

Expert Report of Christopher P.N. Woodcock

June 2009

Prepared for

Fairfax County Water Authority

In the Matter of

Fairfax County Water Authority vs. City of Falls Church

Circuit Court of Fairfax County

No. 2008 16114

A handwritten signature in black ink, appearing to read "C. Woodcock", with a horizontal line extending to the right.

Christopher P.N. Woodcock

Woodcock & Associates, Inc.

Expert Report of Christopher P.N. Woodcock

Introduction

This report presents my views and opinions regarding the charges for water service by the City of Falls Church, Virginia (the City) , with particular consideration of the charges for water service to the City's retail customers in Fairfax County (the County). In particular, this report comments on the appropriateness of the City's inclusion of charges for water service that result in revenue surpluses that the City transfers to its general fund, which either reduces the tax burden on City residents or increases funds available for general fund services provided to the City's residents and businesses that are unrelated to water service.

My opinions in this matter are based on more than thirty years of consulting to water utilities throughout the United States, public service on several municipal boards that set rates, the provision of expert testimony on water rates in numerous jurisdictions, and the preparation of internationally accepted manuals of practice and other accepted literature on proper rate making techniques.

Education, Experience, & Qualifications

I have undergraduate degrees in both Economics (B.A.) and Civil Engineering (B.S.) from Tufts University in Medford, Massachusetts. After graduating in 1974, I was employed by the environmental consulting firm of Camp, Dresser, and McKee Inc. (CDM). For approximately 18 months I worked in the firm's environmental engineering group performing such tasks as designing water distribution and transmission pipes, sewer collection and interception systems, pumping facilities and portions of a wastewater treatment facility. From approximately January 1976, I worked in the firm's management and financial consulting services group, gaining increasing responsibility. At the time of my resignation in 1994, I was a corporate Vice President and appointed the leader of the group overseeing all rate and financial studies.

In the fall of 1994 I started my own consulting firm, Woodcock & Associates, Inc. In the fifteen years I have had this firm I have continued to provide consulting on water and wastewater rates to clients throughout the USA with some assignments in other countries.

In my career, I have worked on over 400 water and wastewater rate and financial studies. Clients have included small water districts serving several hundred customers to large regional agencies serving millions. I have provided services to both municipal utilities and investor owned (private) utilities, as well as to state and federal agencies and countries. Clients I have

worked with include: Arlington County, Boston, Baltimore, Dayton, Denver, Detroit, Edmonton Regional Customer Group, Fort Worth, Massachusetts Water Resources Authority, Metropolitan Water District of Southern California, New York City, Providence, Raleigh, San Antonio, San Diego County Water Authority, Washington DC, and Wichita. Corporate clients have included Frito Lay, Mazda and McDonalds.

I have also worked on a number of engineering and financial feasibility studies in support of revenue bond issues. I have helped draft and review revenue bond indentures, and I worked on several valuation studies, capital improvement financing analyses, and management audits of public works agencies.

I have also held elected and appointed positions on municipal boards overseeing public works functions. I served on various municipal boards and commissions for over 25 years. In that capacity I had to review and vote on increases to municipal wastewater rates and charges. I was also involved in negotiations with municipal finance officials in the proper treatment and recognition of rate revenues and the segregation of those revenues from general fund revenues of the community.

I have provided testimony on rate related matters before utility commissions in Rhode Island, Maine, Connecticut, New York, New Hampshire, Texas, and Alberta, Canada. I have also been retained as an expert witness on utility rate related matters in proceedings in state courts in Arkansas, Florida, Massachusetts, Michigan, New Jersey, Maryland, Ohio, Virginia, and Pennsylvania, as well as the Federal Court in Michigan. I have been selected to several arbitration panels related to disputes over water rates and charges, provided testimony on rate related matters to the Michigan and Massachusetts legislatures, and testified at administrative hearings on a number of occasions.

I am a member of the Water Environment Federation, the Rhode Island Water Works Association, the Massachusetts Water Works Association, the New England Water Works Association, and the American Water Works Association. For the Water Environment Federation, I was a member of the committees that prepared both editions of their manual on Wastewater Rates and Financing. For the New England Water Association I have been a member of the Financial Management Committee and its predecessor Committee on Water Rates for over 30 years; and I served several terms as chairman of that Committee. In my capacity as President Elect for the New England Water Works Association I also sit on the Executive Committee and the Board of Directors as well as chairing and sitting on a number of other administrative committees.

For the American Water Works Association, I am past chairman of the Financial Management Committee and the Rates and Charges Committee that has prepared the manuals on Revenue

Requirements, Water Rates, Alternative Rate Structures, and Water Rates and Related Charges. I remain a member of the Rates & Charges Committee of the American Water Works Association and am the longest serving member of that Committee. In my capacity on that Committee I have been a contributing member and in several cases a member of the editorial committee for the latest editions of all of the manuals of practice prepared by that Committee. I am a member of the subcommittee that reviews and comments on all publications having to do with water rates and charges that are issued by the American Water Works Association. I was also a contributor to the books "*Water Rates, Fees, and the Legal Environment*" published in 2005 by the AWWA, and "*Water and Wastewater Finance and Pricing – a Comprehensive Guide*" by George A. Raftelis (two editions).

A copy of my resume with a list of the publications and papers I have presented is appended to this report.

Summary of Expert Opinion

My opinions, to a reasonable degree of professional certainty, are:

1. Through its water rates and fees, the City of Falls Church has charged customers in Fairfax County for water service, but has transferred large amounts of these revenues to the City's general fund. The City's practice dates to at least 1961 and continues today.
2. The cost of Falls Church's general fund expenses are not the responsibility of water customers in Fairfax County. The property tax savings that result to Falls Church do not benefit Fairfax County water rate payers, nor are general fund expenditures by the City of Falls Church made for the benefit of Fairfax County water rate payers. The funds have been transferred to the City's general fund for expenses that are traditionally and typically tax supported.
3. While the recovery of reasonable indirect costs and payments in lieu of taxes in the water rates charged to customers in Fairfax County are appropriate, the taking of more funds for additional transfers to the City's general fund is not an appropriate or proper component of the rates and charges and not an appropriate use of revenues from such fees.
4. The City's transfers out of the water enterprise are not in conformance with generally accepted rate making principles.
5. The significant transfer of rate revenues to the Falls Church general fund has the effect of turning the City's water fees into something that water rate setting professionals generally recognize as a tax.
6. Water is a necessity. It is a public good that is sold under regulated conditions. In the absence of a private supplier, the provision of water is an essential governmental

service. Governments are not in the business to make a profit; they are non profit entities. By extracting a profit from a necessary governmental function, the City of Falls Church is abusing its unilateral authority to set fair and equitable water rates and charges.

Basis of Expert Opinions

History of Transfers

The City of Falls Church has had a long history of transferring revenues from its water fund to the City's general fund. In 1961 Falls Church's Executive Officer testified that the City was taking a return on equity from the water fund to transfer to the general fund.¹ The Circuit Court of Fairfax County issued an opinion in that case stating that the "evidence shows and it is admitted by the City that the water system is operated as a public utility corporation and reaps a substantial profit whether it be termed profit or return on investment"² In more recent times the City has made transfers to the general fund as a form of profit that are not justified by any cost attributable to operating the water system.

The City of Falls Church 1950 Charter discusses the disposition of surplus funds (Section 13.07). It called for any surplus to be used first to be paid into a "water works renewal fund" in an amount up to the annual depreciation. It could be used "only for renewing, rebuilding or extending the plant and distribution system" of the water utility. If there were still surplus funds, the Charter next called for a payment in lieu of taxes (PILOT) in an amount that would be paid if the utility were not municipally owned. If there were any surplus funds left over they could be transferred to the City's General Fund by a 2/3 vote of the entire City Council.

In 1992 and 1993 the City Charter was amended. These amendments eliminated the water works renewal fund and the restrictions on that first use of any surplus; in effect the requirement that surplus water revenues be used first for renewing and repairing the water system was eliminated. The payment in lieu of taxes was retained. However, the requirement for a 2/3 vote of the entire City Council to transfer funds from the water enterprise fund to the City general fund was eliminated. It was replaced with the provision for "a return on equity that is calculated using generally accepted accounting principles for utility enterprises" with only a majority vote of the City Council. The "generally accepted accounting principles for utility enterprises" wording is somewhat odd; there is no such thing as a return on equity that is determined or calculated based on "generally accepted accounting principles for utility enterprise." In its deposition, the City admits, there is no GASB standard that addresses

¹ Deposition Exhibit 236 page 407.

² City of Falls Church v. Fairfax County No 9312 (Fairfax Circuit Court 1961).

whether it is appropriate for a public utility to transfer moneys from its water fund to the general fund.³ While the *reporting* of the transfer may be an accounting principle, the *calculation* of a return on equity is a rate making principle. There are generally accepted principles for utility rate making and water rates in particular. These are discussed later in the report.

In looking at the fund balances of the Falls Church water enterprise fund, the impact of the charter revision eliminating the water works renewal fund becomes clear. At the end of FY⁴ 1992, the year prior to the lifting of the restriction, the water fund had cash and investments of \$24.5 million. In 1993 the water rate increased from \$1.15 to \$1.59 per 1,000 gallons, and by the end of FY 1995, the water fund cash and investments had increased to \$28.3 million⁵. By FY 2000 the value of the water fund cash and investments jumped to nearly \$42 million a 71% increase in eight years. Remarkably, the City was able to transfer over \$13.8 million to its general fund in addition to adding over \$17 million to the cash and investment balance in the water fund.

