents of a portion of Respondent's service area. Intervenor participated in all stages of these proceedings and its petition was granted by the Commission in conference on July 16, 1980.

Pursuant to notice as required by the rules and regulations of the Commission, the first hearing was held in these matters before a duly authorized Hearing Examiner of the Commission at its Chicago offices on June 18, 1980. At that time, the Examiner consolidated these cases for purposes of hearings. Additional hearings were held on July 2 and 9, 1980. Appearances at these various hearings were entered by counsel for Petitioner and Intervenor and by members of the Staff of the Accounts and Finance and the Water Engineering Sections of the Commission. Two witnesses testified and presented various exhibits in support of these two petitions. Intervenor presented several exhibits in opposition to the petitions. Commission Staff also testified and made certain recommendations regarding the matters that are the subject of these two cases. At the conclusion of the hearing on July 9, 1980, the matter was marked "Heard and Taken." Briefs were filed by counsel for Petitioner and Intervenor.

On its own motion, the Commission, in conference on July 16, 1980, consolidated the affiliated interest case and the securities case for purposes of hearings and a single order.

HISTORY AND BACKGROUND

New Landing Utility, Inc. was incorporated on December 28, 1972. A Certificate of Public Convenience and Necessity was granted to Petitioner by Commission Order dated November 14, 1973, under Docket No. 57952. Said certificate authorized the construction, operation and maintenance of a public water supply and distribution system and a public sanitary sewage collection and treatment system for a recreational land development located in an unincorporated area of Ogle County, Illinois, known as The New Landing for the Delta Queen. The certificated area consists of approximately 2,900 lots. The testimony given in the certificate hearings indicated that the projected cost of the sewer and water facilities would be not less than \$2,913,380 and that the Developer would contribute to the Utility \$2,183,370 of that amount as contributions in aid of construction. A series of appeals flowed from the Commission's Order based on the prohibition of availability charges.

On April 3, 1975, New Landing Utility, Inc. filed with this Commission its application for an order authorizing the issuance of \$600,000 in common stock. On June 11, 1975, the Commission authorized the issuance of 1,000 shares of common stock for \$600,000 and in its order under Docket No. 59717 found that the Developer of the Utility's certificated area had expended funds in excess of \$600,000 for which it is entitled to reimbursement for the acquisition of property or the construction, extension or improvement of additions to Petitioner's facilities.

On June 27, 1972, the Developer secured mortgage loan financing for the entire development through Associated Mortgage Investors ("AMI") for \$6,300,000 under a loan agreement admitted in evidence as Intervenor's Exhibit 1. The Beverly Bank of Chicago acquired a participating interest in the AMI-Developer loan. In 1974, the Developer defaulted on its loan. On April 17, 1975, AMI filed its foreclosure complaint with the Circuit Court for the Fifteenth Judicial Circuit, Ogle County, Illinois. On February 11, 1976, in anticipation of the foreclosure proceedings, two agreements were made, the first an Agreement (Petitioner's Exhibit 3C) between AMI, certain creditors of the Developer and the Developer and the second, a Settlement Agreement (Petitioner's Exhibit D) between AMI, the Developer and certain individuals associated with the Developer, whereby for certain considerations, AMI acquired all of the Developer's interest in the project, including ownership of all outstanding shares of Petitioner's common stock. On December 9, 1976, AMI was awarded a decree of Foreclosure Vesting Title in Mortgagee by the Ogle County Circuit Court, granting title of the Developer's interest in the subject development, including ownership of Petitioner's common stock, to AMI. The Court states in Paragraph 17 of said decree that no obligation is imposed on AMI to complete or construct any amenities and further that there is no legal or equitable lien or charge imposed upon the premises to provide funds for the completion of construction of any amenities as described in the Declaration of Covenants, Conditions and Restrictions.

Because AMI now owns all of the outstanding common stock issued by New Landing Utility, Inc., and because persons employed by AMI serve as officers and directors of Petitioner, AMI exercises substantial influence over the policies and actions of Petitioner. As such, AMI is an "affiliated interest" of New Landing Utility, Inc., as that term is defined by Section 8a of the Public Utilities Act.

From 1974 to 1978, Petitioner and the Commission were involved in court proceedings regarding the November 14, 1973 Commission

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 Cons.
 79-0675

Certificate Order in Docket No. 57952. Said protracted litigation concerned the legality and propriety of availability charges.

On March 19, 1979, at the conclusion of the court proceedings concerning the availability rates, Petitioner filed its original rate schedules. Said rates were suspended pending hearings concerning the propriety and reasonableness of the proposed rates. By Commission Order entered February 6, 1980 in Docket No. 79-0195, Petitioner was directed to file a revised schedule of rates and the rate issues heretofore raised were resolved. In said Order, the Commission referred to the filing of the two instant cases and deferred a finding as to the original cost of the utility plant in service.

BALANCE SHEET AS OF DECEMBER 31, 1978

A Balance Sheet as of December 31, 1979 and December 31, 1978, was submitted by the Utility as Exhibit 4A. The President of the Utility testified that Accumulated Provision for Depreciation includes depreciation on contributed plant; the witness further stated that the Utility is aware that depreciation on contributed plant is not allowed as an expense for rate-making purposes and thus intends to segregate depreciation on contributions from depreciation on other plant assets. The Commission's Order under Docket No. 79-0195 disallowed depreciation on contributed plant as an expense.

	<u>ASSETS</u>		
	<u>Water</u>	1978	
		<u>Sewerage</u>	<u>Total</u>
PROPERTY, PLANT AND EQUIPMENT, at cost (Note 2B)			
Source of supply plant			
Land and land rights	\$ 14,230	\$ -	\$ 14,230
Structure and improvements	4,578	-	4,578
Collecting and impounding	36,849	-	36,849
Wells and springs	44,043	-	44,043
Pumping plant			
Electrical pumping equipment	15,225	-	15,225
Other pumping equipment	3,332	-	3,332
Treatment plants			
Structure and improvements	8,184	320,842	329,026
Water treatment equipment	1,092	-	1,092
Transmission and distribution mains			
Structure and improvements	2,832	-	2,832
Distribution reservoirs and standpipes	46,814	-	46,814
Transmission and distribution mains	535,019	365,814	900,833
Plant materials and operating supplies	60,819	1,827	62,646
Services			
Total property, plant and equipment	<u>\$773,017</u>	<u>\$688,483</u>	<u>\$1,461,500</u>

