

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

Board of Directors

DC Retail Water and Sewer Rates Committee

Tuesday July 24, 2012

9:30am

- 1. Call to OrderHoward Gibbs, Chairman
2. Monthly Update (Attachment A) Randy Hayman
3. FY 2012 Cost of Service Study Review (Attachment B).....Olu Adebo
4. Retail Rates Committee WorkplanOlu Adebo
5. DC Water Strategic Plan DiscussionHoward Gibbs, Chairman
6. Emerging Issues/Other BusinessOlu Adebo
7. Agenda for September 25, 2012 Committee Meeting (Attachment D) Howard Gibbs, Chairman
8. Adjournment

FOLLOW-UP ITEMS – Retail Rates Committee Meeting (June 26, 2012)

- 1. Provide an example of the updating required and quality controls available to reconcile non-residential data found in the DCGIS 2005 flyover information and a more recent update to the flyover data. This example should be provided at a future Retail Rates Committee meeting (Mr. Bardin) Status: TBD based upon availability of data
2. Review of the Potomac Interceptor contracts to see if there are opportunities to modify contracts to be similar to the IMA contracts (Mr. Bardin) Status: Defer Pending Final IMA
3. Provide a legal opinion on the DC Laws requiring a discount program for both the DC Water and DDOE impervious area based fees (Mr. Roth) see (Attachment E)
4. Review the presentation of “average” use by CAP customers compared to the average residential customer given that the averages are not the same (Mr. Roth) see (Attachment F)

**July 2012 Update on Howard University and
Soldiers' Home Delinquent Accounts**

Howard University

Without waiving rights to contest, Howard accepted terms of agreement under which they would begin making payments on current bills on the "Exempt Accounts". DC Water has asserted claimed arrearages which total \$5,447,494.00. Howard tendered a counter-offer, but the amount was not acceptable to resolve the claim and was rejected. General Counsels Norma Leftwich and Randy Hayman met on April 18, 2012, where Hayman presented a new counter-offer. Hayman is awaiting a response to our last counter-offer, and the two general counsels are planning to meet again within the next month. Additional meter testing occurred during May 2012. Many meters were replaced because they failed to capture total consumption at all flow levels, resulting in underbilling. All replaced meters are being retained in a secure location until final resolution of the billing dispute.

Subsequent to the June update, the General Counsel for Howard University retired. Kurt Schmoke, former Mayor of Baltimore will be assuming the position.

NEXT STEPS

1. Howard has indicated that it had some tests performed on some of the meters servicing its properties. Howard's former general counsel was advised that customers have no authority to test meters, and such activity must not occur again. Our meters are maintained in accordance with specifications of the American Water Works Association (AWWA).
2. DC Water General Counsel Randy Hayman has reached out to Kurt Schmoke to continue negotiations, stressing the importance of meeting and moving the talks forward immediately.
3. Provided the parties work in good faith to diligently pursue resolution, DC Water will not pursue further enforcement action.
4. If Howard fails to perform, DC Water's GM shall send notification of intent to lien to HU president.
5. DC Water will place liens on affected HU assets.
6. DC Water will pursue legal remedies to enforce collection against HU.

Soldiers' Home

As agreed, consumption levels are being closely monitored. DC Water began delivering billing statements to Soldiers' Home, commencing the week of April 9, 2012. Two new meters have been installed; billing since January 1, 2012 is approximately \$25,000 per month for sewer services. Each month Soldier's Home sends a letter contesting the billing for all services, pending resolution of our negotiations. Placing additional DC Water facilities on the Soldiers' Home property is not a very viable option at this time.

NEXT STEPS

DC Water is attempting to schedule a meeting with Soldier's Home as soon as they are available, hopefully within the next two weeks. DC Water will share its legal position with Soldier's Home at that time..

COST OF SERVICE STUDY

DC WATER RETAIL RATES COMMITTEE / JULY 24, 2012



DC WATER



Attachment B

INTRODUCTION

- RFC specializes in providing financial planning and cost of service for municipal water and wastewater utilities across the country.
- RFC has worked with DC Water since 2008, and performed the 2009 cost of service study.
- As part of the Retail Rates Committee scope for 2012, RFC was asked to update the cost of service analysis.



COS STUDY COMPONENTS

- I. Revenue Sufficiency Analysis – Do the proposed rates recover adequate revenue to meet expenditures?
- II. Cost of Service Analysis / Rate Equity – Are proposed existing rates equitably recovering the costs of providing service?
- III. Alternative Rate Structure Analysis – Are there alternative rate structures that may more effectively meet DC Water’s highest priority pricing objectives?

I. REVENUE SUFFICIENCY ANALYSIS

- Assess existing rates and charges against the revenue requirements of DC Water for FY 2013 (test year).
- Rates and charges were taken from DC Water's Revised Financial Plan (FY 2013 projections).
- Operating and capital costs were independently forecasted based on a review of historical and projected budgets and capital improvement plans.
- Units of service were independently forecasted based on historical usage patterns and accounts.
- Compared resulting revenues and expenses for the test year against DC Water's Revised Financial Plan (FY 2013 projections).



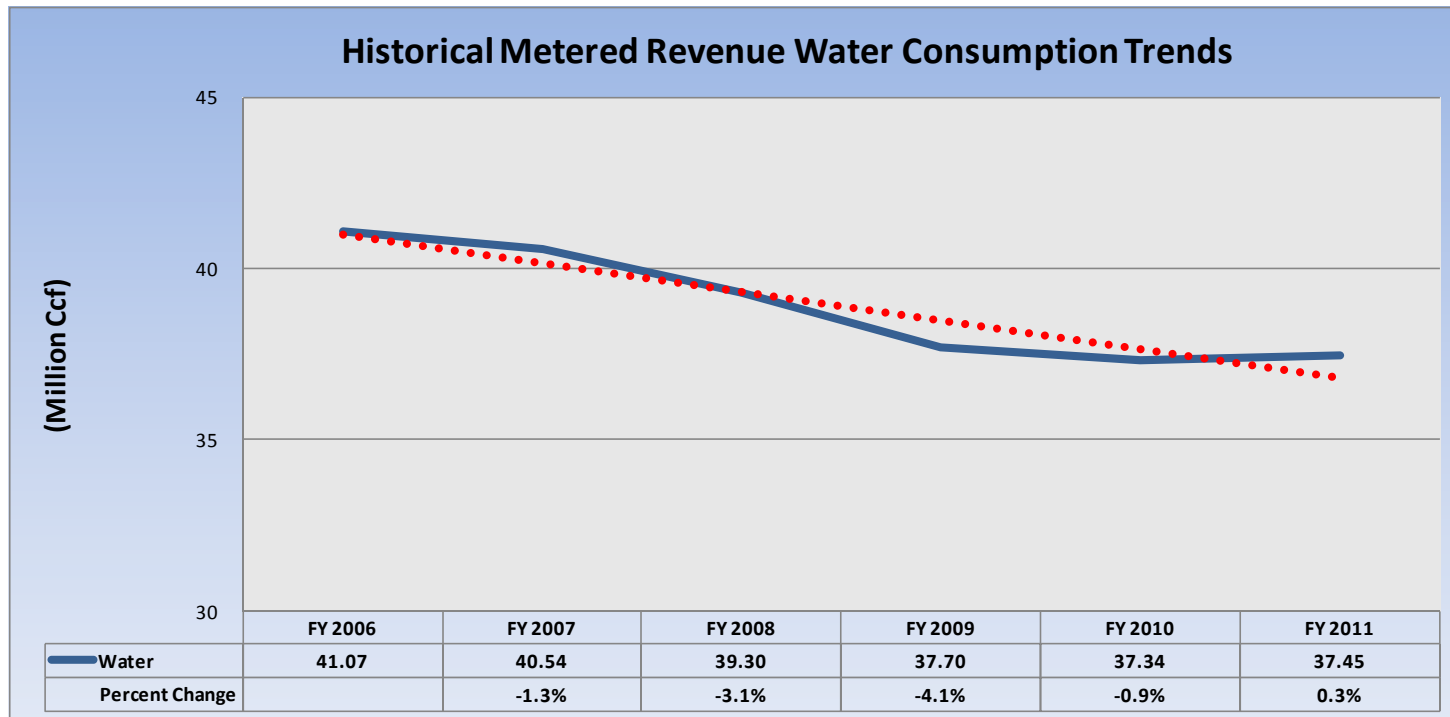
OPERATING EXPENSES

- Revised FY 2013 O&M costs are approximately \$280 million
- Projections through FY 2020 will be refined once the new Financial Plan is available in August.

	2012	2013
Operating Expenses		
Personnel Services	\$ 93,852,000	\$ 99,919,000
Contractual Services	73,516,000	82,350,000
Water Purchases	29,400,000	31,513,000
Chemicals & Supplies	26,112,000	31,360,000
Energy/Fuel/Comm./Rental	29,800,000	34,185,000
Equipment	787,000	993,000
Total: Operating Expenses	<u>\$ 253,467,000</u>	<u>\$ 280,320,000</u>

UNITS OF SERVICE

- To remain consistent with historical trends,* a 1% decrease in consumption has been assumed for the remainder of the forecast.