The May 2006 evaluation of water rates by the City's consultant Paul Cumiskey notes (pages 20 22):

For FY 1995 to FY 1998: "Annual operating revenues averaged \$10.4 million while annual operating expenses averaged less than \$7.8 million. Total availability fees⁶ and interest on invested funds totaled \$10.1 million and more than offset capital expenditures of \$8.1 million."

For FY 1999 to FY 2001: "Payments to the General Fund (ROI) increased by as much as \$2.0 million annually. The increase in the payments to the General Fund were offset by a rate increase in FY 2000, a substantial increase in the amount of availability fees and more investment earnings due to more funds being invested. Further, capital expenditures during this time period were lower than they were in previous years."

For FY 2002 to FY 2005: "Despite three substantial rate increases that occurred in FY 2003, FY 2004 and FY 2005 the cash and investment balance fell from \$43.2 million at the end of FY 2001 to \$20.2 million as of June 30, 2005." Among the reasons for this decline were payments to the City's general fund.

³ City Deposition pages 279 280.

⁴ References to years generally refer to the City's fiscal year which runs from July 1 to June 30. Fiscal year 1992 would run from July 1, 1991 to June 30, 1992.

⁵ During this period the City also more than doubled its availability charge to customers connecting to the City's water system.

⁶ Note that these fees have not been increased since 1996 – see City Deposition pages 551 552, despite Mr. Cumiskey's recommendation for such an increase in 2006 – see Cumiskey deposition pages 296 – 308.

In FY 2002 the water fund advanced the general fund over \$8.8 million of rate payer funds. These were paid back the following year.

During this period (1995-2002), the revenues from Falls Church's rates and fees far exceeded the costs of providing service.

With the removed restriction on the renewal funds and the more easily obtainable City Council vote (to a simple majority rather than a 2/3 vote), Falls Church was able to maintain a transfer for the return on equity at about \$1.3 million per year. By 1999 the transfer to the City's general fund grew to nearly \$2 million, and with the rate increase in 2000, the transfer was increased to over \$4 million per year in 2001.

Over the years, various reports, studies and memoranda on the transfer to the Falls Church General Fund have used different names and terms to refer to it. Consistent with the City's charter, it was typically called a return on equity although it was sometimes called a return on investment as well. In 2006, after the report of the City's consultant, Paul Cumiskey, the term was changed to a "Management Fee." As the City admits, however, there is no real difference.⁷

The calculation performed by the City was revised based on Mr. Cumiskey's recommendation to simplify the issue; however the basic concept of taking a portion of the water utility revenues and turning them over to the City's general fund remained consistent. Different mathematical calculations and rationale appeared, but there was never any cost to justify the transfer; a profit was made through inflated water rates, fees and charges and the extra money was given to the City of Falls Church general fund to benefit City tax payers, not the water system rate payers. As discussed by the City's Chief Financial Officer John H. Tuohy, during his individual deposition (page 67), the "management fee" is just another name for the return on equity – "My view is it's a distinction without a difference."

The distinction between the City taxpayers and the water system rate payers is a significant one. Unlike in many cities, they are not the same in this case. The City's taxpayers are made up 100% of businesses and residents of the City of Falls Church. The City's water rate payers, on the other hand, are comprised of residents and business in both Falls Church and Fairfax County. In fact, Fairfax County customers make up more than 90% of the City's water rate payers, while less than 10% are Falls Church residents.

The following table presents the history of the transfers to the general fund going back to 1981.

⁷ City Deposition pages 281-282.

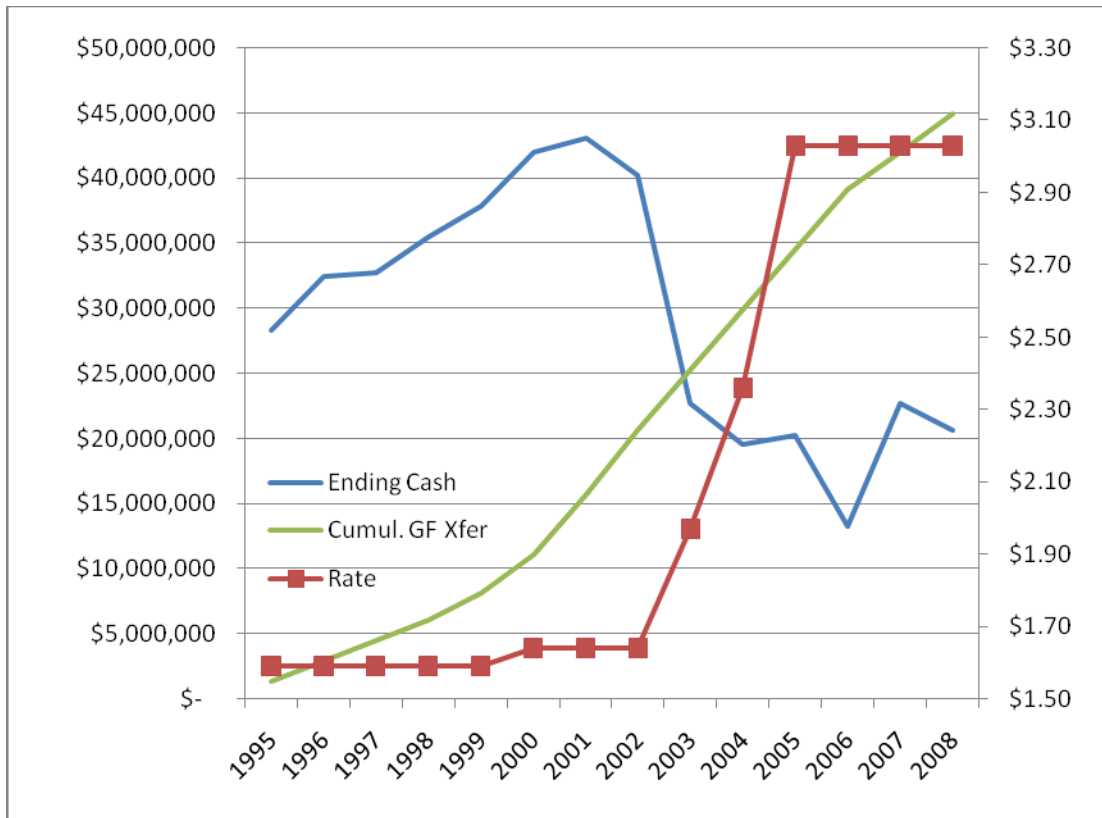
History of Falls Church Return/Fee Transferred to General Fund

1981	400,000	1995	1,389,888
1982	440,000	1996	1,543,931
1983	448,631	1997	1,590,312
1984	428,298	1998	1,622,118
1985	1,004,054	1999	1,992,444
1986	1,150,410	2000	3,029,637
1987	1,003,401	2001	4,576,191
1988	927,579	2002	4,878,754
1989	1,283,145	2003	4,625,874
1990	1,290,869	2004	4,625,874
1991	1,391,560 ⁸	2005	4,625,874
1992	1,511,614	2006	4,625,874
1993	1,277,828	2007	2,905,121
1994	1,362,636	2008	2,926,174
		Total	\$ 58,878,091

The following chart presents a history of three elements of the Falls Church water fund between 1995 (after the restrictions on the water renewal fund had been eliminated and transfers to the City's general fund only required a majority vote of the City Council) and 2008 (the last year of audited information I had for Falls Church). The chart shows the history of:

- the amount of cash, cash equivalents and investments in the water fund
- the cumulative transfers to the City's general fund starting in 1995
- the City of Falls Church water rate

⁸ City claims the amount for 1991 was higher \$2,070,468 (see City Deposition page 287).

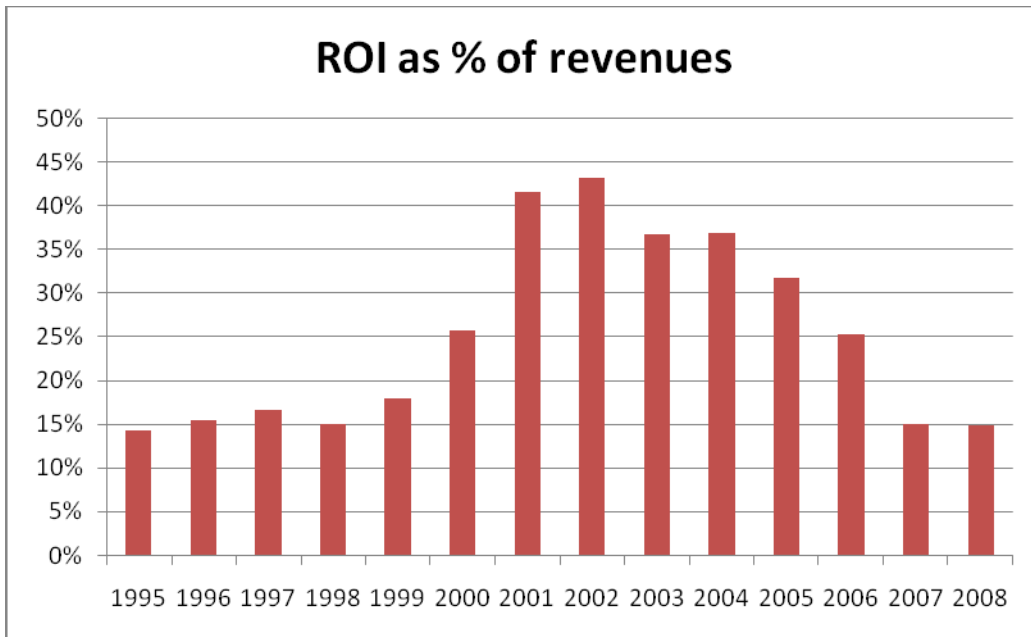


While the water rate was bumped up in FY 2000, it was not enough to sustain the drop in cash and investments. In 2003, 2004, and 2005 the water rates were increased, generating more revenues to continue the transfer of more than \$4.6 million per year to the general fund. With the changeover to the smaller “management fee” in 2007 (still nearly \$3 million) the City was able to forego another rate increase and stop the drop in cash reserves. The City admits that the amount of the general fund transfer was reduced, at least, in part, to avoid having to raise the commodity charge yet again.⁹

The following chart presents the transfers from the water fund to the general fund, since FY 1995, as a percentage of the total operating revenues of the water system¹⁰.