79-0673
Cons.
79-0675

	1978		Total
	Water	Per Company Sewerage	
LESS-ACCUMULATED DEPRECIATION (Note 2A)			
Source of supply plant	7,127	-	7,127
Pumping plant	1,717	-	1,717
Treatment plants	606	24,437	29,043
Transmission and distribution mains	<u>59,107</u>	<u>29,466</u>	<u>88,573</u>
Total accumulated depreciation	<u>68,557</u>	<u>57,903</u>	<u>126,460</u>
NET PROPERTY, PLANT AND EQUIPMENT	<u>\$704,460</u>	<u>\$630,580</u>	<u>\$1,335,040</u>
RESTRICTED FUNDS (Note 3)			327,000
OTHER ASSETS			
Organization costs, net of accumulated amortization of \$9,903 and \$3,767			<u>54,718</u>
TOTAL ASSETS			<u>\$1,716,758</u>

SHAREHOLDERS' EQUITY AND LIABILITIES

	1978
	Per Company
SHAREHOLDERS' EQUITY	
Common stock, stated value \$600 per share; authorized, issued and outstanding 1,000 shares	\$ 600,000
(Deficit)	<u>(155,510)</u>
Total shareholders' equity	444,490
LONG-TERM DEBT	
Other liabilities due investors (Note 4)	<u>1,064,340</u>
Total capitalization	<u>1,508,832</u>
CURRENT LIABILITIES	
Accrued real estate taxes	1,360
Accounts payable	-
Total current liabilities	<u>1,360</u>
CONTRIBUTIONS IN AID OF CONSTRUCTION (Note 5)	<u>206,568</u>
TOTAL SHAREHOLDERS' EQUITY AND LIABILITIES	<u>\$1,716,758</u>

MATTERS PRESENTED IN THE CONSOLIDATED CASES

Several matters have been presented by the Utility for Commission approval and authorization. The central issue upon which most of these proposals depend is the determination and resolution of

the proper accounting treatment of certain expenditures made by AMI for the construction of utility plant facilities, namely whether such monies should be classified as unreimbursed capital expenditures against which stock and debt may be issued or as contributed plant. The amount which the Utility seeks permission to reclassify is \$1,064,340 presently carried on its books as "Other liabilities due investors." This amount includes \$327,000 in an escrow account at Beverly Bank of Chicago.

The amount to be reclassified excludes \$600,000 of common stock issued pursuant to the Commission's Order in Docket No. 59717, contributions in aid of construction in the amount of \$206,568 and \$155,510 shown as a deficit in the Utility's earned surplus account.

The Utility proposes to reclassify the \$1,064,340 as follows: \$300,000 in additional common stock, \$300,000 as a long-term mortgage note, \$300,000 as advances in aid of construction and \$164,340 as additional contributions in aid of construction.

The specific matters presented in these two dockets are as follows:

A. Securities Case, 79-0675

1. The Utility seeks a determination of the original cost of its sewer and water utility plant in service. As part of this determination, the Utility also seeks recognition and approval of the appropriate provision for accumulated depreciation and approval of proposed entries to its books which will reflect its plant accounts and depreciation accounts. The Commission's Accounting Staff, after concluding its investigation, testified that the original cost of plant in service as of December 31, 1978, is not less than \$1,461,500. Intervenors do not contest this figure. Staff offered no opinion as to what portion of plant may have been contributed, stating that this was a legal question.
2. The Utility also seeks approval of an overall capital structure and the financing arrangements which will affect that capital structure. In that connection the Utility specifically asks permission and authority for the following:
 - a. The issuance and sale of not more than 500 shares of its common stock, no par value, in the amount of \$300,000, which proceeds are to be applied for the reimbursement of funds advanced to or for the Utility, which funds were used for purposes of construction and/or acquisition of utility property and facilities and/or the expansion and improvement thereof.
 - b. The issuance and delivery of certain long-term debt securities to the aggregate principal amount of not more than \$300,000 payable not more than 15 years from date, with interest at prevailing prime rate as determined by market conditions from time to time, in the form of Exhibit A attached to the petition in Docket No. 79-0675. The proposed Note is to evidence loans in principal amounts equal thereto, which loans were made for the same purposes as described in paragraph A2.a hereinabove.
 - c. Approval of a first mortgage, in the form attached to the petition in Docket No. 79-0675 as Exhibit B in order to secure repayment of the Note heretofore described.

- d. Approval of a security agreement - chattel mortgage, in the form of Exhibit B-1, attached to the petition in Docket No. 79-0675, also to secure repayment of the Note. Together, the mortgage and security agreement will encumber all of the Utility's facilities, plant and properties.
- e. Approval of a Letter Agreement dated November 26, 1979, between AMI and the Utility ("Agreement") whereby certain funds advanced to or for Petitioner by its stockholders are to be treated as advances in aid of construction, subject to repayment upon certain conditions, all of which are described in the copy of said Agreement attached to the petition in Docket No. 79-0675 as Exhibit C (and attached to the petition in Docket No. 79-0673 as Exhibit A). Petitioner states that, by the terms of the Agreement, the Utility is obligated to repay up to \$300,000 of funds which were advanced for purposes of construction and/or acquisition of utility property and facilities and/or the expansion or improvement thereof under the following circumstances and at the following rates: Upon the completion of any house connected to Petitioner's water and/or sewer mains after January 1, 1981, Petitioner shall repay \$2,000.00 to AMI, or its successor or nominee.

This Letter Agreement also reflects a commitment by AMI to contribute to the Utility \$164,340, this amount being the difference after subtracting the above described advances in aid of construction, common stock and debt securities from the amount of \$1,064,340 presently treated on the Utility's books as other liabilities due investors.

In the event the obligation to repay advances expires before \$300,000 has been repaid (January 1, 2000), the remaining advances would thereafter be treated as contributions in aid of construction and carried on its books as such. In addition, AMI agrees that any additional sums, other than monies heretofore deposited in escrow at Beverly Bank of Chicago as required by Ogle County for the construction of certain utility facilities, shall be contributed to the Utility. However, the letter states that this agreement is not to be construed as a commitment by AMI to complete said construction and installation.

It should be noted that the Commission's General Order 24, Revised, effective January 1, 1975, Rule 21 (2) requires a maximum refund period of not more than ten years on advances made for main extensions.