*Consumption numbers exclude non-revenue metered water



CAPITAL PLAN FINANCING

- Financing for the Capital Plan is consistent with DC Water’s Revised FY 2013 projections
- The CIP and associated funding will be updated in the new Financial Plan

	2012	2013
Beginning Balance	\$ 132,634,951	\$ 173,746,811
Sources of Funds		
Proceeds from Rev. Bonds	\$ 300,000,000	\$ 200,000,000
Proceeds from Treasury Notes	-	-
Capital Equipment Financing	8,184,000	12,279,200
Transfer from Operations	32,546,441	30,064,714
EPA Grants /DC Reimbursement	25,455,000	34,423,000
CSO Grants	31,332,000	30,000,000
Wholesale Customer Capital Contributions	175,242,000	237,897,000
Interest Income	93,419	301,445
Total Sources	\$ 572,852,860	\$ 544,965,359
Uses of Funds		
Water Projects	\$ 51,585,000	\$ 57,646,000
Blue Plains Projects	275,845,000	378,648,000
Sanitary Sewer Projects	39,922,000	45,381,000
Combined Sewer Overflow / Long Term Control Plan	132,016,000	152,021,000
Stormwater Projects	2,775,000	4,276,000
Washington Aqueduct Division Projects	11,373,000	10,598,000
Capital Equipment	15,349,000	15,341,000
Meter Replacement / AMR	2,876,000	1,790,000
Reimbursement for Prior Capital Expend.	-	-
Total Uses	\$ 531,741,000	\$ 665,701,000
Sources Minus Uses	\$ 41,111,860	\$ (120,735,641)
Ending Balance	\$ 173,746,811	\$ 53,011,170



PROJECTED DEBT SERVICE

- Debt service is consistent with DC Water’s Revised FY 2013 projections.
- The debt service schedule will be updated in the new Financial Plan.

	2012	2013
Existing Debt		
Senior Debt		
1998 Revenue Bonds	\$ 23,370,475	\$ 23,366,075
Series 2009A	18,547,108	18,537,708
<i>Subtotal Senior Debt</i>	<u>\$ 41,917,583</u>	<u>\$ 41,903,783</u>
Subordinated Debt		
District G.O. Bonds:	\$ -	\$ -
Jennings Randolph:	805,191	805,191
Little Seneca Reservoir:	47,483	45,022
Commercial Paper	2,750,860	4,125,000
Series 2003 Subordinate Bond	4,444,913	-
Series 2007A Subordinate Bond	11,351,425	11,351,425
Series 2008A Subordinate Bond	19,742,750	19,825,500
Series 2010A Subordinate Bond	7,552,482	7,552,482
<i>Subtotal Subordinated Debt</i>	<u>\$ 46,695,104</u>	<u>\$ 43,704,620</u>
Total: Existing Debt	\$ 88,612,687	\$ 85,608,403
Planned Debt		
WASA Bonds - Planned	\$ 8,910,816	\$ 30,605,594
Capital Equipment Financing	1,501,497	3,679,965
Total: Planned Debt	<u>\$ 10,412,313</u>	<u>\$ 34,285,559</u>
Total: Debt	<u>\$ 99,025,000</u>	<u>\$ 119,893,962</u>



COMPARISON TO FINANCIAL PLAN & REVISED FINANCIAL PLAN

	RFC Model	Financial Plan*		Revised Financial Plan	
	2013	2013	<i>Delta</i>	2013	<i>Delta</i>
Revenue					
Operating	\$ 418,022,347	\$ 432,118,423	\$ (14,096,076)	\$ 418,197,060	\$ (174,712)
Non-Operating	27,289,687	27,775,574	(485,887)	27,289,688	-
Total: Revenue	\$ 445,312,035	\$ 459,893,997	\$ (14,581,962)	\$ 445,486,747	\$ (174,712)
Expenses					
Operating**	\$ 302,302,000	\$ 310,692,429	\$ (8,390,429)	\$ 302,302,000	\$ -
Debt Service	119,893,962	127,627,311	(7,733,349)	119,565,524	\$ 328,438
Total: Expenses	\$ 422,195,962	438,319,740	(16,123,778)	\$ 421,867,524	328,438
Net Cash Available for PAYGO Capital & Other Cash Needs	<u>\$ 23,116,073</u>	<u>\$ 21,574,257</u>	<u>\$ 1,541,816</u>	<u>\$ 23,619,223</u>	<u>\$ (503,150)</u>

*Approved Financial Plan

**Includes Payment in Lieu of Taxes (PILOT) and Right of Way Fee (ROW)



REVENUE SUFFICIENCY FINDINGS

- Revenues under proposed rate increases are sufficient to fund utility cash needs in FY 2013.
- Reserve funds can be maintained at target levels.
- Debt service coverage is adequate to meet required bond covenants.

II. COS ANALYSIS / RATE EQUITY

- Retail revenue requirements are allocated among the following recovery buckets within DC Water's existing rate structure
 - Water Volumetric
 - Metering Fee
 - Wastewater Volumetric
 - Impervious Area Charge
- Net revenue requirements are divided by units of service to calculate cost of service-based rates
- COS-based rates are compared to rates developed by applying across-the-board rate increases

COS RESULTS

	2013	Water	Meter	Wastewater	CRIAC
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Test Year

Retail Revenue Requirements	\$ 323,055,635	\$ 114,112,336	\$ 11,366,079	\$ 155,416,716	\$ 42,160,503
	100.0%	35.3%	3.5%	48.1%	13.1%

Units of Service	34,674,080	2,949,021	35,078,112	4,764,000
	ccf	equiv meters (1)	ccf	ERU's (1)

Calculated Unit Cost (2) (3)	\$ 3.30	\$ 3.86	\$ 4.44	\$ 8.85
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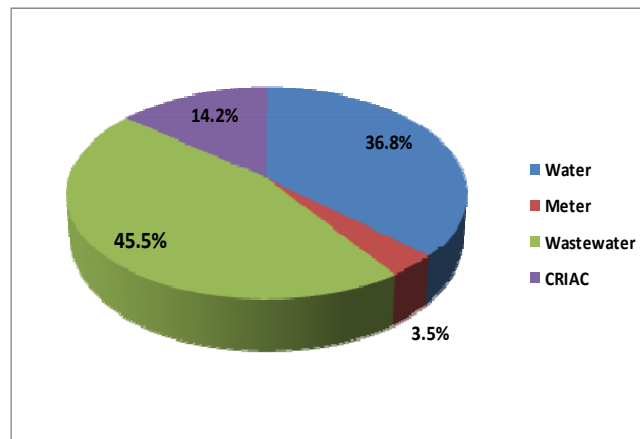
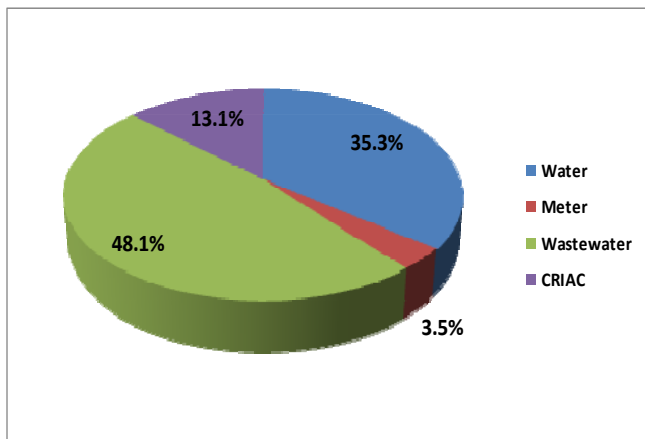
- (1) Represents annualized equivalent meters and ERUs.
- (2) Does not represent actual recommendations, but instead provides directional shifts in cost of service.
- (3) Calculation unit cost is rounded up to the nearest penny.



COMPARISON OF ALLOCATIONS

	Cost of Service			Proposed Rates		
	Unit Cost *	Retail Revenue Requirements	Percent of Total	Unit Cost	Retail Revenue Requirements	Percent of Total
Water	\$ 3.30	\$ 114,112,336	35.3%	\$ 3.42	\$ 118,522,940	36.8%
Meter	3.86	11,366,079	3.5%	3.86	11,383,222	3.5%
Wastewater	4.44	155,416,716	48.1%	4.18	146,549,336	45.5%
CRIAC	8.85	42,160,503	13.1%	9.57	45,591,480	14.2%

* Rounded up to the nearest penny.



COS FINDINGS & NEXT STEPS

- Fire protection revenues have been allocated as an offset to the water volumetric charge causing a shift away from water rate increases to wastewater rate increases.
- Initial findings suggest that the trajectory of the IAC may need to be updated to reflect new estimated cash projections.
- Final recommendations will be based on the new Financial Plan available in August.

III. RATE STRUCTURE ALTERNATIVES

- RFC identified opportunities for changes to the water and sewer rate structures that may better fit DC Water's key pricing objectives.
- These rate structure alternatives included:
 - Meter Fee / Base Charges
 - Class-Based Volumetric Differentiation
 - Wastewater High Strength Surcharges

BASE CHARGE

- DC Water currently assesses a metering fee scaled by meter size based on the cost to install and maintain customer meters.
- DC Water could continue the process of incorporating additional costs into a base charge (in addition to the existing metering fee and not scaled by meter size) to reflect the full cost of customer service, billing, collections, and meter reading.
- Adding a fixed fee to all customers of \$6.93 per month would result in a one-time reduction to the calculated water and sewer volumetric rates by approximately 4.5% and 3.4%, respectively (or about 15¢ each). However, this would also result in adverse impacts to low and average volume users.