⁹ City Deposition pages 321 322.

¹⁰ Includes all revenues from water rates plus rentals and miscellaneous income but does not include revenues from availability fees or interest income.



Once again, this chart shows that the City of Falls Church increased the money it took from the water fund substantially in 2000. By 2002 nearly 45% of all water rate revenue was being transferred to the City general fund for non water purposes. This is an extraordinary percentage of revenues to take from rate payers (primarily in Fairfax County) and give to tax payers in Falls Church. Even the 15% during the mid 1990s and in the past two years is a high percentage of revenues, particularly when one considers that these are for non water related purposes.

The City of Falls Church has indicated its intention to continue the practice of transferring water revenues to the City's general fund. The City's FY 2010 proposed budget for the Water Department includes more than \$2.2 million for this transfer, continuing to use the term "management fee." During their depositions, both Mr. Tuohy, the City's CFO, and Wyatt Shields, the City Manager, indicated that the City has no plans to stop making this transfer¹¹.

The table appended to this report summarizes much of the historical information for the 1995 – 2008 time period. While the City's practice of transferring moneys from the water fund to its general fund goes back to at least 1961, I was unable to find documents that provided all of the detail included on this table going back to that date.

Fairfax County water customers pay for Falls Church General Fund Expenses

Because the City of Falls Church general fund receives such substantial contributions from the water fund, it provides a direct financial benefit to the residents and business in Falls Church.

¹¹ Deposition of Mr. Tuohy page 112, Deposition of Mr. Shields pages 100 101.

There is no cost to the Falls Church general fund associated with the return on investment¹² the general fund does not have to devote or commit any resources to receive these payments. While the City may allude to risks, there are no quantifiable risks associated with the provision of water service¹³. Further, when asked if the City could quantify or calibrate its risk, it responded “no”.¹⁴ The City was also asked about the backing for the bonds it sold for water system improvements. While the bonds were general obligation bonds, when the City Council “adopted the resolution to approve the bond, it also made clear that the bond was to be repaid from revenues of the water system rather than from taxpayer monies.”¹⁵

The interest earnings that are transferred to the general fund are earnings generated on investments in the water fund, not general fund investments. The water fund surpluses upon which interest is earned were generated (predominately) from Fairfax County residents and businesses, but 100% are used solely for the benefit of the Falls Church residents and businesses.

Son Nguyen, who oversaw the Falls Church water system from the mid 1990s until 2003, referred to the water fund as a “money making machine” and the “goose [that laid the golden egg].”¹⁶

The millions of dollars that are moved from the water fund to the City’s general fund are primarily generated by non city customers: residents and businesses in Fairfax County¹⁷. The funds that are transferred to the general fund can either be used to reduce the property tax payments of residents and businesses in Falls Church or can be used to pay for general fund expenses that benefit the residents and businesses of Falls Church. The customers in Fairfax County that provide the excess water rates revenues that make this possible do not pay property taxes in Falls Church and therefore do not benefit from lower City property taxes. The City of Falls Church spends the profits it takes from the water fund on items for the benefit of Falls Church residents and businesses – not the rate payers in Fairfax County. The revenues are generated primarily from Fairfax County for the benefit of Falls Church tax payers.

The comment in the management’s discussion and analysis section of Falls Church’s FY 2007 Consolidated Annual Financial Report is quite telling.

“Some of the cost of governmental activities was paid by those who directly benefited

¹² The same applies to the current management fee charged by the general fund to the water enterprise fund.

¹³ Based on a review of the City’s CAFR, the water fund actually supported the general fund with an \$8.8 million loan or advance. The presence of the water fund appears to reduce the City’s cash flow risks.

¹⁴ City Deposition pages 397 – 398.

¹⁵ City Deposition page 399.

¹⁶ Deposition of Mr. Nguyen pages 150 – 152.

¹⁷ City Deposition page 369.

from the programs (\$2.9 million in 2007 and \$2.6 million in 2006) and other governments and organizations that subsidized certain programs with grants and contributions (\$3.8 million in 2007 and \$3.1 million in 2006). Of the \$52.4 million net cost of services in 2007, the amount that our taxpayers paid for these activities through City taxes was \$48.7 million. The remaining \$3.7 million net cost was funded primarily by transfers from the Water and Sewer funds of \$3.1 million. In fiscal year 2006, of the \$48.8 million of net cost of services, the amount that our taxpayers paid through City taxes was \$45.3 million, and the remaining net cost of \$3.5 million was funded primarily by transfers from Water and Sewer funds of \$4.8 million." (emphasis added)

In addition to Mr. Nguyen, other Falls Church City officials and representatives have openly recognized that the water fund subsidizes the City's general fund. For example:

In an April 9, 1985 article in the Fairfax Journal, Falls Church Mayor Carol Delong acknowledged the "subsidies from the city water rate."

An April 4, 1990 memorandum to the acting City Manager from the Director of Public Utilities discussed different strategies for increasing the water rates in order to provide excess water funds to the City.

The Falls Church April 11, 1994 City Council minutes reflect comments from Councilman Dover that if the City continues to live off the water reserve fund and the water return on investment it will price itself out of the market.

The November 27, 1995 City Council minutes include City Manager David Lasso's comment that each year the City receives substantial amounts of money from the water system to defray costs the City might otherwise have to pay through general taxes.

A March 17, 1999 letter from the City Manager to the Falls Church City Council discussed problems with continually tapping the water fund and having to raise water rates to do that.

The May 10, 1999 City Council minutes include comments from the City's CFO, supporting a rate increase so the City could appropriate water fund interest earnings to the general fund to retire obligations of public safety projects from the early 1990s (clearly not a water related expense). At the same meeting, former Mayor Carol Delong urged the Council to deny the rate increase noting that spending water funds on anything other than the water system was, in her opinion, unethical.

The April 26, 2004 City Council Minutes include statements by Councilman Mabry that the property tax rate could be reduced further "if the water rates could be adjusted"; that "the City of Falls Church could not financially exist without the water

system;" and that the ROE "(about 20 cents on the tax rate) was a big earning for the city."

The minutes of the July 7, 2005 meeting of the Utilities Committee of the City Council explicitly notes the connection between the water fund transfer and the City's tax rate – "the current ROI transfer represents approximately \$0.17 on the tax rate."

The presentation to the City Council Utilities Committee in late 2005 (or early 2006) states "City Councils have, throughout this period, clearly articulated the desire to sustain a large return from the Water Fund to the General Fund."

The April 24, 2006 City Council Minutes include a statement by Councilman Mabry that "[the Water Fund] was a significant asset and produced approximately \$3 million in return on equity as well as indirect support for staff functions. He said the return equaled about 8 10 cents on the tax rate or about \$600 in benefits for each homeowner."

The City also admitted in its deposition that:

"Q. I'm asking generally if in the past the city has transferred monies from the water fund to the general fund in order to help reduce the property tax rate it charges to its own citizens?

A. I guess you could say that, yes."¹⁸

"Q. And so my question is, isn't it true that the City has taken money in the past from that water fund and used it to help balance the City's general budget?

THE WITNESS: Correct."¹⁹

"A. When we figure out the City's budget, we figure the return on equity at the beginning of the process. The tax rate is computed at the end of the process, so whatever all the different revenues sources are compiled together results in a tax rate."²⁰

"Q. Okay. Is there any direct relationship between the water fund and the City's budget in the context of the City's budgeting process?

A. Yes, there's a relationship.

Q. And would you explain what that is?

A. We do the budget for the water fund, P&L, do the budget for the general fund. There's a transfer that's part of that process. And then at the end, when we see all

¹⁸ City Deposition pages 340 341.

¹⁹ City Deposition page 387.

²⁰ City Deposition page 401.

the different revenues coming in, that gives us, if you will, the delta between revenues and expense of the general fund, and we use that, obviously, to adjust either expenditures downward or revenues upward.”²¹

“Q Mr. Tuohy, you said that there was not a direct relationship between the return on equity and the tax rate, and you explained that the way the budget process works is the return on equity is computed for the water fund and that money goes into the general fund, and then you set the tax rate based on how much money you need to pay for the City's operations, right?

A Correct.

Q All right. So the more money that goes into the general fund from the return on equity, the less money you need in tax dollars, right?

A Correct.”²²

There is no doubt that the City Council was aware that the transfers from the water enterprise fund to the City's general fund had a positive impact on the City's budget and its tax rate. The benefit to City residents and business was well known and often discussed.