3. Commission direction to record the exact amount as determined herein, as of December 31, 1978, on its books, and to make appropriate journal entries to reflect and classify said amount in the manner requested by General Order 183, Revised.
- B. Affiliated Interest Case - 79-0673
 1. Letter Agreement with an affiliated interest, described heretofore on Page 6 of this Order, Paragraph 2e.
 2. Management Services Agreement, a copy of which is attached to the petition as Exhibit B, whereby AMI will

provide to the Utility certain management services and assistance. Under said agreement, AMI is to provide personnel for engineering, operating, accounting, legal, billing and customer relations, and supervisory construction. In addition, AMI is to provide executive personnel to assist and advise the Utility in respect of corporate, financial, operating, engineering, organization, regulatory and other matters.

The Agreement provides that no profit to AMI will be included in any charges or services rendered to the Utility. The Agreement further states that, whenever practicable, services shall be billed directly to the Utility and that all costs, including salaries and other expenses, incurred in connection with services rendered to or for the Utility shall be charged directly to the Utility to the extent reasonably possible. In regard to construction, AMI will furnish to the Utility such information as shall be necessary to permit the allocation of charges for such services to particular work orders, and any and all information related to any services performed under the Agreement as may be required by any governmental authority having jurisdiction over the Utility.

3. A conveyance by which AMI quitclaims to the Utility certain real property (including easements) situated within the Utility's certificated service territory. A copy of said deed is attached to the petition as Exhibit C.
4. Bill of Sale, a copy of which is attached to the petition as Exhibit D, pursuant to which AMI quitclaims to the Utility certain sewer and water utility facilities heretofore constructed or installed (including any and all items or inventories held for future construction, installation, repair or maintenance), within Utility's certificated service territory.
5. Consent and approval to issue securities as heretofore requested to AMI as follows:
 - a. 500 shares of its common stock, no par value, for a consideration equal in value to \$300,000.
 - b. Long-term debt (Note) to the aggregate principal amount of not more than \$300,000.
 - c. First Mortgage and Security Agreement - Chattel Mortgage intended to secure repayment of said note.

In addition to those monies expended for the construction and/or acquisition of utility plant, advances were made by associated companies to the Utility to meet its operating and maintenance expenses. Amounts advanced for these purposes have been reflected as a deficit in the Utility's earned surplus account. The Utility does not seek permission to issue securities against monies advanced for operating and maintenance expenses.

PROPER ACCOUNTING TREATMENT OF CERTAIN
EXPENDITURES MADE BY AMI FOR CONSTRUCTION
OF UTILITY PLANT FACILITIES

The Utility proposes that certain expenditures made by AMI in the amount of \$1,064,340 for the construction and/or acquisition of utility property and facilities and/or the expansion and improvement thereof, be reclassified to permit partial reimbursement to AMI. The amount to be reclassified includes the Beverly

Bank escrow account and is now shown on the Utility's books as "Other liabilities due investors, plus \$54,718 shown on its Balance Sheet as "Organization costs, net of accumulated amortization." The Utility proposes to reclassify the \$1,064,340 as follows: \$300,000 in additional common stock, \$300,000 as a long-term mortgage note, \$300,000 as advances in aid of construction and \$164,340 as additional contributions in aid of construction.

The amount to be reclassified excludes \$600,000 of common stock issued pursuant to the Commission's Order in Docket No. 59717, contributions in aid of construction in the amount of \$206,568 and \$155,510 shown as a deficit in the Utility's earned surplus account.

The Utility contends that the amount to be reclassified has been spent to reimburse those who actually paid the bills submitted to the Utility by contractors who constructed and installed the Utility's sewer and water plant and equipment. In its brief, the Utility sets forth the issue as follows: What shall be the capital structure for New Landing Utility?

The Accounting Staff has verified that the Original Cost of Plant in Service as of December 31, 1978, is not less than \$1,461,500. No adjustment was made for Accumulated Depreciation. Neither the Water Engineering Staff nor the Intervenor contests the Original Cost of Plant.

The Commission's Chief Water Engineer opposes the Utility's proposal on the grounds that it is not financially able to incur the additional debt, and that approval of the Utility's financial proposals would result in exorbitant rates for the customers. This witness further states that, under Docket No. 59717, the Developer had asked to issue \$600,000 of stock in exchange for the entire water and/or sewer facilities to be installed in all of the various sections of the certificated area, and that no long-term debt was contemplated at the time the Utility was granted a certificate in Docket No. 57952.

A representative of the Commission's Accounts and Finance Section stated that the proposal in question was a legal question and therefore made no recommendation as to its treatment. The witness also stated that, if the Commission should approve the reclassification, the securities should be entirely in the form of stock since the interest expense incurred on long-term debt would place too great a burden on the Utility.

Intervenor's Brief states the issue as "Should the Utility be permitted to enter into a financial arrangement with AMI the end result of which would be the payment and satisfaction of an indebtedness reflected on Utility's books and financial statements as 'advances from Associated Companies'?" Intervenor states that testimony in the Certificate case shows that the original developer was going to contribute \$2,183,370 to the Utility based on an estimated cost of \$2,913,380. Intervenor further argues that, since the loan agreement was between AMI and the Developer, and not between AMI and the Utility, the Utility was induced by AMI to acknowledge that it was indebted to AMI, an action prohibited by Section 27(f) of the Public Utilities Act. The section states that, without first obtaining the consent and approval of the Commission, no public utility may directly or indirectly guarantee the performance of any contract or other obligation of any other person, firm or corporation.

Intervenor also contends that there is no further need to make AMI "whole," as the Utility's petition allegedly would do, since AMI had already received payments on the loan of \$2,901,432.48 before foreclosure, and also received \$600,000 in utility stock and approximately \$1,800,000 in other property as part of the

foreclosure proceedings. Intervenor contends that any monies recovered on the total loan to the Developer should be apportioned so that the amount expended for utility facilities would reflect such repayment.

The first issue to be resolved is whether the mortgagee, AMI, is obligated by the promise of the Developer to contribute a large portion of the utility facilities. Such a statement was made by the Developer in the original certificate case, but the certificate order does not indicate that the Commission granted the certificate in reliance on this statement; nor does the Commission's order in Docket No. 59717 indicate that the Utility was authorized to issue \$600,000 in common stock on the condition that the remaining costs of the utility would be contributed by the Developer. The Foreclosure Decree does not create an obligation or liability on the part of AMI to construct the utility facilities free of charge. The Commission is of the opinion that the Developer's statements concerning contribution of utility facilities is not legally binding on AMI, and as an oral promise, could not be enforced under any rules of contract law.