METERING FEE & BASE CHARGE CALCULATIONS

FY 2013

Base Charge Calculation

Customer Service Operating Costs	\$ 10,391,898
Projected DC Water Customers	124,961
Projected DC Water Bills (annual)	1,499,532
Sample Base Charge (per combined water & sewer bill)	\$ 6.93

Meter Charge Calculation

Meter Charge Allocated Revenue Requirements	\$ 11,366,079
Projected Equivalent Meters	245,752
Calculated Unit Cost	\$ 46.25
Monthly Metering Fee	\$ 3.86



CUSTOMER SEGMENTATION

- DC Water could develop different volumetric rates by customer class / category based on the different demands they place on the system.
- Differentiation may be based on:
 - Class / category peaking characteristics (water)
 - Discharge strength contributions (wastewater)

DATA ANALYSIS RESULTS

- Based on a review of three years of data, RFC identified five different categories of water customers which demonstrated consistent peaking characteristics.

Customer Class	Base		Max-Month		
	Annual Usage (ccf)	Average Monthly Usage (ccf)	Peaking Factor (1)	Total Monthly Capacity (ccf)	Extra Capacity (ccf)
Residential	7,516,170	626,348	1.17	732,827	106,479
Multi-Family/DC Housing	8,334,720	694,560	1.11	770,962	76,402
Commercial	12,778,448	1,064,871	1.31	1,394,981	330,110
Federal	5,877,860	489,822	1.44	705,343	215,522
Municipal	1,289,993	107,499	1.25	134,374	26,875
	35,797,191				755,387

(1) Data taken from the 2011 DC Water Customer Segmentation Study

- Data analysis supports further customer segmentation based on peaking, however DC Water must undertake further steps prior to implementation.

WATER VOLUMETRIC RATES

- Separating water volumetric rates into a base usage and peak usage component would allow DC Water to apply a water rate differential among customer classes/categories based on their peaking factors.

Customer Categories	Volumetric Revenue Requirements	Annual Usage (ccf)	Volumetric Rate (per ccf)	Average Volumetric Rate (per ccf)	Delta (per ccf)	Percentage
Residential	\$ 23,605,368	7,323,286	\$ 3.22	\$ 3.30	\$ (0.08)	-2.3%
Multi-Family/DC Housing	25,720,656	8,104,139	3.17	3.30	(0.13)	-3.8%
Commercial	41,620,110	12,464,935	3.34	3.30	0.04	1.2%
Federal	19,165,962	5,561,219	3.45	3.30	0.15	4.4%
Municipal	4,014,731	1,220,501	3.29	3.30	(0.01)	-0.3%
Total	\$ 114,126,827	34,674,080				



DATA ANALYSIS RESULTS

- Domestic strength wastewater treatment costs are included in the wastewater volumetric rate.
- High strength customers (above domestic strength) may be assessed surcharges based on their strength contribution.
- Development of the high strength surcharge:
 - Allocation of treatment plant operating costs to pollution removal and flow.
 - Identification of total plant loadings.
 - Identification of high strength customers and their pollutant contributions.
- Data analysis supports further customer segmentation based on strength, however DC Water must undertake further steps prior to implementation.

WASTEWATER HIGH STRENGTH SURCHARGE

- The cost of treating wastewater strength could be assessed to individual customers based on the strength contribution measured by the following pollutant parameters:
 - Total Suspended Solids (“TSS”)
 - Chemical/Biological Oxygen Demand (“CBOD”)
 - Total Phosphorous (“TP”)
 - Total Nitrogen (“TKN”)

	Flow (\$/Ccf)	CBOD (\$/lbs)	TSS (\$/lbs)	TP (\$/lbs)	TKN (\$/lbs)
Allocated Cost	\$ 85,989,629	\$ 23,425,675	\$ 29,069,556	\$ 5,793,472	\$ 32,993,355
Units of Service	143,371,623	191,292,270	222,131,924	3,975,764	37,407,226
Surcharge	\$ 0.600	\$ 0.122	\$ 0.131	\$ 1.457	\$ 0.882



SEGMENTATION IMPLEMENTATION ISSUES

- Additional issues must be considered before these segmentations alternatives could be fully implemented:
 - Data analysis – DC Water must support distinct demand characteristics amongst customer classes.
 - Customer impact and policy consideration – DC Water must perform an analysis of customer impacts related to customer segmentation and rate differentiation to ensure that it fits to the overall policy objectives.
 - Administration – DC Water must assess whether the benefits of this rate structure change outweighs the costs related to billing system changes, bill format changes , customer identification and customer communication outreach
 - Legal and rate making consideration – DC Water must fully assess the legal environment and develop a strategy for implementing the rate
- Staff has already begun looking into implementation issues

