

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Statement 1 was served upon
the persons listed below:

Via Email Only

Sharon Webb, Esq.
Office of Small Business Advocate
Forum Place Building
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov

Patrick Cicero, Esq.
Christine Appleby, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
pcicero@paoca.org
cappleby@paoca.org

Richard Kanaskie, Esq.
Allison C. Kaster, Esq.
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North St. 2nd Floor West
Harrisburg, PA 17120
rkanaskie@pa.gov
akaster@pa.gov

John W. Sweet, Esq.
Elizabeth R. Marx, Esq.
Ria M. Pereira, Esq.
The Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@pautilitylawproject.org

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, ME 04364
barbalexand@gmail.com

Thomas J. Sniscak, Esq.

Kevin J. McKeon, Esq.
Whitney E. Snyder, Esq.
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
kjmcKeon@hmslegal.com
wesnyder@hmslegal.com

John F. Doherty, Esq.
Krysia Kubiak, City Solicitor
Michael E. Kennedy, Associate City Solicitor
Pittsburgh Department of Law
City-County Building, Suite 313
414 Grant Street
Pittsburgh, PA 15219
John.doherty@pittsburghpa.gov
krysia.kubiak@pittsburghpa.gov
Michael.kennedy@pittsburghpa.gov

Jared Thompson, Esq.
Peter DeMarco, Esq.
Natural Resources Defense Council
1152 15th St., NW, Suite 300
Washington, DC 20005
Jared.thompson@nrdc.org
pdemarco@nrdc.org

Brian Kalcic
Excel Consulting
225 S. Meramec Ave., Suite 720T
St. Louis, MO 63105
Excel.consulting@sbcglobal.net

Deanne O'Dell, Esq.
Daniel Clearfield, Esq.
Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
dodell@eckertseamans.com
dclearfield@eckertseamans.com
kmoury@eckertseamans.com
(717) 237 - 6000

Hon. Charles E. Rainey, Jr.
Chief Administrative Law Judge
Pa. Public Utility Commission

400 North Street
Harrisburg, PA 17120
bobbwillia@pa.gov

Cheryl R. McAbee

Dated: August 9, 2023

Cheryl R. McAbee
Pa I.D. No. 44344

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission)	Docket Nos.
)	R-2023-3039919 (Stormwater)
)	R-2023-3039920
V.)	R-2023-3039921
Pittsburgh Water and Sewer Authority)	
)	
)	
)	
)	

**DIRECT TESTIMONY OF
ROBERT STRAUSS**

River Development Corporation Statement No. 1

**Addressing: Pittsburgh Water and Sewer Authority’s proposed tariff increases on
STORMWATER.**

August 9, 2023

DIRECT TESTIMONY OF ROBERT STRAUSS

1 **I. BACKGROUND**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND ON WHOSE**
3 **BEHALF YOU ARE TESTIFYING.**

4 **A.** Dr. Robert P Strauss, Professor of Economics and Public Policy, Heinz College,
5 Carnegie Mellon University, Pittsburgh, PA 15213, and residing at 2307 Country Place
6 Court, Export, PA, 15632; testifying on behalf of River Development Corporation
7 (“RDC”).

8 **Q. WHAT ARE YOUR JOB RESPONSIBILITIES.**

9 **A.** I am a tenured full professor of economics at Carnegie Mellon since joining the
10 University in the summer of 1979, and as such:

11 1] train primarily graduate students at the Heinz College in matters of public
12 financial management at the federal, state and local levels; 2] conduct
13 independent research for publication in a variety of forums including peer
14 reviewed journals; 3] on occasion perform independent research studies in areas
15 of my general and specific expertise for permanent government agencies and
16 elected officials; 4] on occasion conduct independent research studies and/or
17 participate in commissions organized for the purpose of improving general and
18 specific financial policies affecting the public and private sectors; 5] testify before
19 federal, state, and local legislative bodies on matters related to public financial
20 management ; 6] advise periodically various federal, state, and local revenue and
21 statistical agencies such as the Internal Revenue Service and US Bureau of the
22

1 Census. [See www.andrew.cmu.edu/user/rs9f] Please note that this testimony
2 reflects my views and not that of Carnegie Mellon University or its Trustees.

3 **Q. PLEASE DESCRIBE YOUR ENERGY AND EDUCATIONAL EXPERIENCE?**

4 I hold an AB with Honors and Distinction in Economics from the University of
5 Michigan, Ann Arbor [1966], and a Phd. in Economics from the University of Wisconsin,
6 Madison [1970] in the fields of public finance and human resources.

7 My experience in the domain of energy began while on the professional staff of the Joint
8 Committee on Taxation, US Congress, where I was assigned and performed the public
9 responsibility for being the chief energy savings estimator for the US House of
10 Representatives and US Senate, and also was primarily responsible for the analysis and
11 legislative drafting of various business and residential tax credits[1976-8], several of
12 which were enacted by the US Congress.

13 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A PUBLIC**
14 **UTILITY COMMISSION?**

15 **A.** No.

16 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN OTHER**
17 **PENNSYLVANIA CASES, PARTICULARLY TAX CASES?**

18 **A.** Yes. A list of the cases in which I have previously provided testimony is
19 included with my CV at page 7 under Litigation Support, and attached hereto as RDC
20 Exhibit 6.

