

Resolution Regarding the U. S. Department of the Treasury Proposed Regulations for Contributions In Aid of Constructions

WHEREAS, The U.S. Department of the Treasury has issued proposed regulations on the Definition of Contribution in Aid of Construction under Section 118(c); and

WHEREAS, Contributions in Aid of Constructions (CIAC) finances substantial amounts of the capital costs for public utilities; and

WHEREAS, State regulatory commissions authorize the collection of CIAC by public utilities; and

WHEREAS, The proposed regulations exclude from the definition of CIAC, the cost of installing a connection or service line (including the cost of meters, metering systems and piping) from the utility's main water or sewer lines to the line owned by a customer or potential customer. This provision was specifically excluded from the Joint Tax Committee's final revenue estimate performed on this legislation. Further, the industry paid for the CIAC tax modification through a change in the depreciation schedules. As such the proposed regulation exceeds the statutory authority of Section 118; and

WHEREAS, The proposed regulations require an agreement, binding under local law between the prospective contributor and the utility; and

WHEREAS, The State utility commissions authorize the collection of such CIAC and have exclusive jurisdiction over the setting and collection of these amounts, rather than agreements between utility companies and developers. As

such, the proposed regulation exceeds the statutory authority of Section 118; and

WHEREAS, The proposed regulations require annual notification be attached to a utility's federal tax return describing the amounts of CIAC collected, the plant constructed with such CIAC, and a utility's intent not to construct such plant. The statutory requirement is that accurate records are kept. There is no provision that such records should be filed annually with the federal tax return. As such the proposed regulation exceeds the statutory authority of Section 118; and

WHEREAS, There is no provision for CIAC collected and the related plant in service between the effective date of the law and the effective date of the regulation; *now therefore be it*

RESOLVED, That the Board of Directors of National Association of Regulatory Utility Commissioners (NARUC) convened in its March 2000 Winter Meeting in Washington, D.C., requests that the Secretary of the Treasury amend its proposed regulations to: eliminate from its definition of customer connection fees the term service line (including the cost of meters, metering systems and piping); eliminate the requirement for a binding agreement under local law for reimbursement for a facility previously placed in service; eliminate the notification requirements contained in section 1.118-2(e)(2); and, if the definition is not changed, then provide a grandfather provision tax exemption for service lives for the time between the effective date of the law and the effective date of the regulations.

Sponsored by the Committee on Water

Adopted by the NARUC Board of Directors, March 8, 2000.