DISCUSSION



COST OF SERVICE STUDY
DC WATER RETAIL RATES COMMITTEE / JULY 24, 2012



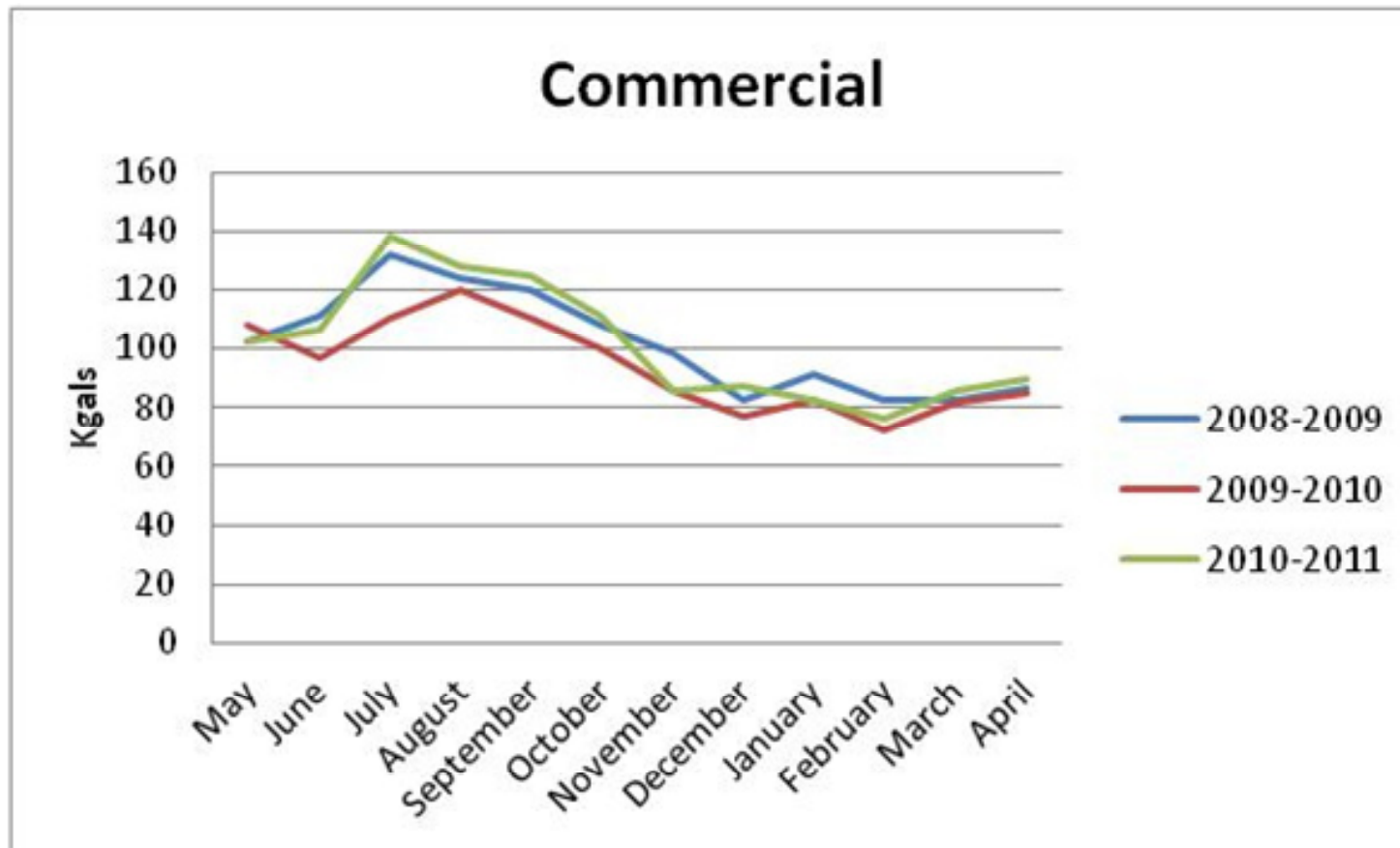
APPENDIX TO PRESENTATION



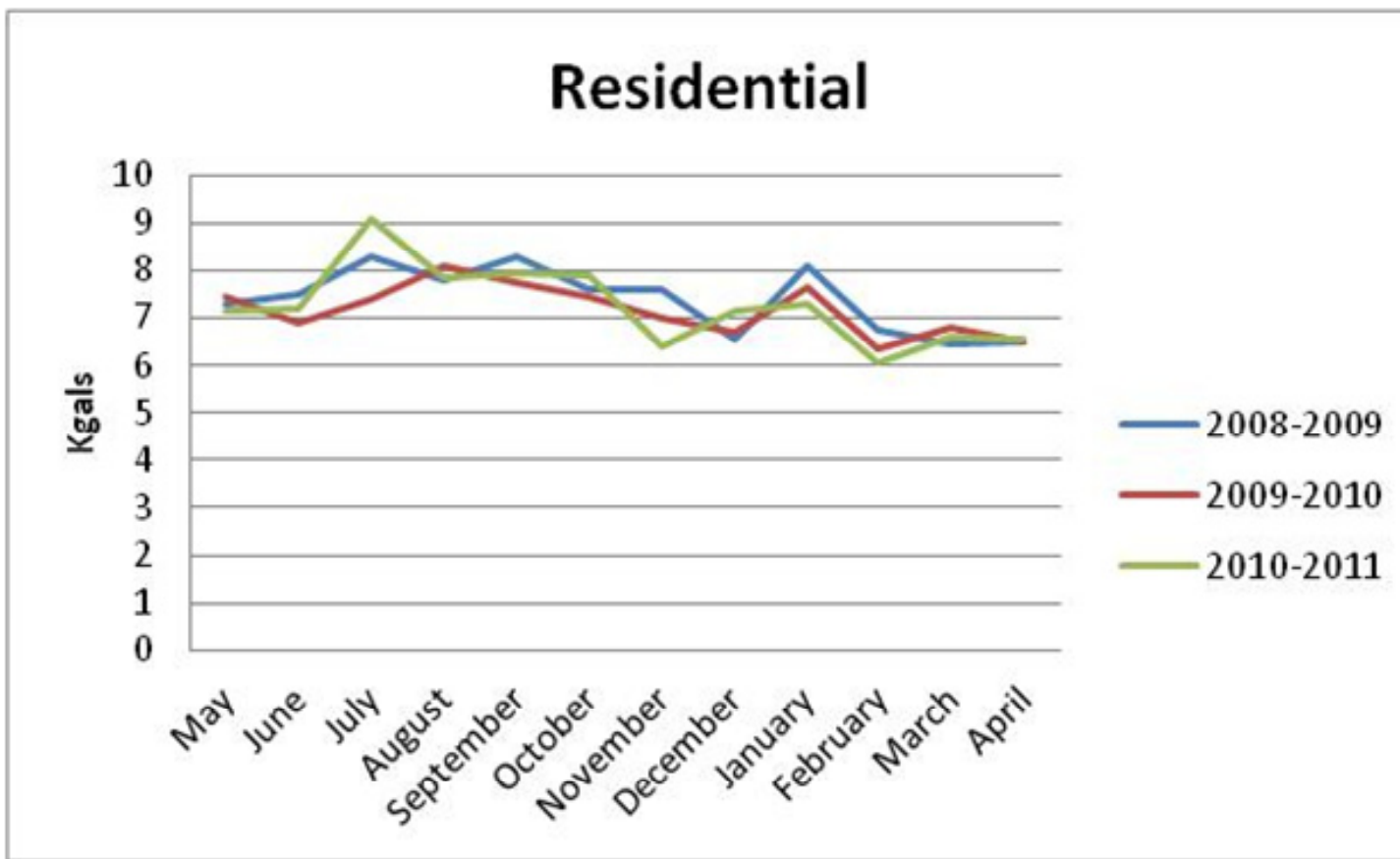
COST OF SERVICE STUDY
DC WATER RETAIL RATES COMMITTEE / JULY 24, 2012



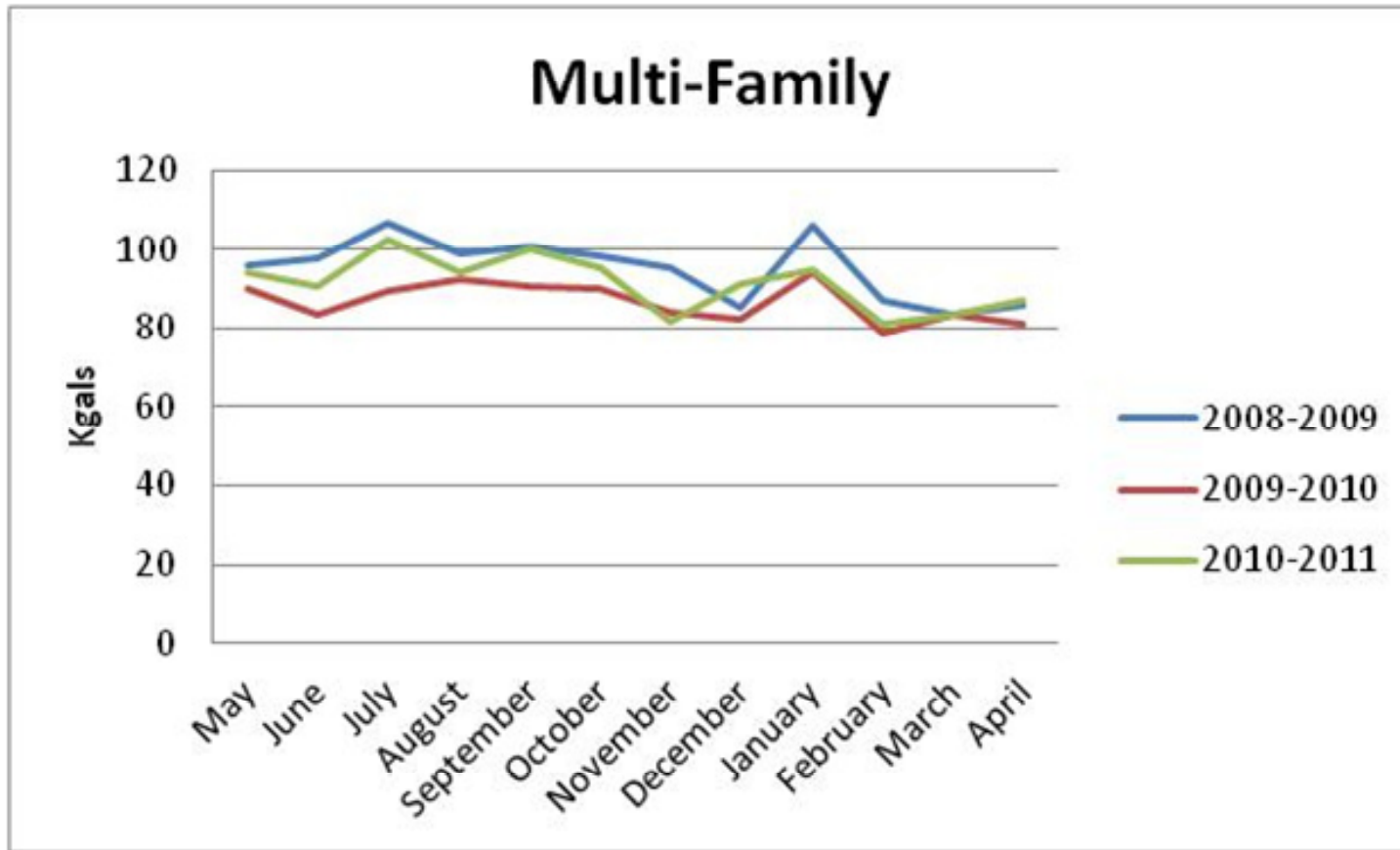
CUSTOMER SEGMENTATION DATA



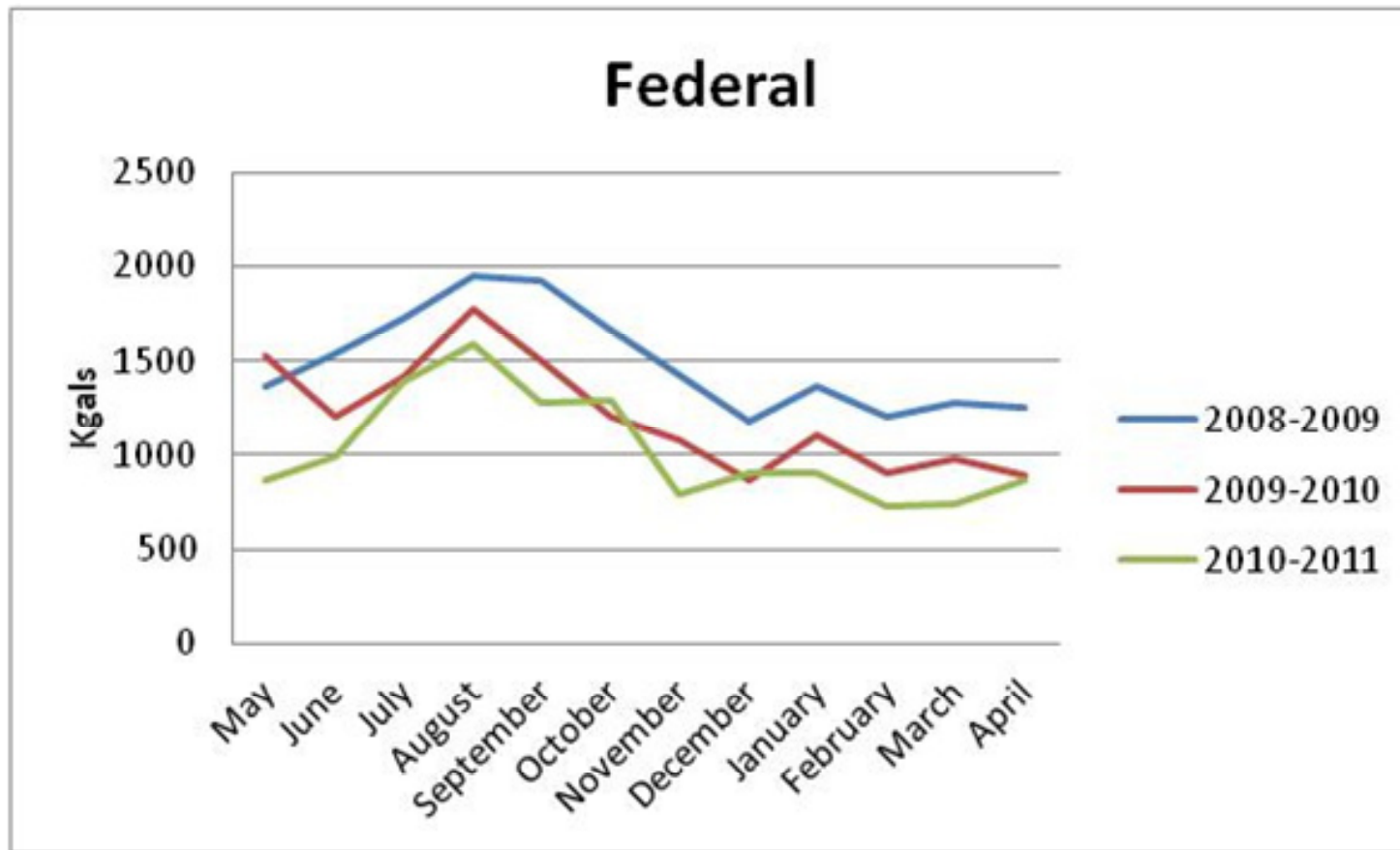
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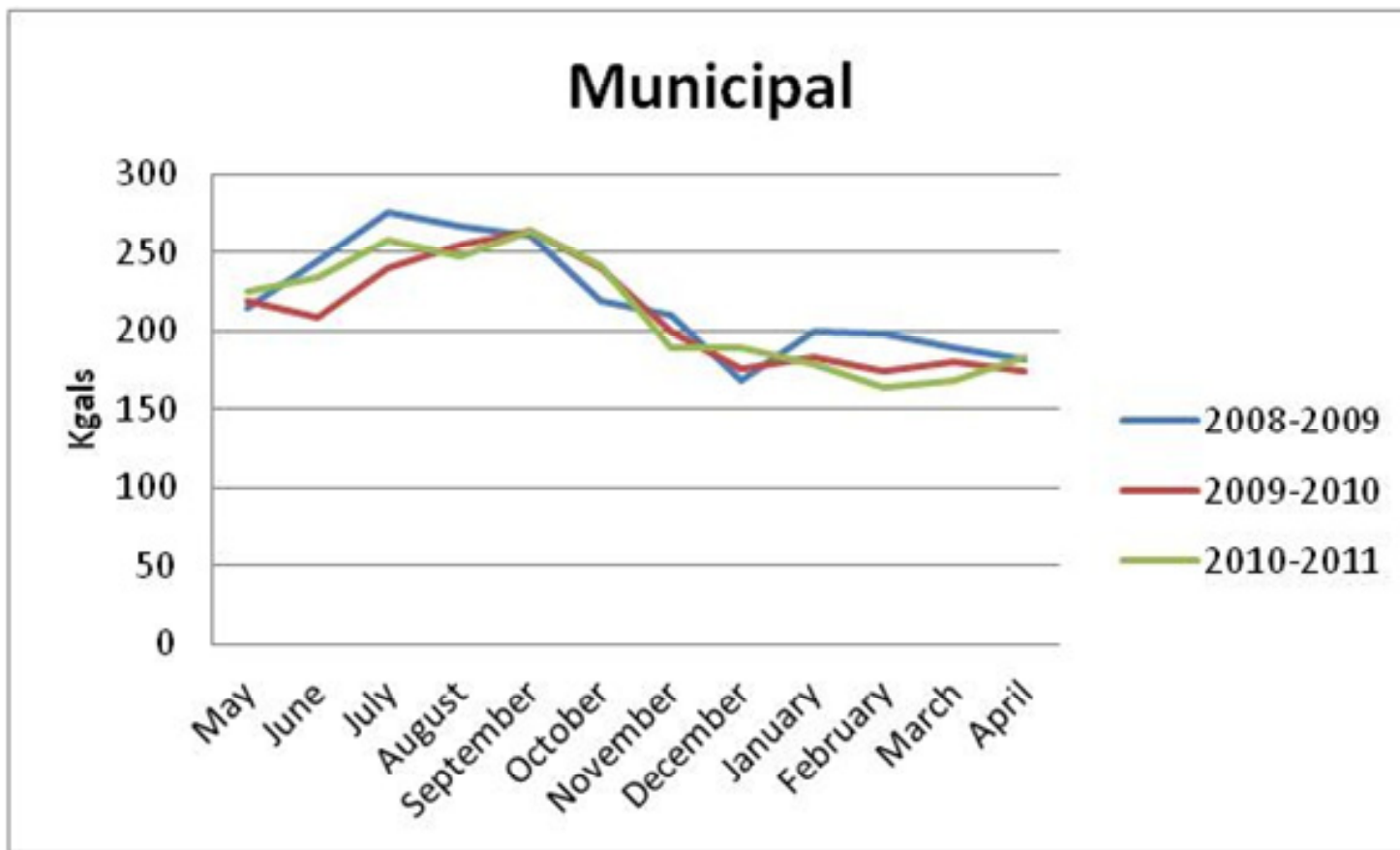
CUSTOMER SEGMENTATION DATA



CUSTOMER SEGMENTATION DATA



CUSTOMER SEGMENTATION DATA