The second issue raised by Intervenor is whether the Public Utilities Act permits the issuance of securities against the monies expended by AMI. The evidence clearly establishes that AMI provided the funds for the construction and/or acquisition of the Utility's plant. How this account was carried on the Utility's books in prior years is not conclusive as to how such monies should be classified, but is, in fact, the issue to be resolved by these proceedings. Section 21 of the Public Utilities Act specifically allows a utility to issue securities for the lawful refunding of its obligations. Intervenor contends that, since the Commission has never recognized this expenditure as a debt of the Utility, authorization to repay such funds would permit the Utility to assume the debt of another, in contravention of Section 27 of the Public Utilities Act. The Commission finds this reasoning to be circular since, by these petition, the Utility is seeking recognition of such expenditures as long-term debt owed to AMI. The Utility facilities were constructed for the Utility and are owned by the Utility. Because the question of ownership of said facilities was raised in the rate case under Docket No. 79-0195, the Quit Claim Deed and Quit Claim Bill of Sale were executed, not to transfer said property, but to resolve any doubts as to ownership.

The question has been raised whether AMI has already recovered certain expenditures made for utility plant because of payments made by the Developer under the loan agreement and as a result of the Foreclosure Decree. This subject was addressed at great length in the Utility's rate case, Docket No. 79-0195 and in the present case. The first matter to be settled is who owns the utility facilities. Construction of the sewer and water facilities was accomplished by contract between the Utility and the building contractors. In such a case, the parties are commonly referred to as the "Owner" and the "Contractor." In this case, when the facilities were completed, they became the property of the Utility. The argument that funds were loaned to the owner by others does not effect a change in ownership.

There is claim by the Intervenor that, based on the Utility's appraisal, the present value of the unsold lots is approximately \$1,800,000. The Utility, however, argues that a value of approximately \$300,000 should be assessed over a fifteen year period of time to allow for the actual sale of said lots and recovery of capital and also to recognize the time value of money, since the lots are not earning any return on investment.

An evaluation by the Commission of the properties received by AMI in foreclosure proceedings does not resolve the issue before the Commission. Utility facilities were constructed with funds

provided either by the developer and/or AMI. The obligation of the Utility to pay for the construction of its facilities remains, whatever reimbursement would be due the developer is now due AMI because in this respect AMI succeeded to the developer's position as a result of the foreclosure and related settlements.

Intervenor claims that a portion of the loan repayments should be credited against expenditures made on utility facilities. The testimony indicates that no such allocation was made during the period of payments (before default). The record in the Certificate case also indicates that no utility facilities were constructed prior to June 14, 1973. The Decree of Foreclosure indicates that the Developer defaulted on his loan as of July 1, 1974. The Utility argues that nearly a million dollars has been expended for utility facilities since December, 1974.

In rebutting the contention that it could not financially sustain the proposed debt expenses, the Utility presented testimony and exhibits showing that its pro forma income will increase from \$80,000 in 1980 to \$98,600 in 1985 as sewer and water utility facilities are completed in the platted areas of the New Landing subdivision. (This area is to be provided service financed, in part, by the escrow account at Beverly Bank and, in part, by the contribution of such construction costs pursuant to the Letter Agreement heretofore described in Paragraph 2e on Page 6 herein.) The testimony further indicates that during this same period, normalized expenses will increase from \$61,800 to \$72,300. As such, operating income for 1980 will be \$18,200 and operating income will increase to \$26,300 in 1985. When noncash expense items, primarily depreciation, are added to operating income, cash flow available to Petitioner will be \$42,200 in 1980 and will increase to slightly more than \$50,000 in 1985. During this same period, estimated debt service expense on the proposed Note will decrease from \$56,000 in 1981 to \$46,400 in 1985. The Evidence indicates that the Utility could be financially able to pay the interest on the proposed long term debt. In order to protect the financial position of the Utility, the proposed Note to an affiliated interest, if approved, should not be transferable without prior Commission approval.

Taking into consideration the above evidence and arguments, and the Utility's proposal that only \$600,000 of the \$1,064,340 expended for utility facilities be classified as presently reimbursable for the issuance of securities, the Commission is of the opinion that the balance of plant costs subject to reimbursement (as set forth in the following section of this order on Page 8) is reasonable and represents funds which have been advanced by AMI for utility facilities for which AMI has not previously been reimbursed and for which the Utility should be authorized to issue securities.

At this time, it is also appropriate to give notice to the Utility and AMI, and their respective future assigns, that the Letter Agreement (Exhibit A in Docket 79-0673, wherein AMI and the Utility agree that any additional sums which may be spent to complete utility facilities in presently platted areas of the New Landing for the Delta Queen subdivision, other than money heretofore deposited in the escrow established at Beverly Bank of Chicago, shall be contributed to the Utility) is a condition of the authorization for the issuance of securities granted herein and shall be binding to the extent of \$794,395. This amount is the cost estimate to complete present sewer main systems in said platted areas as set forth as Appendix 1 to Exhibit A, 79-0673. Said Letter Agreement and the commitment made therein is a consideration in the Commission's determination of the capital structure of the Utility and shall be binding on the Utility, AMI and their future assigns. The Letter Agreement also indicates a further contribution to be made by AMI for construction and/or acquisition of utility facilities in the amount of \$164,340. This Letter Agreement shall be a part of the documentation in the Utility's

present and future Annual Reports until such time as the amount of \$794,395 has been expended for utility plant and recorded as a contribution.

STATEMENT OF UNREIMBURSED CAPITAL EXPENDITURES
AS OF DECEMBER 31, 1978.