In 2003, the City raised its water rate from \$1.64 to \$1.97, and projected additional rate increases in next five years, with \$3.58 anticipated by FY 2008.²³ In FY 2004, the rate was raised to \$2.36, and then to \$3.03 in FY 2005.²⁴ When the rate was raised to \$3.03 in FY 2005, the City projected it would reach \$3.83 by FY 2009.

The primary driver for these rate increases was maintaining an extremely large transfer of “return on equity” from the water fund to the general fund. The City Manager wrote in a memo to City Council members that the “water fund in particular needs a rate adjustment to cover our ever increasing costs, especially the sizable ROI transfer to the general fund. Without adjusting the rates, the ROI will drain the water fund of its cash.... Therefore it is extremely important that the Council determine a level of rates that cover our costs and provide for a reasonable ROI.”²⁵

Since June 2005, however, the City has held back on further increases to its water rates, fees and charges keeping them at the 2005 levels. In July 2005, Fairfax Water advised the City that

²¹ City Deposition page 402.

²² City Deposition page 403.

²³ Minutes of City Council Meeting of May 12, 2003. (Dep. Ex. 120.)

²⁴ Minutes of City Council Meeting of June 13, 2005. (Dep. Ex. 61.)

²⁵ Deposition Exhibit 242.

it would be offering water service to customers in the City's area of service in Fairfax County.²⁶ The City expressed concern that its water rates were getting too high relative to those charged by the Fairfax County Water Authority.²⁷ Previously planned rate increases ceased, and without those increases, the generation of excess profits slowed. As a result, the City became worried about the dropping level of the water fund cash and investments and the ability to continue the transfers from the water enterprise fund to subsidize the general fund (see chart on page 8).

In February 2003, the City's consultant, CDM, sent a letter to Mr. Samar Beidas, the General Manager of Falls Church's Department of Environmental Services. In that letter, the consultant acknowledged that the City was accustomed to a \$4.6 million annual transfer to the general fund but also needed funds for capital improvements. In order to continue the transfers and fund the capital improvements, the consultant presented a plan that included increasing the water rates through 2008, issuing bonds to pay for the cost improvements, and reducing the reserve level from \$14 million to \$8 million in order to continue the transfers. The letter also raised the idea of charging higher rates to County customers than City customers.

CDM's letter did not address why bonding of capital improvements would be needed if there were sufficient reserves from rate revenues to pay the cost of improvements. It seems clear that the City did not want to use those reserves for water system improvements, preferring to use them to subsidize the City's general fund rather than using the funds to pay for projects that would benefit the rate payers who provided the funds in the first place. If the reserves were used for water system improvements they would benefit the water system customers, with over 90% of those customers being outside the City. On the other hand, transferring the water enterprise reserves to the City's general fund would directly benefit only the citizens of Falls Church – less than 10% of the customers that provided those reserve funds through their water rates and charges.

Two months after the February 2003 CDM letter, the City Manager (Mr. Dan McKeever) sent an email to members of the City Council suggesting alternative rate increase strategies. He notes that rate adjustments will be needed "to finance the operations of the water system, a ROI transfer, and approximately \$35 million in capital improvements."

Less than a month later, City Council member Mabry emailed Mayor Gardner reporting on a meeting of the Finance Committee noting "I think there was unanimous agreement that the best way to get at some more water money is to bulk up the return on equity." This was perfectly consistent with the City's history of accumulating huge unrestricted reserves for the

²⁶ Letter from Day to Gardner of July 8, 2005 (Dep. Ex. 36).

²⁷ Minutes of City Council Meeting of Apr. 4, 2004 at 23 (Dep. Ex. 60.); City of Falls Church, Water Rate Evaluation, Apr. 6, 2007 (Dep. Ex. 57).

sole purpose of throwing off interest income and maximizing the funds that can be extracted from the water fund to subsidize the City's general fund.

By 2005, the City realized that the water fund had been generating "negative net income"²⁸ and that for the past four years the City had been transferring prior years' earnings to the general fund. Mr. McKeever's PowerPoint presentation also notes that the "last rate and future rate adjustments plus modifications to the administrative charge should result in positive earnings for the Water Fund." The City had clearly determined it should raise its water rates again in order to generate profits in the water fund that could then be transferred to the City's general fund.

Transfers on top of Administrative Costs and PILOT are Duplicative

At least since 1992, the City's water rates included three distinct components encompassing the payments to the City's general fund:

1. Payments of indirect costs
2. Payments in lieu of taxes
3. Return on investment (or profit)²⁹

The indirect costs are for administrative or support services provided by the City such as purchasing, financial and management services. The inclusion of this first element – the indirect costs – is not in dispute. When properly calculated, these are costs that are typically and properly included in the determination of water department expenses for inclusion in the enterprise fund's rates, fees and charges. When the City's consultant, Mr. Cumiskey, analyzed the indirect overhead costs for the City in 2005, he noted that the amounts the City was charging for these indirect expenses were high relative to other utilities he had looked at, and he recommended a significant reduction (\$2.07 million to \$1.14 million) in the cost of these services assigned to the Falls Church water utility. While it is somewhat difficult to compare one utility to the next because of different accounting treatments of expenses, based on my experience, I agree with Mr. Cumiskey³⁰ that the amounts charged by Falls Church to the water fund are on the high side³¹.

While not as common as the first element, the PILOT is also a proper charge in most circumstances. In determining the proper amount of the PILOT, care must be taken that the amount charged to the water fund and transferred to the general fund is not duplicative and has some reasonable basis. In some places, the PILOT is used in place of a charge for indirect

²⁸ See PowerPoint presentation attached to 11/17/2005 email from Tuohy to Etris.

²⁹ Also called a return on equity and later changed to a "management fee."

³⁰ See Deposition Ex 93 and deposition of Mr. Cumiskey pgs 168 178.

³¹ Even with Mr. Cumiskey's proposed reductions, all the administrative costs still represent in excess of 24% of the operating revenues; a percentage that still exceeds the average of 21.3% contained in Mr. Cumiskey's report.

services; in others, it can be in addition. Often the PILOT is based on the assessed value of real property owned or used by the water enterprise and charged at the prevailing property tax rate. The amount of the PILOT charged to the Falls Church water enterprise fund is relatively small³², growing from some \$34,000 in the late 1980s to \$110,000 in 2008. Documents provided to date by the City, however, are not sufficient for me to determine the basis on which the City has calculated the current PILOT. The City's current CFO testified that he did not know how the current number was calculated.³³

The final element, the return on investment or profit that is transferred to the City's general fund, is not an appropriate or proper cost for a municipal water enterprise fund. A profit is an appropriate element for an investor owned or privately held utility, but in that case, the payment is needed to induce a private company to provide the service, the rates charged are typically regulated by the State, and there are other expenses reflected in a municipally owned water utility's rates that are excluded.

As shown on the appended table, Falls Church has maintained a large sum of cash and investments in its water fund. While the end of year cash and investments has dropped substantially since 2002, (with one exception) it has been greater than the annual operating revenues, and through 2002 it generally was at a level that was four times the annual operating revenues. This is an extraordinary level of cash and reserves, particularly for a utility with no revenue backed bonds. The elimination of the restricted water construction renewal fund with the 1992/1993 Charter revisions makes this level of cash and investments even more extraordinary – there are no restrictions on its use. Because these unrestricted reserves are not reserved for anything in particular – they are pure profit. That profit is used to generate interest income that is turned over to the City's general fund and that provides yet another source of revenues to transfer to the general fund. As shown on the appended table, interest income was well over \$1 million per year through 2002 and in recent years has edged back up to nearly \$1 million per year again.

The return on investment payments to the City are nothing more than excess revenues generated by charges to customers that reside primarily outside the City limits to the benefit of the tax payers of Falls Church. There is no legitimate cost or service associated with the provision of water service that can be assigned to these transfers. All legitimate overhead, management and administrative costs are recovered through the first two elements: the indirect costs and the payment in lieu of taxes. There are no costs remaining that can be tied to the return on investment (or "management fee").

³² Relative to the return on investment transfers.

³³ Deposition of Mr. Tuohy pages 208 209.

In 2006, based on a study by Mr. Cumiskey, Falls Church eliminated the return on investment and substituted it with a so called "management fee." (The first payment occurred for FY 2007.) From Mr. Cumiskey's and Mr. Tuohy's depositions, it is clear that there is no extra "management" associated with this fee because all of the City's direct and indirect costs are already paid for as part of an administrative charge to the water system.³⁴ Indeed, the City also admitted in its deposition (via Mr. Tuohy) that "there's no additional management being paid for through that [management fee], it's already been paid for in administration" costs.³⁵

The City's transfers do not follow generally accepted rate making principles

The transfers of a so called return on equity from the Falls Church water department enterprise fund to the City's general fund is not a proper or generally accepted utility rate making expense. The cost of this transfer is unrelated to the cost of providing water service; in fact there are no costs that can be associated with it that have anything to do with the provision of water service.

The City's Annual Financial reports from 2001 through FY 2008 characterize the money moved from the water fund to the City's general fund as "excess operating funds." By the City's auditors own words, the funds are "excess" and therefore not needed or required to provide water service. The recovery of excess revenues or "excess operating revenues" in order to generate surpluses that can be transferred to the general fund is not a proper cost to be recovered through rates. It is a clear indication of excessive rates.

Transfers of water department revenues to a City's general fund on top of indirect service charges and a payment in lieu of taxes are double dipping and without any merit.