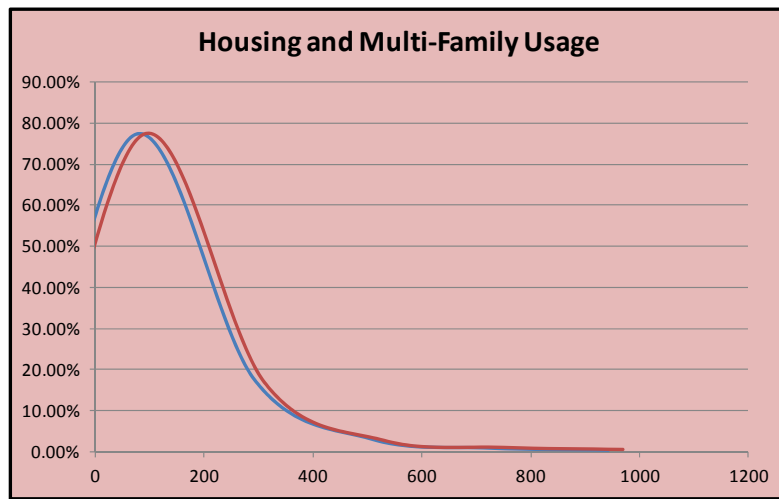
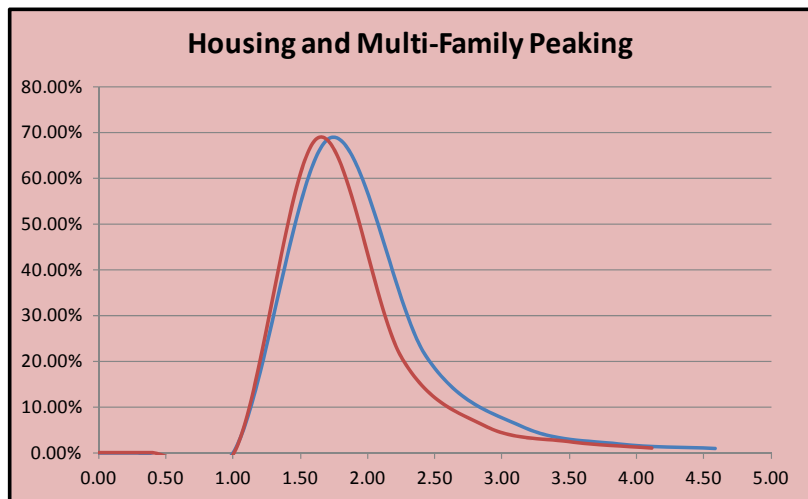


CUSTOMER SEGMENTATION DATA



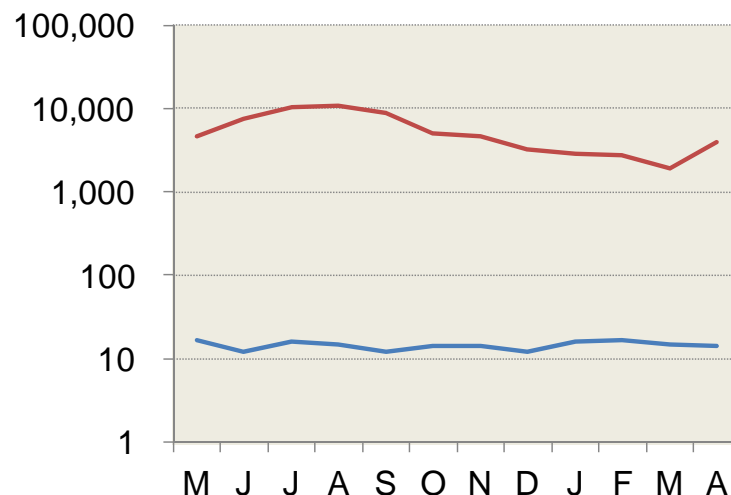
CUSTOMER SEGMENTATION DATA

- Housing and Multi-Family Similarities
 - Our analysis suggest Housing and Multi-family should be combined into a new customer class
 - At this time, rate structure would follow the existing Residential Class



CUSTOMER SEGMENTATION DATA

- Is it equitable to assign a class-based rate if all customers in the class do not fit the high peaking pattern?