A summary of the Utility's Statement of Unreimbursed Capital Expenditures as of December 31, 1978, together with Commission adjustments for Accumulated Depreciation and additional Contributions in Aid of Construction to be made per Letter Agreement, is set forth below:

<u>Per Company</u>	<u>As Adjusted</u>
INVESTMENT	
Utility plant, at cost	\$1,461,500
Organization Expenses	54,718
Restricted Funds	327,000
	<u>\$1,843,218</u>
	<u>\$1,788,500</u>
LESS:	
Accumulated Provision for Depreciation	0
	<u>126,460</u>
NET INVESTMENT IN PLANT	<u>\$1,843,218</u>
	<u>\$1,662,040</u>
DEDUCT:	
Common Stock Previously Issued	600,000
Contributions in Aid of Construction Previously Recorded	206,568
Contributions in Aid of Construction per Letter Agreement (Docket 79-0673 - Ex. A)	84,938
Advances in Aid of Construction, subject to reclassification upon total or partial refund	300,000
	<u>300,000</u>
	<u>\$1,106,568</u>
	<u>\$1,191,506</u>
UNREIMBURSED EXPENDITURES	
AS OF DECEMBER 31, 1978	
representing amount of additional securities which can be authorized	<u>\$ 736,650</u>
	<u>\$ 470,534</u>

Restricted funds represent monies required to be placed in escrow by the Developer pursuant to the requirements of Cgle County. These funds are deposited in the Beverly Bank of Chicago and are restricted for the purpose of construction of sewer and water facilities for certain recorded plats in the Utility's certificated area. These areas are shown on Utility's Exhibit 9 in Docket 79-0195. Interest on these funds has been used for the payment of utility expenses in prior years and is reflected in a reduction of the deficit in earned surplus. This accounting procedure is shown in the Utility Annual Reports.

Advances in Aid of Construction, in the amount of \$300,000 which is subject to refund under the terms of the Letter Agreement described on Page 6 of this order, Paragraph A2e, is subject to later classification as unreimbursed capital to the extent of repayments, and/or contributions in aid of construction to the extent the advances are not repaid at the end of the determined time period.

The Commission has made three adjustments to the Utility's Statement of Unreimbursed Capital Expenditures: (1) disallowance of capitalization of organization expenses; (2) deduction for accumulated depreciation and (3) deduction for Contributions in Aid of Construction per Letter Agreement between the Utility and AMI, in the manner set forth below.

In Petitioner's Exhibit 4A, a compilation of financial statements prepared by an independent accounting firm, Organization Costs are described as including rate case expenditures, stating that said costs are being amortized on a straight line basis, 2% rate for organization costs and a 33-1/3% rate for rate case expenditures. The item as described is an expense and does not qualify as a capital expenditure. The amount of \$54,718 has accordingly been deducted from plant investment.

Net Investment in Plant must reflect the depreciated investment value. Petitioner has not made such an adjustment in its Statement of Unreimbursed Expenditures. The Commission is of the opinion that \$126,460, a figure stated by the Utility, represents depreciation on plant and, as such, is a proper adjustment in determining Net Utility Plant.

Pursuant to the terms of its Letter Agreement with the Utility, AMI has agreed to contribute \$164,340 of the \$1,064,340 presently recorded as other liabilities due investors. Unreimbursed Capital Expenditures must be reduced by accumulated depreciation in the amount of \$126,460, \$79,402 of which is applicable to noncontributed plant. Since no rates were in effect to recover said \$79,402 at the time such depreciation occurred, this contribution should be charged against depreciation on noncontributed plant and the remainder reclassified for purposes of determining unreimbursed Expenditures as follows:

\$164,340	Proposed Contribution in Aid of Construction
79,402	Accumulated Depreciation on Noncontributed Plant
<u>\$ 84,938</u>	Contribution in Aid of Construction for purposes of Unreimbursed Expenditures

The Commission finds that the Utility's Unreimbursed Expenditures against which securities may presently be issued amounts to \$470,534. The Utility is seeking to issue \$600,000 in securities, \$300,000 in common stock and \$300,000 in long term debt. The Utility's petition should be denied as to the amount of securities sought to be issued.

The Utility has shown that, based on the installation of facilities in certain platted portions of its certificated area, its projected revenues are sufficient to issue additional debt at this time. The Commission is of the opinion that the Utility should be authorized to issue \$300,000 in common stock and \$170,534 in long-term debt, resulting in a total security issuance of \$470,534. Petitioner's proposed Note and related mortgage and security agreements should be modified to reflect the above stated figures.

The Utility's Balance Sheet as of December 31, 1978, adjusted for the reclassification of \$1,064,340 in accordance with this Order should be stated as follows:

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Balance Sheet
 December 31, 1978
 Adjusted per this Order

<u>ASSETS AND OTHER DEBITS</u>	<u>PER BOOK</u>	<u>ADJUSTMENTS</u>	<u>AS ADJUSTED</u>
Utility Plant	\$1,461,500		\$1,461,500
Less:			
Accumulated Provision for Depreciation	126,460		126,460
	<u>1,335,040</u>		<u>1,335,040</u>
Special Funds Deferred	327,000		327,000
Debits:			
Organization Expense	54,718		54,718
Total Assets and Other Debits	<u>\$1,716,758</u>		<u>\$1,716,758</u>
<u>LIABILITIES AND OTHER CREDITS</u>			
Common Stock	\$ 600,000	(b) \$300,000	\$ 900,000
Earned Surplus	(155,510)		(155,510)
Total Proprietary Capital	444,490		744,490
Long Term Debt	-	(d) 170,534	170,534
Advances from Associated Companies	1,064,340	(a) (\$164,340) (b) (\$300,000) (c) (\$300,000) (d) (\$170,534) (e) (\$129,466)	129,466
Accrued Taxes	1,360		1,360
Advances for Construction	-	(c) 300,000	300,000
Contributions in Aid of Construction	206,568	(a) 164,340	370,908
Total Liabilities and Other Credits	<u>\$1,716,758</u>	<u>-0-</u>	<u>\$1,716,758</u>

- (a) Reclassify advances to contributions in aid of construction - \$164,340
 (b) Reclassify advances to common stock - \$300,000
 (c) Reclassify advances from associated companies to advances for construction subject to refund per Letter Agreement - \$300,000
 (d) Reclassify advances to long term debt - \$170,534
 (e) Balance of advances not subject to reimbursement - \$129,466