The American Water Works Association (AWWA) is the acknowledged and leading authority on standards, custom and practice in public water supply in North America. The organization consists of over 60,000 water professionals. Among the activities and information the AWWA provides to water professionals are policy statements, standards, and guidance manuals.

The City admits that it has looked to the AWWA in the past for guidance on best practices in utility rate setting.³⁶

The Association's policy statements undergo review and scrutiny at many different levels of the organization by numerous professionals before they are adopted. They reflect a consensus of thinking in the water supply industry.

³⁴ See deposition of Mr. Tuohy pages 72 and 381 383; deposition of Mr. Cumiskey page 251 52.

³⁵ City Deposition pages 302 303.

³⁶ City Deposition page 318, line 8 19.

The AWWA has an adopted policy on Financing, Accounting and Rates. This policy was first adopted in 1965 and has been updated since. In part, this policy statement³⁷ says:

“The American Water Works Association (AWWA) believes that the public can best be provided water service by self sustained enterprises adequately financed with rates and charges based on sound accounting, engineering, financial, and economic principles.

To this end, AWWA recognizes the following principles that water utilities should establish. Implementation of these principles can be balanced against other policy objectives; however, no policies should be adopted that compromise the long term financial integrity of water utilities or their ability to provide service to customers. Basic financing and rate principles include:

1. Water utilities’ revenues from water service charges, user rates, and capital charges, (e.g., impact fees and system development charges) should be sufficient to enable utilities to provide for:

- annual operation and maintenance expenses;
- capital costs (e.g., debt service and other capital outlays); and
- adequate working capital and required reserves to permit going concern operations under normal and emergency conditions.

2. Water utilities should account for and maintain their funds in separate accounts from other governmental or owning entity operations. Water utility funds should not be diverted to uses unrelated to water utility services. Reasonable taxes, payments in lieu of taxes, and/or payments for services rendered to the water utility by a local government or other divisions of the owning entity, may be included in the water utility’s revenue requirements after taking into account the contribution for fire protection and other services furnished by the utility to the local government or to other divisions of the owning entity.” (emphasis added)

It is thus the policy of the organization that represents water suppliers throughout North America that “water utility funds should not be diverted to uses unrelated to water utility services.” Falls Church’s transfer of millions of dollars every year from the water fund to the City’s general fund is a violation of this policy. It is not a generally accepted practice. To the contrary, it is not a proper rate making practice.

³⁷ The following quotations are from the policy statement adopted in 2003. Portions of the policy have been redrafted and are in the review process; however, the quotations included herein are in both the existing and the proposed new versions.

The United States Environmental Protection Agency prepared a training module for the Drinking Water Academy of the EPA. That module³⁸ includes the AWWA policy above (including the statement not to divert water funds to uses unrelated to water utilities)³⁹ and a discussion on under pricing and over pricing of water. In the section on over pricing the US EPA says:

- Overpricing by water systems presents problems as well.
- A system that overprices collects more revenues than requirements justify.
- Revenues from overpricing are sometimes used to subsidize other services or functions.
- Subsidies from ratepayers are inconsistent with cost based ratemaking and generally unfair, particularly if customers have not explicitly approved the subsidy.
- The higher price induces customers to underconsume, that is, to use less water than is economically efficient.

In this US Government training module it is made clear that it is not proper to over price water by subsidizing other services or functions with water revenues, and that these subsidies “are inconsistent with cost based ratemaking and generally unfair, particularly if customers have not explicitly approved the subsidy.”

The Manuals of Water Supply Practice are also put forth by the AWWA dealing with a wide range of subjects. As with the policy statements, the Manuals of Practice are developed or revised/updated by members with acknowledged expertise in the particular area or practice. As noted on the Association’s website: “AWWA Manuals of Water Supply Practices offer industry approved best practices for all aspects of water utility operation, management, and maintenance. Every AWWA manual is written, reviewed, and approved by an expert group of AWWA volunteer members – operators, engineers, scientists, managers, educators, manufacturers, and other water industry professionals – who are obligated to arrive at a consensus that the information is technically accurate and reflective of current best practice, before the manual can be printed and released. These manuals are thoroughly reviewed by the committees that develop them and by several oversight committees.”

The American Water Works Association’s M5 Manual – *Water Utility Management* repeats the policy statement presented above. It is included in the “Management Manual” under the Utility Financial Management chapter as accepted guidance as adopted by the AWWA Board of Directors.

The American Water Works Association’s M1 Manual – *Principles of Water Rates, Fees and Charges* is the first of more than 40 of the Association’s Manuals of Practice. This Manual presents the Association’s guidance on determining water rates and charges; it is considered

³⁸ <http://www.epa.gov/ogwdw/dwa/electronic/presentations/pwsoper/fincapacity.pdf>

³⁹ Actually the 1992 version of the policy; however the relevant wording regarding “funds should not be diverted” is included in this earlier version as well.

the authoritative document on water rates. The M1 Water Rates Manual discusses two methods that are used to determine the amount of revenue that is proper to recover through water rates: the cash basis and the utility basis. Generally the cash basis is used for municipal water departments and districts and the utility basis is used for privately owned (investor owned) water companies. In cases where a municipality provides service to customers outside its corporate limits the utility basis may be used to allocate the costs to those customers outside the City; however, the residual cash needs are used to determine the overall cash requirement from rates. Typically, any differential between the utility allocation and the cash needs is reflected in the in City rates. Because the utility based needs are frequently greater than the cash needs, this frequently results in a lower in City rate. In fact this is the cost basis or rate making rationale for having a rate differential. The distinction between determining an overall revenue requirement on a cash basis and allocating costs on a cash basis is clearly discussed in the AWWA's M1 Manual.

The City admitted in its deposition that it was unaware of this AWWA policy, and that none of the rate consultants the City had hired in the past ever pointed out this policy to the City.⁴⁰ I find that omission quite surprising. The City also admitted that it is unaware of any water industry rate making guide that approves the return on equity or "management fee" that has been taken over the years by the City.⁴¹

The 2005 presentations to the Falls Church City Council Utilities Committee and the City Council were prepared by the City's consultant, Mr. Cumiskey. It clearly states "A \$4.6 million ROI cannot be supported based on traditional utility rate making principles." In lieu of the return on investment, Mr. Cumiskey recommended that the City adopt a management fee that he thought might be more defensible and understandable. As discussed earlier, Mr. Cumiskey admitted, however, that there is no additional "management" or other cost that can be associated with this fee. He also admitted that his concept could not be found in any recognized water rate making publication.⁴²

Another basic fault with the City's calculation of the County water rates is that in more recent years the City has mixed the cash and utility basis of rate making – using elements of both. This is not a proper or accepted method for determining water rates.

The cash based approach for determining total revenue requirements has different components than the utility based approach. A simplified comparison is presented below.

⁴⁰ City Deposition pages 335 337.

⁴¹ City Deposition pages 279 280 and 282 283.

⁴² Deposition of Mr. Cumiskey page 233.

<u>Cash Basis</u>	<u>Utility Basis</u>
Operation & Maintenance Expenses	Operation & Maintenance Expenses
Capital	Capital
Cash capital (pay as you go)	Depreciation
Debt Service	Return on Rate Base

It is not proper to mix the two methods. For example, it is not proper utility rate making to include depreciation plus an allowance for cash capital needs. The adding of both cash and utility needs is not a proper rate making approach, it generates revenues far in excess of the cost to provide service.⁴³

Based on my review of the City’s water rate model, the rates for outside customers include all the cash components (including debt service and cash capital needs) plus all the utility based capital components (depreciation and the return on rate base). Falls Church has set its rates and fees using all the components of both methods. It is no wonder the City generated such enormous reserves – they double counted the capital needs. After paying for their operating costs and their cash capital requirements of debt service and pay as you go financed capital projects, all the revenues for depreciation and return on rate base were just gravy; there was no offsetting expense. As a result, the City was able to build up huge reserves.

Falls Church retained Mr. Paul Cumiskey to analyze its administrative costs and return on equity in the mid 2000s. Mr. Cumiskey recommended that the City replace the return on equity concept of transferring funds from the water enterprise to the City general fund, instead using the concept of a management fee. The management fee would be determined by taking 10% of the water funds operating revenues plus all interest earnings on invested funds. This rationale for transferring water funds to the City general fund is also without support in traditional rate setting.

First the concept of a management fee suggests there is an element of management. Mr. Tuohy, the City’s CFO, admits in his deposition of April 20, 2009⁴⁴ that there is no “management” associated with this fee, that all such management costs are recovered through the indirect/administrative charge that results in a transfer of water funds to the general fund. Mr. Cumiskey likewise testified that the administration charges capture all “management” costs associated with the water system.⁴⁵ The concept of this fee being used by others is misplaced – in cases where there is a management fee paid to a contractor by a city it was in cases where a private operator was engaged to provide services. As part of the contract, management fees

⁴³ Note that the M1 Manual indicates that it is appropriate to measure revenue requirements using one method and allocate costs using another method. It is also clear that adding the elements together is not proper e.g., “Depreciation expense is not included” under the cash basis (page 5).

⁴⁴ Deposition of Mr. Tuohy pages 72, 381 383.

⁴⁵ Deposition of Mr. Cumiskey pages 251 52.

were paid to the contractor by the municipality for the private contractor's right to (1) operate the system and (2) make a profit. It has no applicability to a municipality running its own system; municipalities are not in the business to make a profit, particularly on essential governmental services such as the provision of drinking water.