- Customer A uses 5,500 Ccf/month and has a peaking ratio of 1.96
- Customer B uses 15 Ccf/month and has a peaking ratio of 1.17

Attachment – C

FY 2012 Retail Rates Committee Proposed Workplan Completed Activities

Committee Activity	Committee Calendar	Completed
1. FY 2013 Retail Rate Activities		
a. Rate Proposal to committee	October 2011	√
b. Committee recommendation	December 2011	√
c. Public Outreach	March/April 2012	√
d. Public Hearing	May 2012	√
e. Committee recommendation on FY 2013 rates	June 2012	√
f. Board adoption of FY 2013 rates and fees	July 2012	√
3. Review and Update Committee on long-range rate issues, including follow-up on FY 2009 Cost of Service Study results, prior to next cost of service study		
b. Revisit CAP program and possible modifications (Expansion and or methodology)		
i. Update committee on CAP program	March 2012	√
c. Miscellaneous Fees and Charge		
i. Update Committee on Miscellaneous Fees	December 2011	√
ii. Committee Recommendation on Miscellaneous Fees	January 2012	√
iii. Board Approval on Miscellaneous Fees	February 2012	√
iv. Publish in DC Register	February 2012	√
v. Committee Action on Miscellaneous Fees	June 2012	√
vi. Board adoption of FY 2013 miscellaneous fees and charges	July 2012	√
4. FY 2012 Cost of Service Study		
i. Notice to Proceed	November 2011	√
ii. Receive Draft Report	June 2012	√
iii. Present to the Retail Rates Committee	July 2012	√
5. Review of charges/rates for specific customers		

Attachment – C

b. Town of Vienna	Completed	√
6. “PILOT” evaluation – In coordination with District Government Review and Propose replacement for assessing PILOT and related issues.		
a. PILOT discussion with committee	June 2012	√
7. IAC Program Evaluation	March 2012	√
8. Fire Protection Fee Cost of Service Study		
a. Present Draft Fire Cost of Service Study to Retail Rates	December 2011	√
b. Submit copy of report to DCCFO & DC City Administrator for review	December 2011	√
c. Rate proposal to Committee	March 2012	√
d. Committee Meeting & Public Hearing	May 2012	√
e. Committee recommendation on revised fee	June 2012	√
f. Board adoption of fire protection fee	July 2012	√
9. Billing Frequency Change for Impervious Only Accounts		
a. DC Retail Water & Sewer Rates Committee Discussion and Recommendation on FY 2013 Billing Frequency Change for Impervious Only Accounts	January 2012	√
b. Board Action on FY 2013 Billing Frequency Change for Impervious Only Accounts	February 2012	√
c. Publish in DC Register	February 2012	√
d. Board Approval	July 2012	√
10. Retail Groundwater Sewer Charge		
a. Rate Proposal to committee	March 2012	√
b. Committee recommendation	March 2012	√
c. Public Outreach	March/April 2012	√
d. Public Hearing	May 2012	√
e. Committee recommendation on FY 2013 rates	June 2012	√
f. Board adoption of retail groundwater sewer change	July 2012	√

Attachment – C

<p>c. Miscellaneous Fees and Charge vii. FY 2013 miscellaneous fees and charges effective</p>	<p>October 2012</p>	
<p>4. FY 2012 Cost of Service Study iv. Final Report</p>	<p>September 2012</p>	
<p>5. Review of charges/rates for specific customers a. Howard University, Soldier’s Home Negotiations</p>	<p>Monthly</p>	
<p>6. “PILOT” evaluation – In coordination with District Government Review and Propose replacement for assessing PILOT and related issues. b. Engage the District of Columbia in further discussion</p>	<p>TBD</p>	
<p>8. Fire Protection Fee Cost of Service Study g. Fire protection fee effective</p>	<p>October 2012</p>	
<p>9. Billing Frequency Change for Impervious Only Accounts e. Billing frequency change for impervious only accounts effective</p>	<p>October 2012</p>	
<p>10. Retail Groundwater Sewer Charge g. Retail groundwater sewer charge effective</p>	<p>October 2012</p>	



Attachment - D

D.C. WATER AND SEWER AUTHORITY
BOARD OF DIRECTORS
RETAIL WATER & SEWER RATES
COMMITTEE MEETING

TUESDAY, September 25, 2012; 9:30 a.m.
AGENDA

Call to Order	Committee Chairman
Monthly Updates	Chief Financial Officer
Committee Workplan	Chief Financial Officer
Emerging Issues/Other Business	Chief Financial Officer
Agenda for October 23, 2012 Committee Meeting	Chief Financial Officer
Adjournment	Committee Chairman

*Detailed agenda can be found on DC Water's website at www.dewater.com/about/board_agendas.cfm

Attachment E

FOLLOW-UP ITEMS – Retail Rates Committee Meeting (June 26, 2012)

3. Provide a legal opinion on the DC Laws requiring a discount program for both the DC Water and DDOE impervious area based fees (Mr. Roth)

Response:

Attached are the following memos that address the follow-up question above from the June 26, 2012 Retail Rates Committee meeting.



Privileged and Confidential: Subject to Attorney/Client; Attorney Work Product Privileges

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY | 5000 OVERLOOK AVENUE, SW | WASHINGTON, DC 20032

Office of the General Counsel

MEMORANDUM

To: David J. Bardin, Chairperson, District of Columbia Retail Water and Sewer Rates Committee
Members of the District of Columbia Retail Water and Sewer Rates Committee

From: Randy Hayman, General Counsel

Date: January 25, 2011

Re: LID Incentive Program Legal Requirement

Legal Authority - Overview

The legal authority for the referenced program is found in District of Columbia Law (L17 – 0370) entitled “Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008” (Act), effective March 25, 2009. This authority is codified in the District of Columbia Official Code (Code) by the addition of a new subsection (b-1) to § 34 – 2202.06.

This Act sets out the following **mandates** for DC Water:

- (i) DC Water shall offer financial assistance programs to mitigate the impact of any increases in retail water and sewer rates on low –income residents of the District, including a low-income design incentive program;**
- (ii) DC Water shall establish, together with the District Department of the Environment (DDOE), a low –impact design incentive program within the DDOE, to reduce the surface area that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow under natural conditions;**
- (iii) DC Water and DDOE will continue to collect and document low-impact design techniques throughout the District on reducing stormwater runoff ,and the possible implications of how proven, long-term reductions in stormwater runoff may be used to renegotiate the consent decree and the cost and size of the Long- Term Control Plan; and**
- (iv) DC Water shall, once a discount is approved, grant discounts retroactively to no earlier than the date of the implementation of the impervious surface fee.**

Criteria and procedures not mandated by the Act

The DDOE notice of Proposed Rulemaking "Stormwater Fee Discount Program" establishes certain criteria and procedures that are **not mandated** by the Act: These include:

- (i) the granting of discounts of a maximum of thirty percent (30%) of the stormwater fee;
- (ii) the granting of the discount for a five (5) year period, which may be renewed upon re-application if eligibility continues; and

Specific Questions Regarding Legal Authority

The following questions were addressed to the Office of the General Counsel (OGC):

Question #1 - What is the statute (or statutes) and does it directly amend DC Water's enabling legislation?

Answer – The earlier referenced Act directly amends DC Water's enabling statute through the addition of three new subsections.

§ 34-2202.06 of the Code is amended by the addition of a new subsection (b) which reads as follows:

(b) The General Manager, in his or her sole discretion, may restrict combined sewer flow into the district from Maryland and Virginia, so long as the action does not violate §34-2202.18¹

§34-2202.16 of the Code is amended by the addition of a new subsection (b-1) which reads as follows:

(b-1)

(1) The Authority shall offer financial assistance programs to mitigate the impact of any increases in retail water and sewer rates on low-income residents of the District, including a low-impact design incentive program.

(2) Within 6 months of March 25, 2009, the authority shall provide a report to the Council of the District of Columbia detailing the number of low-income residents affected by increases in retail water and sewer rates and strategies that will significantly increase enrollment in existing discount programs available to low-income ratepayers.

§ 34-2202.01 *et seq.* of the Code is amended by adding a new § 34-2202.16a **Low-impact design incentive programs and fee discounts** which reads as follows:

(a) Within one year of March 25, 2009, the Authority shall establish, together with the District Department of the Environment ("DDOE"), a low-impact design incentive program within the DDOE, to reduce the surface area that either prevents or retards the entry of water into the ground as occurring

¹ This section states that the enabling statute shall not amend, alter, modify or repeal existing regional agreements including the 1985 Blue Plains Intermunicipal Agreement

under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions.

(b) The Authority and the DDOE will continue to collect and document the effects of the low-impact design techniques throughout the District on reducing stormwater runoff and the possible implications of how proven, long-term reductions in stormwater runoff may be used to renegotiate the consent decree and reduce the cost and size of the Long-Term Control Plan.

(c) Impervious surface fee discounts approved by the Authority shall be retroactive to no earlier than the date of the implementation of the impervious surface fee. A property owner may not qualify for an impervious surface fee discount until the stormwater management measures for which the property owner seeks a discount are demonstrated to be fully functional.