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

- (1) Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, duly authorized to engage in the business of providing water and sewer service in that certain area of Ogle County, Illinois, known as The New Landing for the Delta Queen Subdivision (including the "Lost Nation" area) and is a public utility within the meaning of an Act entitled "An Act concerning public utilities," as amended;
- (2) the Commission has jurisdiction over Petitioner and of the subject matter herein;
- (3) Petitioner presently has outstanding no stocks, bonds, notes, or other evidences of indebtedness, except 1,000 shares of its common stock, no par value, issued for a stated value of \$600,000 pursuant to authority granted in Ill. C.C. No. 59717;
- (4) Petitioner seeks authority to issue not to exceed 500 shares of its common stock, no par value, for a stated value of \$300,000, and to apply the proceeds thereof to the purposes hereinafter set forth;
- (5) Petitioner also seeks authority to issue and deliver certain long-term debt securities to the aggregate principal amount of not more than \$300,000, payable 15 years from date, with interest at prevailing prime rate as determined by market conditions from time to time, in form and tenor substantially the same as the Note admitted into evidence in No. 79-0675 as Petitioner's Exhibit A; in connection with the issuance of said Note, Petitioner also seeks approval of a first mortgage, in the form of Exhibit B admitted into evidence in No. 79-0675 which it proposes to grant in order to secure repayment of the Note; Petitioner also seeks approval of a security agreement - chattel mortgage, in the form of Exhibit B-1 admitted into evidence in No. 79-0675, which it proposes to grant in order to secure repayment of the Note; if such authority is granted, Petitioner proposes to execute said mortgage and said security agreement-chattel mortgage and, further, proposes to issue and deliver the said long-term debt securities on the basis of the face value thereof to evidence loans in principal amounts equal thereto and apply the proceeds thereof, not more than \$300,000, to the purposes hereinafter set forth;
- (6) Petitioner states that the proceeds to be realized from the issuance and sale of the aforesaid common stock (\$300,000) and the issuance and delivery of the aforesaid Note (not more than \$300,000) shall be applied for the reimbursement of funds advanced to or for Petitioner, which funds were used for purposes of construction and/or acquisition of utility property and facilities and/or the expansion and improvement thereof;
- (7) such application of said proceeds, to the extent hereinafter authorized, is reasonably required for the purposes of construction and/or acquisition of utility facilities and property and not for maintenance of service, replacements or substitutions, and such purpose is not, in whole, or in part, reasonably chargeable to operating expenses or to income;
- (8) the Commission does not deem it necessary to make a

physical valuation of the property of Petitioner;

- (9) Petitioner analyzed its books and records in order to determine the original cost of its utility plant installed as of December 31, 1978, the accumulated provision for depreciation properly allocable thereto, and the proper classification of said utility plant by the primary accounts prescribed by the Commission's General Order 183;
- (10) the Accounts and Finance Staff member reviewed Petitioner's analysis and examined the records which support the journal entries Petitioner proposes to make in order to properly reflect on its books of account the original cost of its utility plant installed as of December 31, 1978; the staff representative accepted the original cost figure as determined by Petitioner, made no adjustments for provision for accumulated depreciation, but agreed that \$126,460 was a correct calculation based on amount of plant;
- (11) the evidence establishes that the original cost of Utility Plant in Service as of December 31, 1978, is \$1,461,500; the Accumulated Provision for Depreciation properly allocable thereto as of said date is \$126,460, resulting in a Net Utility Plant valued at \$1,335,040;
- (12) the amount of \$1,064,034, presently carried on the Utility's books as "Other liabilities due investors," subject to the adjustments to Unreimbursed Capital Expenditures set forth in Findings (14) and (15), represents funds which have been advanced by AMI for the construction and/or acquisition of utility property and facilities and/or the expansion or improvement thereof, for which AMI has not previously been reimbursed and for which the Utility should be authorized to issue securities and/or long term debt;
- (13) the following adjustments should be made to the Utility's Statement of Unreimbursed Capital Expenditures as of December 31, 1978:
 - (a) Utility's method of determining Unreimbursed Capital Expenditures, i.e., based on undepreciated gross plant rather than Net Utility Plant after depreciation, is not consistent with past practices of the Commission as they have been applied to other utilities and fails to take into consideration that the purpose of such a determination is to establish those company investments which can be funded by the sale of securities and issuance of debt;
 - (b) Organization Costs as described in Utility's Exhibit 4A is an item of expense and does not qualify as a capital expenditure; the amount of \$54,718 should be excluded from a determination of Unreimbursed Capital Expenditures;
 - (c) pursuant to the terms of its Letter Agreement with the Utility, AMI has agreed to contribute \$164,340 of the \$1,064,340 presently recorded as other liabilities due investors; unreimbursed Capital Expenditures must be reduced by accumulated depreciation in the amount of \$126,460, \$79,402 of which is applicable to noncontributed plant; since no rates were in effect to recover said \$79,402 at the time such depreciation occurred, this contribution

should be charged against depreciation on noncontributed plant and the remainder reclassified for purposes of determining Unreimbursed Expenditures as follows:

\$164,340	Proposed Contribution in Aid of Construction
79,402	Accumulated Depreciation on Noncontributed Plant
<u>\$ 84,938</u>	Contribution in Aid of Construction for purposes of Unreimbursed Expenditures

- (14) \$300,000 of the \$1,064,340 advanced for the construction of utility facilities should be classified as Advances in Aid of Construction, subject to reclassification upon total or partial refund, pursuant to the terms of the Letter Agreement dated November 26, 1979, between the Utility and AMI, attached to the Petition as Exhibit C in Docket No. 79-0675, except that the expiration date for the repayment of such advances should be no later than January 1, 1991; a ten year period of repayment is more reasonable in that it encourages a more rapid development of the subdivision and is in keeping with the repayment policies set forth in the Commission's General Order 24; the subject Letter Agreement should be modified accordingly and an executed copy of same sent to the Commission for inclusion in the case file for the subject dockets;
- (15) taking into account the aforesaid adjustments, the Net Utility Plant should be \$1,335,040 and Restricted Funds \$327,000; after deducting \$206,568 representing Contributed Plant, \$600,000 for stock previously authorized and issued, \$84,938 as contribution per Letter Agreement, and reclassification of \$300,000 of the \$1,064,340 "due investors" to Advances in Aid of Construction, the total amount of Applicant's Unreimbursed Capital Expenditures as of December 31, 1978, is \$470,534;
- (16) the total amount of common stock and long-term debt proposed to be issued by the Utility is \$600,000 and, if approved, would result in an overfunding of Unreimbursed Capital Expenditures of \$129,466; the Utility's petition should be denied as to the aggregate amount of securities and long-term debt to be issued;
- (17) subject to the terms and conditions provided in this Order, the application for authority to issue common stock may be reasonably granted to the extent of, and in the amount of \$300,000, and the public will be inconvenienced thereby; Petitioner should be authorized to issue and sell, in the manner and for the purposes set forth herein, not to exceed 500 shares of its common stock, no par value, in the amount of \$300,000 to AMI and to take such other action as is appropriate, reasonable and proper to accomplish the issuance and sale thereof;
- (18) subject to the terms and conditions provided in this Order, New Landing Utility, Inc. should be authorized to modify those long-term debt securities described in Finding (5) herein so that all evidences of such debt will reflect an amount not to exceed \$170,534, in conformance with the balance of Unreimbursed Capital Expenditures determined herein, and to issue and deliver said modified long-term debt securities in the manner and for the purposes hereinabove set forth, and to take such other action as is appropriate, reasonable and

proper to accomplish the purposes set forth in this Order; said Note should not be transferable without prior Commission approval; executed copies of said modified documents should be sent to the Commission for inclusion in the case file of the subject docket;