The management fee concept of transferring water funds to the general fund also is contrary to general rate making practices with the element of transferring all interest earnings to the City general fund. The reserve funds that provide the interest earnings were created by water rate payer funds. The rate payers are the ones that provided that cash and are also the ones that deserve the interest earnings on the investments. This is not cash that was provided by the City of Falls Church. In this instance, the notion of transferring all this interest is particularly troublesome. As discussed earlier, Falls Church set water rates, fees and charges that were well above the cost of providing service. The practice of overcharging the water rate payers resulted in the creation of enormous reserve funds that were well above the reasonable needs of the water utility. The idea of overcharging customers to create huge reserves that shed annual interest earnings that typically exceed \$1 million per year is contrary to accepted rate making practices. As noted above, Mr. Cumiskey, who created the management fee concept, testified that he could not think of any authoritative text or treatise that endorsed it.⁴⁶

Tax vs. Fee

In our industry, rate making professionals generally recognize a distinction between a fee and a tax. It is a permissible fee when the revenues generated do not exceed the cost of providing service (including a reasonable provision to cover anticipated future expenses). But if the revenues from fees consistently exceed such costs, it is generally considered to be a tax, especially when the excess revenues are transferred to the municipality's general fund for non water purposes, as is the case here. I agree that a community can set fees to recover more than the current expenses of an enterprise, with the idea of raising revenues in anticipation of future expenses. While that may be true of the funds restricted for future construction, it is not the case with the huge unrestricted balances at issue here. Falls Church has set its rates to provide excess revenues (over the enterprise's actual expenses) so it could transfer portions of the excess revenues to the City's General Fund.

Not all excess revenues are transferred out of the water enterprise fund to the City's general fund. While varying amounts have certainly been transferred out, a portion of excess revenues have remained in the enterprise fund. The keeping of some of the excess revenues does not lessen the impact however. Falls Church has (a) used these retained excess revenues to generate significant interest earnings that are transferred to the City's general fund; and/or (b) saved the retained excess revenues for transfer to the general fund in later years. In effect,

⁴⁶ Deposition of Mr. Cumiskey page 233.

Falls Church has set up an enormous investment fund within the water enterprise fund that was paid for by predominantly Fairfax County rate payers. This fund was then used to generate interest income each year that was transferred to the City general fund. Fairfax County rate payers created a huge interest earning fund that was used to pay for Falls Church's non water, general fund expenses. The excess profits were generated and invested to earn income for the City's general fund.

In later years, apparently feeling pressure from Fairfax Water's lower water rates, Falls Church did not increase its own water rates. This coincided with Fairfax Water's efforts to offer water service to new development in areas previously served by the City.

Water is an essential governmental service that should not be exploited and sold for a profit

Water is necessary for all living things. An adequate and safe water supply is generally necessary to obtain an occupancy permit for a building. In the absence of a private well with adequate quantities and qualities of water, water supply must be obtained from a community system. In some limited cases, water is supplied by a private, investor owned firm. In those cases, the amounts that can be charged by the private operator are established by state regulatory bodies to ensure fair and reasonable prices.

In most cases, water is a governmental function; the community is responsible for providing water service to residents. That is the case with the City of Falls Church. Unlike a private water company, there is no regulatory body to oversee the rate setting process of the City of Falls Church. City residents do have the recourse of elections of their City Council. There is no such recourse for over 90% of the City's customers that do not reside within the City of Falls Church.

The City of Falls Church is supposed to be a non profit entity. Municipalities are not in the business of making a profit or providing returns or dividends to stock holders or investors. The notion of a City making a profit for essential services such as education or public protection is absurd. No community charges more than the cost to make a profit on fire protection or schools or police protection. Likewise, no community should charge more than the cost of service to provide water – the most essential service provided by the government. Yet that is exactly what Falls Church has done and continues to do. The amounts charged to residents of Fairfax County, for an essential governmental service, far exceed the cost of providing that service. Falls Church openly admits to making a profit on the water it sells to all its customers. Because the City has no place to spend or dispose of that profit, it is returned to some but not all of the customers. The profits that are returned directly benefit only the City's businesses and residents. Those that reside in Falls Church reap 100% of the benefits of that profit while they contribute less than 10% to create it.

Conclusion

Based on my review of the documents and evidence provided, I believe that the City of Falls Church has been billing and collecting excessive amounts for water service to customers in Fairfax County. The revenues from water rates, fees, and charges have exceeded the costs of operating and maintaining the water utility, making repairs, improvements and expansions to the system, and reimbursing the City for legitimate overhead, management and financial support services.

The generation of excessive revenues has resulted in enormous fund balances that serve no purpose other than to provide a source of revenue to the City's general fund. While the revenues are predominantly collected from customers in Fairfax County, transferring rate payer generated funds to Falls Church's general fund directly benefits only the comparatively few customers in Falls Church – not the county rate payers.

The transfer of water funds to the City's general fund is not in conformance with generally accepted rate making standards and is contrary to long standing policy of the American Water Works Association.

The assessing of rates, fees, and charges that consistently generate revenues in excess of legitimate costs turns the City's water fees into what water industry rate making professionals recognize as a tax.

Applying generally accepted rate making principles, the City should adjust its rates immediately to reflect the legitimate costs of providing water service. Any excess revenues or fund balances that are being held in the water fund should stay in that fund. They should only be used to (1) pay for future capital projects related to the water system; and/or (2) reduce the water rates to all customers.

APPENDIX 1. SUMMARY OF HISTORIC FINANCIAL INFORMATION FY 1995 – FY 2008

<u>Fiscal Year</u>	<u>Operating Revenues</u>	<u>ROE or Mngmt Fee Transferred to General Fund</u>	<u>Transfers as % of Operating Revenues</u>	<u>Interest Income</u>	<u>End of Year Cash Plus Investment</u>	<u>Water Rate</u>
1995	\$ 9,714,263	\$ 1,389,888	14%	\$ 1,501,172	\$ 28,340,252	\$ 1.59
1996	\$ 10,028,549	\$ 1,543,931	15%	\$ 1,710,220	\$ 32,421,236	\$ 1.59
1997	\$ 9,593,782	\$ 1,590,312	17%	\$ 1,799,372	\$ 32,717,241	\$ 1.59
1998	\$ 10,794,944	\$ 1,622,118	15%	\$ 1,947,629	\$ 35,456,708	\$ 1.59
1999	\$ 11,133,052	\$ 1,992,444	18%	\$ 1,877,041	\$ 37,905,668	\$ 1.59
2000	\$ 11,787,769	\$ 3,029,637	26%	\$ 2,107,227	\$ 41,977,285	\$ 1.64
2001	\$ 10,977,933	\$ 4,576,191	42%	\$ 2,317,682	\$ 43,083,598	\$ 1.64
2002	\$ 11,297,328	\$ 4,878,754	43%	\$ 1,011,479	\$ 40,201,867	\$ 1.64
2003	\$ 12,583,244	\$ 4,625,874	37%	\$ 486,165	\$ 22,702,791	\$ 1.97
2004	\$ 12,528,123	\$ 4,625,874	37%	\$ 226,032	\$ 19,523,044	\$ 2.36
2005	\$ 14,554,007	\$ 4,625,874	32%	\$ 394,219	\$ 20,242,611	\$ 3.03
2006	\$ 18,326,495	\$ 4,625,874	25%	\$ 584,249	\$ 13,226,210	\$ 3.03
2007	\$ 19,385,666	\$ 2,905,121	15%	\$ 838,788	\$ 22,679,406	\$ 3.03
2008	\$ 19,705,069	\$ 2,926,174	15%	\$ 868,636	\$ 20,643,207	\$ 3.03

APPENDIX 2. MATERIALS REVIEWED CONCERNING FALLS CHURCH WATER SYSTEM

Item	Date	Doc	Description
1.	4/4/1950		1950 Va. Acts ch. 323
2.	5/21/1959	City FOIA2 2949	FCC Minutes
3.	5/21/1959		Agreement b/n FCWA and FCC
4.	6/23/1961		Testimony Excerpts, Falls Church v. Fairfax County
5.	6/29/1961		Opinion, <i>Falls Church v. Fairfax County</i> , No. 9312 (Fairfax County, Va.)
6.	3/29/1962	FW Historical 007209	Fairfax County Sun Echo Article: <i>Falls Church Water System Lucrative</i>
7.	7/1963		Wiley & Wilson, A Brochure: <i>Presenting Matters of Factual and Financial Interest Concerning Bonds Issued for the Water Department and General Obligations of the City of Falls Church</i>
8.	5/12/1969		FCC Minutes
9.	6/9/1969		FCC Minutes
10.	1976		Statement of Harold Miller, Mayor, City of Falls Church at the Potomac River, Hearings and Markup Before the Subcommittee on Bicentennial Affairs, the Environment, and the International Community, 94th Cong., 2d Session 777
11.	1980 1981	FCWA Morin 367 84	Wiley & Wilson, History of the City of Falls Church Water System.
12.	8/5/1981	FCWA Morin 327	Fairfax County Sun Article: <i>What Does That Water Bill Pay For?</i>
13.	9/2/1981	FCWA Morin 305 10	Memo from H. Burt to J. Lambert
14.	9/__/1981	FCWA Morin 325	Memo from J. Lambert to T. Davis et al.
15.	10/19/1981	FCWA Morin 1274 78	Letter from H. Wells to J. Lambert
16.	10/23/1981	FCWA Morin 1270	City of Falls Church Expenditure Estimates Spreadsheet
17.	1982	FCWA Morin 362 63	City of Falls Church Department of Public Utilities Schedule of Rates, Fees and Charges
18.	11/24/1982	FCWA Hist 14688	Northern Virginia Sun Article: <i>Falls Church Water, Sewer Rates Change</i>
19.	2/24/1984		Memo from R. Dolecki to J. Livinski
20.	__/__/1985	FCWA Morin 1264 65	Undated Article: <i>Fairfax County Water Authority Promises "Friendly Takeover"</i>
21.	4/9/1985		The Fairfax Journal Article: <i>Fairfax Wages War for Water</i>
22.	4/15/1985	FCWA Morin 54 55 Morin 67 68	Letter from F. Morin to C. DeLong
23.	4/16/1985	FCWA Morin 134	Letter from C. DeLong to F. Morin
24.	11/10/1986	FCWA Morin 1101	Outline of Possible Fairfax County Falls Church Land Swap and Water System Acquisition Conceptual Consideration
25.	1/2/1987	FCWA	Letter from A. Griffin to F. Griffith