Question#2 - Does the statute require Low Impact Development (LID) incentives for poor people, as such? If yes, does that mean C.A.P. customers of DC Water, all of whom are residential customers? I.e., could DDOE's plan to exclude residential customers for the foreseeable future be compatible with the statute?

Answer – Yes, the new subsection (b-1) added to § 34-2202.06 of the Code requires DC Water to offer low-impact design incentive programs to low-income residents of the District. Yes, DC Water's CAP customers would qualify. DDOE's plan initially appeared to be inconsistent. However, DC Water has received verbal confirmation from DDOE, that its proposed rulemaking will now include language addressing the phasing in of incentives for residential customers (including low-income residents).

Question#3 - Does the statute require DC Water to offer anyone an incentive to engage in LID practices, or does it merely call for non-compulsory coordination with DDOE?

Answer – Subsection (c) of the new § 34-2202.16a **Low -impact design incentive program and fee discounts** requires DC Water to offer incentives.

Question #4-If the statute requires DC Water to offer incentives, must the incentive take the form of a discount reducing some of DC Water's IAC bills?

Answer – Yes, the referenced subsection (c) uses the phrase “impervious surface fee discount”. Also, the newly added subsection (b-1) (1) of § 34-2202.16 states that the low-impact design incentive program, one of the financial assistance programs to be offered to low -income residents of the District, shall mitigate the impact of any increases in retail water and sewer rates on such low income residents. The statute does not state that an ‘impervious surface fee discount is the only form of incentive that can be offered.

Question#5 - If the statute requires incentives and DC Water must (or chooses to) provide them through IAC bill discounts, must the discounts be effective as of some date?

Answer – No, the statute only sets out (i) a date for DC Water's submittal of a report to the District Council detailing the number of low income residents affected by increases in retail water and sewer rates and strategies that will significantly increase enrollment in existing discount programs and (ii) a date for the establishment of a low-impact design incentive program.

Question#6 - May DC Water establish a discount incentive program first effective for bills for FY 2013 without violating the statute?

Answer – The referenced subsection (c) requires that discounts shall be retroactive to no earlier than the date of the implementation of the of the impervious surface fee (emphasis added). The statute requires that the discount incentive program be applied retroactively. Therefore, the program could not first be effective for FY 2013. However, as written, the statute does not mandate that the discounts be retroactive to the date of the implementation of the impervious surface fee; rather, that they cannot be applied earlier than that date.

Question#7 - Does the statute define what LID activities it wishes incentivized? (E.g., green roofs, trees, etc.)

Answer – No, the statute does not list specific LID activities. However, the statute in the newly added § 34-2202.16a (a) states the objective of the low-impact design incentive program: *to reduce the surface area that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow ,relative to the flow present under natural conditions.*

Question#8 - Does the statute define incentive? Does it seek targeted incentives that may influence behavior or merely rewards for approved behavior. (E.g., Would a 50-year old green roof qualify?)

Answer – No, the statute does not define incentive nor discuss the intent of the incentive other than stating the objective of the low-impact design incentive program as cited above. A 50 –year old green roof may qualify as an incentive if it is fully functional at the time the discount incentive program becomes effective.

Question#9 – What kind of rule making process must the Board follow if it wishes to propose and later adopt IAC discounts? What DCMR text would that process likeliest be amending?

Answer – The Board would be required to publish notice of proposed rulemaking in the *DC Register*, hold a public hearing, adopt the IAC discount by a majority vote of the Board, and publish a notice of final rulemaking in the *DC Register*. The addition of new subsections to Section 4101, "Rates for Sewer Service of Chapter 41, "Retail Water and Sewer Rates , of Title 21, "Water and Sanitation" of the District of Columbia Municipal Regulations (DCMR) may be an appropriate location for the text. An alternative would be to add a new section to Chapter 41 of Title 21 of the DCMR.

As highlighted above, the statute allows DC Water to exercise discretion in crafting the discount incentive program, such as: (i) the amount of discount to be granted; (ii) the period of time a discount will be in effect prior to renewal (if renewed); and (iii) the time period during which the discount will be applied retroactively (so long as it is no earlier than the date of the implementation of the impervious surface fee).



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY | 5000 OVERLOOK AVENUE, SW | WASHINGTON, DC 20032

MEMORANDUM

To: David Bardin, Member, DC Water Board of Trustees
Through: Randy E. Hayman, General Counsel
From: Katherine Cahill, Principal Counsel
Date: July 14, 2011
Re: Low Impact Development "LID"

You have requested the Office of the General Counsel (OGC) to review and comment on certain questions regarding the referenced matter. The OGC's review included the District of Columbia Official Code (Code) and the District of Columbia Municipal Regulations (DCMR).

your questions, along with the OGC's response, follow:

Is the District of Columbia Law (L 17-370) entitled " Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008" the only law that requires the District Department of the Environment "DDOE" to have a program which includes LID discounts from DDOE's stormwater fees?

The OGC's review did not find any other law, statute, or regulation that specifically requires the DDOE to provide LID discounts from DDOE's stormwater fees.

However, various sections of the Code require DDOE to undertake certain actions with regards to LID. For example, § 8-152.04 of the Code, **Stormwater Management and Low Impact Development Grants**, requires the Director of the DDOE to: (i) prepare a study, along with other stormwater agencies which recommends policies and measures developed to implement LID and stormwater best practices on District properties; (ii) include among DDOE's public educational efforts a campaign to inform the public on the benefits of preventing pollution from stormwater runoff; and (iii) to work with DC Water to collect and evaluate scientific data on the effects of low impact development on reducing stormwater runoff to develop a plan for aggressive use of low impact development technologies to reduce the cost and size of any large scale civil engineering solutions to reducing stormwater pollution of the area's waterways. Additionally, § 8-152.05 **Stormwater Advisory Panel**, establishes a Stormwater Advisory Panel (Panel) within the DDOE. The Technical Working Group (TWG) of this Panel is directed to make recommendations to the Panel regarding existing District agency rules, regulations, and policies that might create barriers to the implementation of LID or stormwater best management practices within the District.

How does the “Water and Sewer Authority Equitable Ratemaking Act of 2008” give DDOE authority to have a program which includes LID discounts from DDOE’s stormwater fees?

§34-2202.16 of the Code, **Charges and Fees and Rate Setting**, requires DDOE to establish a stormwater fee by rule and amend it from time to time. This section further states that the Mayor shall coordinate the development and implementation of the MS4 stormwater user fee with DC Water’s impervious area surface charge, to ensure that both systems employ consistent methodologies (emphasis added). This section further states that the Mayor shall offer financial assistance programs to mitigate the impact of user fees on low income residents in the District, and shall evaluate the applicability of similar existing District low-income assistance programs to the stormwater user fee.

The “Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008” added a new § 34-2202.16a to the Code, **Low Impact Design Incentive Program and Fee Discounts**, that requires both DC Water and DDOE to establish within DDOE, a low impact design incentive program, to reduce the surface area that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions (emphasis added).

The two previous paragraphs together form the basis for DDOE to have a program which includes LID discounts from DDOE’s stormwater fees.

What does LID mean?

§ 8-151.01 of the Code, **Definitions**, subsection 8, defines LID as follows:

(8) “Low Impact Development “ or “LID” means stormwater management practices that mimic site hydrology under natural conditions , by using design techniques in construction and development that store,infiltrate,evaporate,detain,or reuse or recycle runoff.

Is “low impact design” defined in the regulations or agency practice? Is it the same as “low impact development”?

The OGC’s review did not find a definition for “low impact design”. However, the definition of LID includes the use of design techniques to achieve the goal of low impact development. As the working definition of LID includes ‘design’, it is the opinion of the OGC that the terms “low impact development” and “low impact design” are interchangeable.

What does it mean to conclude on page 2 (page 3?) that subsection (c) requires DC Water to offer incentives? How does that square with earlier list of mandates for DC Water? Does DC Water have discretion to deviate from DDOE’s program structure?

The OGC requests clarification for the first portion of this question. Without such clarification, the OGC continues to hold the position stated in its earlier memorandum of January 25, 2011 – that subsection (c) of the Act does require DC Water to offer incentives. The subsection states affirmatively, that impervious surface fee discounts (which would act as incentives) approved by the Authority shall be

retroactive to no earlier than the date of the implementation of the impervious surface fee. This statement would be superfluous if DC Water were not required to offer incentives.

Regarding whether DC Water has discretion to deviate from DDOE's program structure, §§34-2202.16 and 34-2202.16a should once again be reviewed. §34-2202.16 states that the Mayor shall ensure that that the stormwater fee and the impervious surface area charge employ consistent methodologies. Webster's Third New International Dictionary defines 'consistent' as 'showing no noteworthy opposition'. 'Methodology' is defined as the 'processes, techniques or approaches used in the solution of a problem'. Given these parameters, while both the stormwater user fee and the impervious area surface charge must include the same fundamental processes, there is no statute or regulation which requires these processes to be identical. For example, both must be based on a measurement of the impervious area of real property, and both must have an appeal process. The offering of an incentive is a fundamental process that both also should have. However, these fundamental processes, while they could be identical, are not required to be identical.

It is the opinion of the OGC that while the stormwater user fee and the impervious area surface charge programs should include the same fundamental processes, these processes need not be identical.



DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY | 5000 OVERLOOK AVENUE, SW | WASHINGTON, DC 20032

MEMORANDUM

To: David Bardin, Member, DC Water Board of Trustees
Through: Randy E. Hayman, General Counsel
From: Katherine Cabill, Principal Counsel *KC*
Date: August 9, 2011
Re: Low Impact Development "LID" - Follow -Up Questions

You have requested the Office of the General Counsel (OGC) to review and comment on certain follow-up questions regarding the referenced matter. A copy of these questions is attached to this memorandum for your convenience.

Your questions, along with the OGC's response, follow:

May we interpret Section 3 of D.C. Law 17-370 [about incentives] in light of Section 2 of that same Law [about impervious area rates or charges]? -Or must we consider each in isolation?

In responding to this question, a review of the basic rules of statutory construction is beneficial. A recent District of Columbia Court of Appeals case Grayson v. AT&T Corporation 15 A.3d 219 (2011) is helpful. In this case, consumers brought actions against telephone companies and Internet dial-up service provider under the Consumer Protection Procedures Act (CPPA). The court reiterated that "[we] presume [that the legislature] acted rationally and reasonably, and [we] eschew interpretations that lead to unreasonable results". (*Ibid* at p.238) The court continued that "a basic principle [of statutory interpretation] is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous". (*Ibid* at p.238)

In light of these basic principles, it would not be appropriate to read these two sections in isolation. This is especially true in light of the fact that the same phrases such as 'occurring under natural conditions' and 'relative to the flow present under natural conditions' are used in both sections.

Would a natural outcropping of impervious rock on a property be an "impervious surface" for purposes of billing methodology?

A natural outcropping of impervious rock on a property should not be considered an "impervious surface" for purposes of billing methodology. The examples of "impervious surface" listed in Section 2 of the Law are all man-made. The language in the two sections talks about impervious surfaces as increasing water runoff more than would be found under natural conditions. A natural outcropping of impervious rock is a natural condition.

May DC Water billing methodology distinguish between two or more degrees of imperviousness? Or does Section 2 allow only an either/or choice –pervious or impervious?

In responding to this issue, a review of statutory interpretation is once again appropriate. The case Grayson v. AT&T Corporation remains helpful. In reviewing the statute in that case, the court noted that “words are to be given a sensible construction and one that would not work an obvious injustice”. (*Ibid* at p. 238) The court also noted that [we] are “required to remain more faithful to the purpose than the word”. (*Ibid* at p. 238)

If one property owner went to the expense of creating an environmentally friendly parking lot using semi- pervious material and vegetation, an ‘obvious injustice’ may occur if he is charged the same amount as the property owner creating an asphalt parking lot.

The Law does not preclude DC Water from distinguishing between two or more degrees of imperviousness.

If a property owner affixes to an existing rooftop a covering of pervious material (such as soil or artificial soil that allows entry of water) will rooftop so covered cease to be “impervious’ surface for purposes of the authorized billing methodology?

In answering this question, the efficacy of the roof mimicking natural conditions in impeding the quantity and rate of water flowing from the surface would need to be examined. If the roof was successful, the intent of the Law would be met.

Does “surface” in Section 216 a [“incentive... to reduce the *surface* area”] mean the same as “surface” in Section 207 (a) (1) [“amount of impervious *surface*?]

The manner in which the term “surface” is described is the same in both sections. The “surfaces” prevent or retard the entry of water into the ground. Therefore, it is reasonable to assume the terms carry the same meaning.

Does “incentive”... to reduce the surface area” (that either “prevents” or “retards” or “causes” effects as stated also mean “incentive...to increase” such surface area?

If the intent of the Law would be met, this would be a reasonable interpretation of the Law. Regarding the examples: (i)... adding permeable pavement to what had been lawn? - would only qualify if it could be measured that the added permeable pavement decreased water run off to a greater extent than the lawn; (ii)... adding permeable pavement *in place of* impermeable pavement - clearly qualifies.

Does Section 216a call for incentives “to install... practices that reduce the amount of stormwater runoff generated from a property” or incentives “to reduce the [impervious] surface area?

As earlier stated by the court in Grayson v. AT&T Corporation [we] are “required to remain more faithful to the purpose than the word”. With this principle in mind, both types of incentives would be allowable under this section.

May DC Water express its incentives as dollar amounts even if DDOE uses percentage discounts as its incentives?

The OGC's earlier memorandum dated July 11, 2011 on Low Impact Development "LID", addressed the question –"Does DC Water have discretion to deviate from DDOE's program structure? The OGC concluded that while the stormwater user fee and the impervious area surface charge programs should include the same fundamental processes, these processes need not be identical.

A fundamental process for these two programs is a LID incentive . However, these incentives need not be identical. Therefore, DC Water may express its incentive as a dollar amount even if DDOE uses a percentage discount as its incentive.

FOR: Randy E. Hayman, General Counsel **DATE:** 25 July 2011
FROM: David J. Bardin, Chair, Retail Rates Committee
RE: OGC memo of July 14, 2011, re: *Low Impact Development "LID"*

Thank you for OGC's memo. Discussion of whether DC Water may deviate from DDOE's program structure correctly understood my question. Additional questions follow:

Q#1: May we interpret Sec. 3 of D.C. Law 17-370 [about incentives] in light of Sec. 2 of that same Law [about impervious area rates or charges]? – Or must we consider each in isolation?

D.C. Law 17-370, Sec. 2 authorizes DC WASA to base sanitary sewer service charges in part on impervious surface considerations by amending Section 207 of a 1954 Act of Congress. As a result, lead-in language and paragraph (1) were changed to read:

"(a) The sanitary sewer service charges established under the authority of this title shall be based on the following:"

"(1) A billing methodology which takes into account both the water consumption of, and water service to, a property and the amount of impervious surface on a property that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow relative to the flow present under natural conditions.

Q#2A: Would a natural outcropping of impervious rock on a property be an "impervious surface" for purposes of billing methodology?

Q#2B: May DC Water billing methodology distinguish between two or more degrees of imperviousness? Or does Sec. 2 allow only an either/or choice – pervious or impervious?

Q#2C: If a property owner affixes to an existing rooftop a covering of pervious material (such as soil or artificial soil that allows entry of water) will rooftop so covered cease to be "impervious" surface for purposes of the authorized billing methodology?

D.C. Law 17-370, Sec. 3 amends DC WASA's enabling law, D.C. Law 11-111, to add (among other things) subsection 216(b-1) and section 216a, reading in part as follows:

"(b-1)(1) The Authority shall offer financial assistance programs to mitigate the impact of any increases in retail water and sewer rates on low income residents of the District including a low-impact design incentive program.

"(2)"

"Sec. 216a. Low-impact design incentive program and fee discounts.

"(a) ... [T]he Authority shall establish, together with the District Department of the Environment ("DDOE"), a low-impact design incentive program within the DDOE, to reduce the surface area that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions.

"(b)"

Q#3A: Does "surface" in Section 216a ["incentive ... to reduce the surface area"] mean the same as "surface" in Section 207(a)(1) ["amount of impervious surface"]?

Q#3B: Does "incentive ... to reduce the surface area" (that either "prevents" or "retards" or "causes" effects as stated) also mean "incentive ... to increase" such surface area?

- Removing existing impervious materials could "reduce" impervious effects recited in Section 216a.
- But could adding materials also qualify?
 - o ... adding permeable pavement to what had been lawn?
 - o ... adding permeable pavement in place of impermeable pavement?

Q#3C: Does Section 216a call for incentives "to install ... practices that reduce the amount of stormwater runoff generated from a property" or incentives "to reduce the [impervious] surface area"?

Q#3D: May DC Water express its incentives as dollar amounts even if DDOE uses percentage discounts as its incentives?

FOLLOW-UP ITEMS – Retail Rates Committee Meeting (June 26, 2012)

- Review the presentation of “average” use by CAP customers compared to the average residential customer given that the averages are not the same (Mr. Roth)

Response:

FY 2011 average monthly consumption for CAP customers was 7.42 Ccfs compared to 6.69 Ccf used by residential customers. The impact of the variance in monthly water use between the average CAP customer and the average residential customer is an increase of \$5.72 a month (see chart below). However, comparison of different use and multiple charts leads to miscommunication to stakeholders. Future comparisons will continue to use one average consumption assumption.

	FY 2012 ⁽¹⁾	FY 2012 ⁽²⁾	Difference
Total Amount Appearing on DC Water Bill After CAP Discount	\$ 34.26	\$ 39.98	\$ 5.72
Less: CAP Discount (4Ccf per month)	\$ (31.36)	\$ (31.36)	\$ (0.00)
Amount Appearing on DC Water Bill Prior to CAP Discount	\$ 65.62	\$ 71.34	\$ 5.72
DC Water Water & Sewer Retail Rates (1)	\$ 48.17	\$ 53.42	\$ 5.25
DC Water Clean Rivers IAC	6.64	6.64	-
DC Water Customer Metering Fee	3.86	3.86	-
Subtotal DC Water Rates & Charges	\$ 58.67	\$ 63.92	\$ 5.25
District of Columbia PILOT Fee	\$ 3.28	\$ 3.64	\$ 0.36
District of Columbia Right of Way Fee	1.00	1.11	0.11
District of Columbia Stormwater Fee	2.67	2.67	-
Subtotal District of Columbia Charges	\$ 6.95	\$ 7.42	\$ 0.47
(1) Assumes average residential monthly consumption of 6.69 Ccf, or 5,004 gallons.			
(2) Assumes average CAP customer monthly consumption of 7.42 Ccf, or 5,550 gallons.			