- (19) the conditions of the Letter Agreement, wherein AMI and the Utility agree that any additional sums which may be spent to complete utility facilities in presently platted areas of the New Landing for the Delta Queen subdivision, other than money heretofore deposited in escrow established at Beverly Bank of Chicago, shall be contributed to the Utility, is a condition of the authorization for the issuance of common stock and long-term debt granted herein and shall be binding to the extent of \$794,395 on the Utility and AMI, and their respective future assigns; said Letter Agreement shall be recorded in the Utility's present and future Annual Reports until such time as the amount of \$794,395 has been expended for utility plant and recorded as a contribution;
- (20) Petitioner should be required to classify by primary plant accounts the total of \$1,461,500 hereinabove found to have been expended for utility plant installed as of December 31, 1978, and the total amount of \$126,460 as the accumulated provision for depreciation properly allocable thereto;
- (21) Petitioner should be authorized to enter into a Management Services Agreement, a copy of which is attached to the petition in Docket No. 79-0673 as Exhibit B, whereby AMI will provide to the Utility certain management services and assistance heretofore described in the prefatory portion of this Order; in the event that certain charges cannot be made directly to the Utility, AMI shall maintain records indicating the number of hours each of its employees has spent in providing service to the Utility, the title of said employee and the hourly rate being charged for said service, as well as a detailed allocation of AMI's equipment and supplies used for the benefit of the Utility; the arrangements stated in the Management Services Agreement are reasonable, unaffected by the affiliation of interests and in the public interest, and Commission approval should be granted for same;
- (22) subject to the terms and conditions provided in this Order, the Letter Agreement in the form of Exhibit C in Docket No. 79-0675, the Quitclaim Deed in the form of Exhibit C in Docket No. 79-0673 and the Bill of Sale in the form of Exhibit D in Docket No. 79-0673, are reasonable and proper, unaffected by the affiliation of interests and in the public interest and Commission approval should be granted for same;
- (23) any objections and motions made in these proceedings which remain undisposed of should be considered disposed of in a manner consistent with the ultimate conclusions herein contained.

IT IS THEREFORE ORDERED that:

A. The Commission's consent, authority and approval be, and are hereby granted to and of (1) the issuance and sale by Petitioner of 500 shares of its common stock, no par value, for a stated value of \$300,000; (2) the issuance and delivery by Petitioner of its long-term debt securities as described in

Finding (5) herein to the aggregate principal amount of not more than \$170,534; and (3) the application of the proceeds of the issuance and sale of said common stock and the issuance and delivery of said long-term debt securities to the purposes set forth in Finding (6) herein.

B. The authority granted herein to Petitioner to issue and sell said common stock and to issue and deliver said long-term debt securities be, and is hereby, granted on the following conditions and not otherwise:

- (1) that Petitioner shall apply the proceeds of the issuance and sale of said common stock and issuance and delivery of said long-term debt securities to the purposes set forth in Finding (6) herein;
- (2) that before the issuance of any notes, mortgages and/or security agreement-chattel mortgage, said documents shall be conformed to reflect indebtedness of not more than \$170,534 and, further, that said conformed copies shall be filed with the Commission under these docket numbers upon execution of same;
- (3) that before the issuance of any certificates representing the common stock herein authorized to be issued, Petitioner shall cause to be placed upon the face of such certificate the following:

ILLINOIS COMMERCE COMMISSION

Identification No. 5216

- (4) that before the issuance of any notes representing the long-term debt securities herein authorized to be issued, Petitioner shall cause to be placed upon the face of each such note the following:

ILLINOIS COMMERCE COMMISSION

Identification No. 5217

- (5) that without order of this Commission none of said common stock herein authorized to be issued and none of said long-term debt securities herein authorized to be issued shall be issued subsequent to July 31, 1981;
- (6) that the contributions set forth in the Letter Agreement and the conditions set forth in Finding (15) and (20) herein are binding on the parties to said agreement and/or their respective future assigns.

C. Petitioner shall keep separate, true and accurate accounts showing the issuance and disposition of the common stock herein authorized to be issued and the issuance and disposition of the long-term debt securities herein authorized to be issued, and shall file reports with the Commission as required by the Commission's General Order 129, as amended, relative to the issuance and disposition of said common stock and long-term debt securities and the application of the proceeds thereof.

D. Petitioner be, and is hereby, charged an amount equal to five cents (5¢) for every One Hundred Dollars (\$100.00) of the stated value of the common stock herein authorized to be issued, in the aggregate stated value of \$300,000, said charge amounting to One Hundred Fifty Dollars (\$150.00) and an amount equal to ten cents (10¢) for every One Hundred Dollars (\$100.00) of the total aggregate amount of the long-term debt securities herein authorized to be issued, \$170,534, said charge amounting to One Hundred and Seventy-One (\$171.00) and that said charges shall be paid into

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the State Treasury before any of said common stock or any of said long-term debt securities shall be issued.

E. Approval of the Commission is hereby granted to Applicant to do any and all things not contrary to law, or the rules and regulations of the Commission, incidental, necessary or appropriate to the performance of any and all acts specifically authorized in this Order.

IT IS FURTHER ORDERED that New Landing Utility, Inc., be, and is hereby, authorized to enter into the Letter Agreement attached to the petition as Exhibit C in Docket No. 79-0675 subject to the conditions set forth in Findings (14) and (19) herein.

IT IS FURTHER ORDERED that:

F. New Landing Utility, Inc. record in its primary plant accounts as expenditures made as of December 31, 1978, for construction or acquisition of utility plant the aggregate sum of \$1,461,500 and as the accumulated provision for depreciation accrued on said utility plant as of the date the aggregate sum of \$126,460.