Item	Date	Doc	Description
		Morin 789	
26.	1/25/1988		FCC Minutes
27.	2/4/1988	FCWA Morin 1073 74	Memo from A. Griffin to C. DeLong and City Council
28.	2/8/1988		FCC Minutes
29.	2/11/1988		The Washington Post Article: <i>Falls Church Rejects Water Sale City Manager Says Change in Fairfax Board Played a Role</i>
30.	3/9/1988	FCWA Morin 1072	Letter from A. Griffin F. Griffith
31.	10/28/1988	City FOIA2 3223 29	Memo from J. Livinski to City Manager
32.	3/21/1990	CITY FOIA2000 380	Memo from D. Lasso to J. Livinski.
33.	3/30/1990	CITY FOIA2000 379	Memo from J. Livinski to D. Lasso
34.	4/4/1990	CITY FOIA2000 375 77	Memo from J. Livinski to D. Lasso
35.	4/4/1990	CITY FOIA2000 378	Memo from D. Lasso to J. Livinski, cc: Councilman Knight
36.	4/5/1990	CITY FOIA2000 374	Memo from D. Lasso to J. Livinski
37.	4/10/1990	CITY FOIA2000 373	Memo from J. Livinski to D. Lasso
38.	4/19/1990	CITY FOIA2000 369 72 City FOIA2 3176 78	Memo from J. Livinski to D. Lasso
39.	5/29/1991	City FOIA2 3200 13	City Manager Report, <i>Public Utilities Fund Payments to City</i>
40.	12/4/1991	City FOIA2 3196	Memo from H. Green to J. Doan
41.	12/6/1991	City FOIA2 362 64	Memo from J. Doane to City Manager
42.	12/6/1991		Memo from J. Doane to the Mayor and City Council
43.	3/30/1992		1992 Va. Acts ch. 513
44.	8/12/1992	CDM 1976 98	Malcolm Pirnie Water Rate Analysis for City of Falls Church (Aug. 12, 1992)
45.	11/23/1992	CDM 2353 71	Malcolm Pirnie Report, <i>City of Falls Church, Va., Water Rate Analysis</i>
46.	12/14/1992	CITY FOIA2 285 86	FCC Resolution
47.	3/1/1993	FCWA Morin 3236	FCC Resolution
48.	4/7/1993		1993 Va. Acts ch. 969
49.	2/14/1994		FCC Minutes
50.	2/14/1994	CITY FOIA2000 287 288	FCC Resolution
51.	4/11/1994		FCC Minutes
52.	9/26/1994	CITY FOIA2000	FCC Resolution

Item	Date	Doc	Description
		289 91	
53.	2/7/1995	City FOIA2 3197 98	FCC Calculation of Return on Equity for FY 94
54.	3/25/1995		1995 Va. Acts ch. 655
55.	7/24/1995	CITY FOIA200029 2 94	FCC Ordinance
56.	9/24/1995	CITY FOIA2000 299 301	FCC Ordinance
57.	11/27/1995		FCC Minutes
58.	9/9/1996	CITY FOIA2000 295 98	FCC Ordinance
59.	9/24/1996		FCC Minutes
60.	3/13/1997	City FOIA2 3199	FCC Calculation of Return on Equity for FY 96
61.	12/18/1997	City FOIA2 2252 54	Letter from P. Shea to D. Scott
62.	2/1998		Draft Robinson, Farmer, Cox Associates Report, <i>The City of Falls Church, Va., Water Fund Rates and Investment Return Considerations</i>
63.	11/3/1998	City FOIA2 332	Memo from S. Nguyen to W. Best
64.	1/4/1999	City FOIA2 331	Memo from S. Nguyen to W. Best
65.	1/15/1999	GFG 87	Form letter from S. Nguyen to distribution list
66.	1/___/1999	GFG 68 86	GFG Survey Response Summary: <i>The City of Falls Church Department of Environmental Services</i>
67.	2/1/1999		Summary: <i>City of Falls Church, Department of Environmental Services</i>
68.	2/26/1999	CITY FOIA2000 320 21	Memo from S. Nguyen to W. Best
69.	3/17/1999		FCC Proposed Budget, FY 99 00
70.	3/22/1999	City FOIA2 2137 55	John B. Crihfield et al. Report, <i>The Falls Church Water System: an Analysis of Capital Costs, Transfers, Water Prices, and System Value</i>
71.	3/22/1999	City FOIA2 1964	Memo from W. Best to H. Rivera
72.	4/1/1999		Falls Church News Press Editorial: <i>A Cash Cow?</i>
73.	4/8/1999		Falls Church News Press Article: <i>City Should be Charging 33% More for Water, Expert Says</i>
74.	4/12/1999		FCC Minutes
75.	4/22/1999	City FOIA2 2639 41	Falls Church News Press Article: <i>New Budget to Fully Fund Schools & Provide Decade's First Tax Cut</i>
76.	4/26/1999	CDM 1970 71	FCC Minutes
77.	4/28/1999	City FOIA2 2854	Letter from H. Rivera to R. O'Neill
78.	4/28/1999	City FOIA2 2637	Letter from Ellison Heights Civic Ass'n to K. Hanley
79.	4/30/1999	City FOIA2 2636 40	Letter from K. Hanley to Falls Church Mayor Snyder
80.	5/4/1999	CITY FOIA2 1967 70	Letter from C. DeLong to B. O'Connor
81.	5/10/1999	City FOIA2 2245 47	FCC Minutes

Item	Date	Doc	Description
82.	5/18/1999	CITY FOIA2000 314 15 3127 28	Memo from S. Nguyen to H. Rivera
83.	5/18/1999	CITY FOIA2000 316 17	Memo from S. Nguyen to H. Rivera
84.	5/19/1999	CITY FOIA2 3123 24	FCC Utility Committee Meeting Minutes
85.	5/20/1999	City FOIA2 2861 62	Memo from H. Rivera to Vice Mayor Mabry
86.	5/20/1999	City FOIA2 2634 35	Letter from Mayor Snyder to K. Hanley
87.	5/24/1999		FCC Minutes
88.	6/14/1999		FCC Minutes
89.	6/14/1999	CITY FOIA2 305 06	FCC Ordinance
90.	9/13/1999		FCC Minutes
91.	10/___/1999	CITY FOIA2 3086 3371	FCC Briefing Book, <i>Water & Sewer</i>
92.	2/25/2000	CDM 2004 29	Black & Veatch Report, <i>Valuation of Water System, City of Falls Church</i>
93.	2/28/2000	City FOIA2 2199 2201	Memo from R.D. Ambrose, Black Veatch, to S. Nguyen
94.	2/28/2000		FCC Minutes
95.	2/28/2000		FCC Proposed Budget, FY 2000 01
96.	2/___/2000	FCWA Morin 3478 89	Falls Church League of Women Voters Report: Water System Revenues and Their Applications
97.	3/13/2000	City FOIA2 2863	Fairfax Board of Supervisor Clerk's Summary
98.	3/13/2000		FCC Minutes
99.	3/16/2000	FCWA Morin 3241	Falls Church News Press Article: <i>Eureka! City Council Discovers "Liquid Gold" in Water System</i>
100.	4/10/2000		FCC Minutes
101.	4/19/2000	City FOIA2 2864	Memo from A. Griffin to S. Mendelsohn
102.	5/2000	CDM 329 28	FCC Department of Environmental Services Information Packet
103.	___/___/2000	CDM 360 61	FCC Water and Sewer Budget Presentation FY 01
104.	6/27/2000	CDM 439 36	FCC Request for Proposals, Water and Sewer Utility Rate Study and Competitiveness Analysis
105.	7/6/2000	CDM 53 54	Email from M. Toch, CDM, to J. Ridge, D. Kemp, N. Lloyd, C. Martin, D. Schwartz, D. Westman
106.	10/19/2000	CDM395 409	Agreement b/n CDM and FCC, Water and Sewer Utility Rate Study and Competitiveness Analysis
107.	11/3/2000	CDM 3724 25 + 3751 60	FCC Department of Environmental Services Exhibit List to the Rate Study
108.	11/9/2000	CDM 631	CDM Notes of Meeting with FCC
109.	1/11/2001	CDM 1463	CDM Email from D. Westman to D. Kemp and D. Lanning, cc: M. Toch
110.	1/29/2001	CDM 597 620	CDM Slides Prepared for meeting with FCC
111.	1/29/2001	CDM 588	CDM Meeting Summary with FCC

