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24 October 2012

Dear Chairman Williams and fellow members of the DC Tax Revision Commission:

This letter suggests that the Commission's overall package recommend changes in three areas related to the D.C. Water and Sewer Authority ("DC Water" or "DCWASA"):

- (1) public utility taxes;
- (2) rent for use of DC-owned land; and
- (3) impervious area charges levied to pay for Clean Rivers long-term control plan.

In combination, they offer opportunities to broaden the tax base and add revenues, with more transparency, equity, and accountability.

(1) PUBLIC UTILITY TAXES

D.C. law imposes public utility taxes on gross receipts of telephone, television, and radio companies and on metered delivery units (gallons, therms, or kilowatt-hours [kWh]) in the case of heating oil, natural gas, and electricity. But D.C. public utility taxes do not apply to public utility water or sewer services in the District, namely:

- delivery of metered water to DC residents (close to 80 million gallons a day) or
- removal of DC, Maryland and Virginia sewage to the Blue Plains Wastewater Treatment Plant in Ward 8 for treatment and discharge into the Potomac River.

Much of that sewage comes from MD and VA (161 million gallons a day metered during the 12 months ending July 2012).

Instead, DC Water collects (and pays to the District) "Payment In Lieu of Taxes (PILOT)" fees, set by its Board of Directors. This practice is problematic for two reasons:

First, no D.C. law provides for any such "PILOT" at all. Period. Every other PILOT transparently implements a specific D.C. law. The "PILOT" paid by DC Water is thus arbitrary and not necessarily based on rational benchmarks. This "PILOT" Fee now runs at \$0.67 per 1000 gallons, spiraling up each year in proportion to increases in DC Water's rates to customers in DC.¹ DC Water's General Manager proposed to his Board on October 5, 2012, a budget that calls for raising PILOT Fee revenues to \$20 million in FY2014 -- solely from customers in DC -- at a rate of \$0.71 per 1000 gallons.²

¹ DC Water's average residential customer uses 5,004 gallons per month, with a total monthly bill of \$71.36 (about 1.4 cents per gallon). "PILOT" Fees make up 4.7 percent of the monthly bill (\$3.35). There are also \$3.74 of other fees for DC Government monthly. DC Water loosely interprets understandings with the DCCFO to spiral up its "PILOT" Fees.

² The proposed \$480 million budget would include \$20.1 million of "PILOT" revenues.

Second, and perhaps more important, DC Water passes all “PILOT” costs to DC customers only -- not to Maryland or Virginia customers.

A better approach would expand DC's public utility tax law to cover metered water deliveries and metered sewage flows, including sewage from MD and VA. This would treat DC Water and all its customers like Pepco and Washington Gas and all their customers.³ Payments would be based on units -- not gross receipts. Whether water and sewage tax rates should be adjusted would be a matter for legislation to resolve (just like energy tax rates) -- not for DC Water's Board. To accomplish those results, the Council would amend laws unique to DC Water as necessary.⁴

These changes would eliminate the murky “PILOT” payments, would spread taxes to consumers across the region, and would increase the District's revenue collections. If these proposed changes were in effect today, at a base tax rate of \$0.70 per thousand gallons of metered water delivered and metered sewage handled, plus a 10 percent surcharge to non-residential customers, there would be annual revenue gains to the General Fund due to the base rate and to the Ballpark Revenue Fund due to surcharges.

(2) RENT FOR USE OF DC-OWNED LAND

DC's "other revenues" should normally include rent received from those who occupy and use DC-owned land. However a large tract of prime Potomac Riverfront land owned by DC at Blue Plains is used by DC Water for a huge, industrial-scale, regional sewage treatment plant without paying any rent. A reasonable rental would be a legitimate cost of operation and would be split between suburban sewage utilities which send wastes to Blue Plains and DC residents. There would be annual revenue gains to the General Fund.

(3) IMPERVIOUS AREA CHARGES

Congress delegated responsibility for setting water and sewer rates to the Council which redelegated to DC Water's Board. The Council may retrieve part of that delegation (or enact laws to guide its exercise).

DC Water collects “impervious area charges” (or IACs) from residential and non-residential customers to reflect impacts that lead to rain water runoff. These charges pay for the District's 93 percent share of DC Water's multi-billion dollar Clean Rivers

³ DC Water itself is a Pepco and Washington Gas customer. It pays public utility taxes at non-residential rates set by D.C. law for electricity and natural gas which it consumes, principally (almost 90 percent) in treating wastewater. It pays \$0.0077 per kWh and \$0.07777 per therm (each including a 10 percent surcharge for the Ballpark Revenue Fund to help pay off bonds for construction of Nationals Park). DC Water passes along to all its customers (including those in MD and VA) proportionate shares of DC public utility taxes paid on energy consumed in DC in order to serve them.

⁴ Thus D.C. law exempts DC Water, “its income, property, and transactions” from District taxes. D.C. Official Code § 34-2202.20(c)

initiative to reduce overflows of combined storm water and sanitary sewage. IAC rates have risen sharply in recent years, a trend projected to continue.

- D.C. law endorses basing such charges on impervious surfaces.
- But IACs are being administered in a way that seems unfair to DC residences as compared to commercial customers.
- And sharply rising IACs will be particularly harmful to low-income DC residents.

IACs may be viewed as akin to real property taxes levied at the same unit rate for residential and commercial properties.

- IACs are based on impervious surfaces for each property owner -- except for transportation rights of way. In other words, the charges do not take into account the tremendous amount of impervious surfaces represented by streets, sidewalks, and alleys.
- Yet streets, sidewalks, and alleys account for nearly half of DC's impervious area.

Impervious transportation surfaces generally benefit commercial customers more than residential customers. Commercial properties rely on roads for employees to get to work, and most of those employees are non-DC residents. Retail and other businesses rely on transportation infrastructure to enable customers to get to them.

Nonetheless, DC Water sets identical unit IACs for Residential and Non-residential customers. Because commercial property owners can treat IACs as a cost of doing business and pass them on to tenants and customers, it would make sense to have higher unit IAC rates for commercial customers than for residential customers in DC. The Commission's package should recommend legislative action along those lines.

LOW-INCOME WATER AND SEWER CUSTOMERS AND IACs

DC Water recognizes a need to relieve burdens on its low-income customer households (as defined and certified by the Energy Office in the Department of the Environment for all public utilities in DC), but affords no relief from rapidly rising IACs. DC Water's budgeted Customer Assistance Program entitles qualified households to discounts for some of the components of their bills, but not for any part of their residential IACs. This situation reinforces the reasons to constrain residential IACs.

Thank you for the important work your Commission is doing in the public interest. Please let me know if I may supply any further information.

Faithfully,

David J. Bardin