G. The original cost of Petitioner's utility plant installed as of December 31, 1978, is hereby determined to be \$1,461,500.

H. Petitioner shall proceed to classify the amount expended for its utility plant as of December 31, 1978, in accordance with the classification set out in the Uniform System of Accounts.

IT IS FURTHER ORDERED that the consent, authority and approval of this Commission be, and are hereby granted, pursuant to Section 8a of the Public Utilities Act, to (1) the Letter Agreement admitted in evidence in Docket No. 79-0675 as Petitioner's Exhibit C, in the form heretofore approved in this Order; (2) the Management Services Agreement in the form of Petitioner's Exhibit B in Docket No. 79-0675 subject to the conditions set forth in Finding (21) herein; (3) the conveyance of the Quitclaim Deed in the form of Petitioner's Exhibit C in Docket No. 79-0673; (4) the Bill of Sale in the form of Petitioner's Exhibit D in Docket No. 79-0673; and (5) the issuance and sale to AMI of 500 shares of its common stock for a consideration equal in value to \$300,000, and the issuance and delivery to AMI of its long-term debt security (Note) to the aggregate principal amount of not more than \$170,534 and the granting to AMI of a first mortgage and security agreement-chattel mortgage intended to secure payment of said Note, all of which shall be subject to the terms and conditions heretofore set forth and in the form of Petitioner's Exhibits E, F and F-1, respectively in Docket No. 79-0675.

IT IS FURTHER ORDERED that any objections or motions made in these proceedings which remain undisposed of be considered disposed of in a manner consistent with the ultimate conclusions contained herein.

By Order of the Commission this 14th day of January, 1981.

(SIGNED) MICHAEL V. RASTEN

Chairman

(S E A L)



EXHIBIT B

MORTGAGE NOTE

ILLINOIS COMMERCE COMMISSION
IDENTIFICATION NO. 5217

\$170,534.00

Chicago, Illinois
January 26, 1981

FOR VALUE RECEIVED, NEW LANDING UTILITY, INC., a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, hereby promises to pay to the order of ASSOCIATED MORTGAGE INVESTORS, a Massachusetts Business Trust, in the manner hereinafter provided, the principal sum of ONE HUNDRED SEVENTY THOUSAND FIVE HUNDRED THIRTY FOUR and NO/100 DOLLARS (\$170,534.00) and interest from the date hereof on the balance of principal remaining from time to time unpaid at the Prime Interest Rate as defined herein in installments as follows: FIVE THOUSAND SEVEN HUNDRED and NO/100 DOLLARS (\$5,700.00) of principal plus accrued and unpaid interest on the 1st day of May and the 1st day of November, 1981, and on the 1st day of May and the 1st day of November of each year thereafter until this Note is fully paid, except that the final payment of principal and interest, if not sooner paid, shall be due on the 1st day of November, 1995. All such payments on account of the indebtedness evidenced by this Note shall be first applied to interest on the unpaid principal balance and the remainder to principal.

"Prime Interest Rate" shall mean the prime interest rate charged from time to time by the First National Bank of Chicago to its most credit worthy borrowers. Interest hereunder shall be computed each calendar month on all amounts hereunder outstanding at the rate of the Prime Interest Rate on the 15th day of any such calendar month together with penalties or late payment charges, if any, as set forth herein.

The principal of each of said installments unless paid when due shall bear interest after maturity at the Prime Rate of interest, as defined herein, plus two percent per annum. Said payments are to be made at such place as the legal holders of this Note may, from time to time, in writing appoint, and in the

absence of such appointment, then at the office of Associated Mortgage Investors, 95 Merrick Way, Suite 103, Coral Gables, Florida 33134.

Upon 30 days prior written notice, prepayment of the principal due under this Note may be made in whole or in part by paying in multiples of \$1,000, without penalty; provided such prepayments shall be first applied against accrued interest then due and owing, and thereafter against the last maturing installments of principal due hereunder. Prepayments shall not relieve the obligation of the maker to pay installments of principal and interest when due hereunder.

Maker warrants and agrees that this instrument and the rights and obligations of all parties hereunder shall be governed by and construed under the laws of the State of Illinois.

The parties hereto intend and believe that each provision in this Note comports with all applicable local, state and Federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Note or said Mortgage is found by a court of law to be in violation of any applicable local, state or Federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Note or said Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Note and said Mortgage, shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and holder hereof under the remainder of this Note shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to the

holders hereof for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof, or of the Mortgage, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the holder hereof shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

The payment of this Note is secured by a mortgage, bearing even date herewith, to Associated Mortgage Investors, Mortgagee, on certain real estate in the County of Ogle, Illinois. It is agreed that at the election of the holder or holders hereof and without notice, the principal sum remaining unpaid hereon, together with accrued interest thereon, shall become at once due and payable at the place of payment aforesaid in case of default for ten (10) days in the payment of principal or interest when due in accordance with the terms hereof or in case at any time hereafter the right to foreclose the said mortgage shall accrue to the legal holders hereof under any of the provisions contained in said mortgage.

All parties hereto severally waive presentment for payment, notice of dishonor, protest and notice of protest.

NEW LANDING UTILITY, INC.

By Michael Hamway
Its President

ATTEST:

Mary E. Ball
Its Secretary

EXHIBIT C

Applicant's Response to Staff Data Request

Staff Data Request FD-7

Mr. Armstrong's Direct Testimony states, "As the balance due recorded for the Mortgage Note decreased, the amount due as Accounts Payable to Associated Companies increased by like amount." To which Associated Companies does Mr. Armstrong's testimony refer? Is the ownership interest in NLU identical to the ownership interest in the Associated Companies to which NLU is indebted for payments on the mortgage note? If the answer is no, please list who ultimately owns the Associated Companies in question and their percentage of ownership.

Response:

"Associated Companies" in Mr. Armstrong's direct testimony refers to DAME Co. DAME Co. owns all common stock issued by NLU. DAME Co. holds the Mortgage Note issued by NLU. Mr. Armstrong owns all common stock issued by DAME Co.

The person responsible for this response, who is also the witness who will be responsible for the answering of cross-examination questions pertaining to both the request and the response, is: Gene L. Armstrong, President, New Landing Utility, Inc., P.O. Box 168, Oak Park, IL 60303; tel. 708-848-4241, or 708-386-8400 ext. 4.