Item	Date	Doc	Description
		91	
112.	1/31/2001	CDM 590 592	CDM Email from M. Toch to D. Lanning, D. Kemp, D. Westman
113.	2/1/2001	CDM 1422	CDM Email from D. Westman to M. Toch cc D. Kemp and D. Lanning
114.	2/22/2001	CDM 1648 1818	Draft CDM Report to FCC, Water and Sewer Utility Rate Study and Competitiveness Analysis
115.	2/22/2001	CDM 582 87 CDM 3418 22	CDM Handwritten Meeting Notes with FCC
116.	2/26/2001	CDM 577 81 CDM 3414 17	CDM Email from M. Toch to D. Kemp, D. Lanning, and D. Westman
117.	3/28/2001		CDM Final Report, Water and Sewer Utility Rate Study and Competitive Analysis
118.	3/30/2001	CDM 4479	Email from M. Toch to D. Lanning, D. Kemp, D. Westman
119.	4/5/2001	CDM 4369 70	Letter from S. Beidas to M. Toch
120.	4/18/2001	CDM 4381 87	Letter from M. Toch to S. Beidas
121.	6/04/2001	CDM 4371 80	Email from M. Toch to S. Beidas cc: D.Kemp
122.	6/11/2001		FCC Minutes
123.	9/24/2002	CDM 3245 48	CDM Memo to File by M. Toch
124.	10/1 2/2002	CDM 3026 27	CDM Handwritten Notes
125.	10/10/2002	City Foia2 2325 35	Memo from D. McKeever to Mayor and City Council
126.	10/15/2002	City FOIA2 2052	FCC Minutes
127.	11/27/2002	City FOIA 2 2053	Email from S. Mabry to D. McKeever
128.	2/14/2003	CDM 3023 24	Letter from M. Toch to S. Beidas
129.	2/20/2003	CDM 4247	Email from D. McKeever to M. Toch
130.	3/4/2003	City FOIA2 2094	Email from D. McKeever to S. Mabry, L. Hockenberry, R. Parson
131.	3/10/2003	City FOIA2 2096 97	Email from D. McKeever to S. Mabry, L. Hockenberry, D. Gardner
132.	3/10/2003	City FOIA2 2098	Email from S. Mabry to L. Hockenberry, D. Gardner, D. McKeever
133.	3/13/2003	FCWA Morin 3390	Falls Church News Press Article: <i>Preliminary OK Given to Stiff Water Rate Hike</i>
134.	3/24/2003	FCWA Morin 3388	Fairfax County Board Matter , Falls Church City Water Proposed Rates
135.	3/25/2003	FCWA Morin 3391	Washington Post Article: <i>Illegal House Lots Draw Owners' Ire, Fairfax Supervisors Revise Rules to Validate Some Properties</i>
136.	3/27/2003	FCWA Morin 3574 76	Falls Church News Press Article: <i>McKeever Says FY04 budget Can Fully Fund Schools With No Tax Rate Hike</i>
137.	4/4/2003	FCWA Morin 3386 87	Letter from A. Griffin to D. McKeever
138.	4/14/2003 12:17 pm	City FOIA2 2104	Email from D. McKeever to D. Gardner, R. Gardner, R. Parson, D. Snyder, L. Hockenberry, M. Meserve, S. Mabry
139.	4/14/2003	City FOIA2 2700 07	FCC Agenda No. 10(C)(2), Ordinance to Adjust water service rates
140.	4/14/2003	City FOIA2	FCC Minutes

Item	Date	Doc	Description
		2105 07	
141.	4/15/2003	CDM 4150	Email from S. Beides to D. Kemp and M. Toch
142.	4/16/2003	City FOIA2 2118	Email from D. McKeever to T. Griffin
143.	4/17/2003	FCWA Morin 3577 78	Falls Church News Press Article: <i>Fairfax County Pressures F.C. to Backk of from 2 Tier Water Rate Plan</i>
144.	4/18/2003	City Foia2 2121 28 City Foia2 2708 15	FCC Agenda 10(c)(2), Ordinance to Adjust Water Rates
145.	5/1/2003	City FOIA2 2132	Email from S. Mabry to D. McKeever
146.	5/7/2003	City FOIA2 2876 77	Letter from D. McKeever to T. Griffin, cc: Mayor, Council, R. Thorpe and S. Hughes
147.	5/9/2003	City FOIA2 2136	Email from S. Mabry to D. Gardner, cc: D. McKeever
148.	5/12/2003		FCC Minutes
149.	12/3/2003	City FOIA2 638	Email from B. Etris to D. McKeever, cc B. Creel
150.	4/26/2004	City FOIA2 2129 31	FCC Minutes
151.	5/20/2004	City FOIA2 758 80	FCC Water System Briefing and Tour
152.	7/27/2004	Wiley 544 156	Wiley & Wilson Water System Inventory & Appraisal Report
153.	11/17/2004		CDM Excel Rate Model
154.	3/4/2005	City FOIA2 1996 99	Fitch Ratings for FCC, AA+
155.	5/4/2005	City FOIA2 2340 41	Email from D. McKeever to City Council
156.	6/13/2005	City FOIA2 2343 45	FCC Minutes
157.	6/23/2005	City FOIA2 2051	Memo from W. Shields to Staff
158.	7/__/2005	FCWA Morin 3488	Letter from H. Green letter to Falls Church News Press
159.	7/7/2005	City FOIA2 3395	FCC Utilities Committee Minutes
160.	7/18/2005	CITY FOIA2 1614 18	Memo from P. Cuminsky to B. Etris
161.	7/__/2005	City FOIA2 2940 45	Draft of History of Falls Church Water System
162.	7/26/2005	City FOIA2 2011 2050	Memo from B. Creel to Utilities Commission Council
163.	7/28/2005	CITY FOIA2 1982 83	Memo from J. Touhy to D. McKeever
164.	8/11/2005	City FOIA2 3448 49	Memo from J. Tuohy to D. McKeever
165.	8/11/2005	City FOIA2 3450 55	Memo from J. Tuohy to D. McKeever
166.	8/22/2005	City FOIA2 3494 96	Letter Agreement b/n P. Cumiskey and J. Tuohy (unsigned)
167.	8/30/2005	FCWA Morin 3463	Customer Complaint Letter from A. Pastorkovich to FCC
168.	9/1/2005	City FOIA2 946 47	Email from E. Suriano to B. Etris
169.	9/1/2005	CITY FOIA2 648	Email from B. Etris to B. Creel, D. McKeever, J. Tuohy

Item	Date	Doc	Description
170.	9/26/2005		FCC Minutes
171.	10/17/2005	City FOIA2 3497 504	Memo from P. Cumiskey to J. Tuohy
172.	10/31/2005	City FOIA2 723 35	Email from P. Cumiskey to J. Tuohy
173.	11/09/2005	City FOIA2 736 37	Email from P. Cumiskey to J. Tuohy
174.	11/17/2005	CITY FOIA2 955 77	Email from J. Tuohy to B. Etris
175.	3/6/2006	City FOIA2 2793 800	Email form P. Cumiskey to D. McKeever, J. Tuohy
176.	4/6/2006	City FOIA2 2733 42	Presentation, City of Falls Church, Water Rate Evaluation
177.	4/7/2006	City FOIA2 1694 1711	Presentation, City of Falls Church, Water Rate Evaluation
178.	___/___/2006	City FOIA 2773 87	Work Papers
179.	4/10/2006		FCC Minutes
180.	4/24/2006		FCC Minutes
181.	4/24/2006	City FOIA2 2653 99	Memo from P. Cuminsky to J. Tuohy
182.	9/20/2006	City FOIA2 1935 45	FCC Water Briefing
183.	9/25/2006		FCC Minutes
184.	2/26/2007	City FOIA 66	Record of Communication by R. Collins
185.	2/27/2007	FCWA Morin 3529	Handwritten Letter from E. Joyce to Fairfax County Water Authority
186.	3/2/2007	CFC 65	Customer Complaint Letter from T. McReady to Mayor Gardner
187.	3/5/2007	FCWA Morin 3527	Letter from T. McReady to P. Allin
188.	3/6/2007	CFC 64 65	Letter from W. Shields to T. McReady
189.	4/6/2007		Declaration of H. Green, City of Falls Church v. Fairfax County Water Authority, CA No. 1:07cv174
190.	5/2007	City FOIA2 2307 24	Hudson River Energy Group, <i>Valuation Report of the Municipal Water System of the City of Falls Church</i>
191.	5/31/2007		Falls Church News Press Article: <i>F.C. Back in Court Vs. Fairfax Water 'Cherry Picking</i>
192.	6/7/2007	FCWA Morin 3555	Letter to Editor of Falls Church News Press from F Griffith
193.	___/___/2008	CBH 218 19	CBH Doc Receivables 2008.xls
194.	1/5/2009		FCC Work Session Minutes
195.			Selected Briefs and Pleadings
196.			City of Falls Church and Fairfax Water's Discovery Responses (through 6/11/2009)
197.			Depositions (through 6/11/2009) of B. Etris, J. Tuohy, W. Shields, S. Nguyen, P. Cumiskey and City of Falls Church
198.			Selected Deposition Exhibits 1 257
199.			Videos of City Council Meetings recently produced by the City (to date: 6/10/2009; 5/10/1995; 3/13/2000; 4/10/2000; 6/11/2001; 4/14/2003; 4/26/2004; 4/26/2005; 5/23/2005; 6/13/2005; 4/10/2006; 4/24/2006)