21 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

22 Below I explain that the PWSA stormwater charge and the proposed schedule are
23 improper for several, inter-related reasons : a] because neither the earlier nor proposed

1 storm water charge has been authorized as required by law by the duly elected City
2 Council of Pittsburgh predicate to PWSA’s submission and consideration of said storm
3 water charges by the PUC, the existing and proposed storm water charges were and are
4 defective, b] that as a consequence of these predicate defects in these storm water
5 charges, they were improperly approved by the Public Utilities Commission e.g. the
6 PUC should never have considered the defective, unapproved request to impose a
7 stormwater charge by the PWSA, c] the defective earlier and proposed storm water
8 charges are unjust because the measure of the stormwater charge is merely based on area
9 of non-permeable surface area and as such is really a property tax rather than a charge
10 related to either the use or responsibility of storm water mitigation services, and, as such,
11 said tax violates the Uniformity Clause of the Pennsylvania Constitution as to what
12 governmental entity may impose a tax in Pennsylvania, d] the imposition of the earlier
13 and proposed storm water charges are unjust and improper because RDC has been and is
14 a customer of Pennsylvania American Water, not PWSA, e.g. RDC erroneously paid a
15 storm water charge to PWSA and is therefore due a refund of all monies so improperly
16 billed per the above and improperly collected, e] the earlier and proposed storm water
17 charge is unjust and unreasonable to the business of RDC because the dollars of monies
18 being billed are an unjust and unreasonable proportion of said business net income.

19 **II WHAT MAKES THE STORMWATER FEE A TAX**

20 **Q. IN YOUR OPINION IS THIS STORMWATER CHARGE A TAX?**

21 **A.** Yes, the currently imposed stormwater charge has the characteristics of a tax rather than a
22 fee or charge, and this conclusion was also reached by the Pa. Commonwealth Court.
23 The Commonwealth Court held in an unpublished memorandum that “ the Stormwater
24 Charge constitutes a “local tax” *Borough West Chester v. Pa. State System of Higher*
25
26

1 *Education and West Chester University of Pa. of the State System of Higher Education,*
2 No. 260 M.D. 2018 (Pa. Cmwlt. Jan. 4, 2023) because it provides general benefits
3 enjoyed by the general public. And, while properly viewed as a tax, the Commonwealth
4 Court held it was not a special assessment because the Borough of West Chester was
5 imposing the tax for an indefinite period whereas special assessments typically are
6 imposed once to pay for a discrete infrastructure improvement.

7 The plain English meaning of a fee or charge is that it is imposed, collected and used for
8 a particular purpose, and is voluntarily reflecting extent of use or responsibility, while a
9 “tax” is involuntary in nature and used for a general purpose. The Commonwealth Court
10 could not find a discrete benefit accruing to a single customer from the use of storm water
11 fees, and thus concluded that the charge was really a tax not a fee *per se*.

12 The characterization of the fee as more properly a tax has several consequential
13 implications. Under the Pennsylvania Constitution, a tax must be uniform in application
14 which means uniform in rate, and must be imposed through political action and collected
15 by elected officials who represent the geographic and political area which elects them.

16 Specifically, Article VIII, § 1. Uniformity of taxation of the PA Constitution provides:

17 “All taxes shall be uniform, upon the same class of subjects, within the territorial
18 limits of the authority levying the tax, and shall be levied and collected under
19 general laws.”

20 This 2023 Commonwealth Court decision is consistent with an earlier decision by the
21 Allegheny County Court of Common Pleas regarding the City of Pittsburgh taxation of
22 non-resident professional athletes, *National Hockey League Player’s Ass’n et al. v. City*

1 of Pittsburgh, No. GD-19-015542, Ct. of Common Pleas, Allegheny Cty., Sept. 21, 2022,
2 appeal filed, Oct. 19, 2022.

3 . The City of Pittsburgh levied a fee on activities of non-resident professional athletes, but
4 measured it on professional athletes net income earned at 3% while playing in
5 Pittsburgh. The Allegheny County Court of Common Pleas found the City of Pittsburgh's
6 Non-Resident Sports Facility usage Fee, was actually a tax because it was imposed as 3%
7 on non-resident athletes' personal income earned in Pittsburgh and was non-uniform
8 when compared to the taxation of other non-resident income.

9 Given the determination by the Commonwealth Court in *Borough of West Chester* that
10 the stormwater fee is in fact a tax, and given that PWSA is not an organized local
11 government in Pennsylvania, but a municipal authority with an appointed, rather than
12 elected governing body, it follows that PWSA is without the constitutional or statutory
13 power to impose and collect said tax on RDC.

14 **III. PWSA IS NOT AUTHORIZED TO COLLECT A STORMWATER FEE?**

15 **Q. HAS THE APPLICATION OF A STORMWATER FEE BY PWSA BEEN**
16 **PROPERLY AUTHORIZED AS REQUIRED BY PENNSYLVANIA PUBLIC**
17 **UTILITY LAW?**

18 **A.** No. Effective September of 2013, under Act 68, title 53, § 5607 (a)(18) states:

19 Storm water planning, management and implementation as defined in the
20 articles of incorporation by the governing body. Authorities, existing as
21 of the effective date of this paragraph, already operating storm water
22 controls as part of a combined sewer system, sanitary sewer system or
23 flood control project may continue to operate those projects.

1 Thus, any municipal public authority in operation before the above cited section 18,
2 enacted in 2013, such as PWSA, was required to amend its Articles of Incorporation
3 through an adopted resolution by the municipality incorporating the public authority as a
4 predicate for the municipal public authority, such as PWSA, to levy such a new, storm
5 water charge to finance new, storm water services. This authorization to impose a storm
6 water fee has not been done by the Pittsburgh City Council which means that any attempt
7 to collect monies for a storm water charge are without proper, legal authorization.

8 Further, new or proposed storm water *projects* by any municipal public authority must
9 be approved by ordinance or resolution of said municipality which incorporated the
10 municipal public authority, also as provided in Act 68, Title 53, Para 5607 as follows:

11 (c) **Effect of specificity.**--The municipality or municipalities organizing
12 such an authority may, in the resolution or ordinance signifying their
13 intention so to do or from time to time by subsequent resolution or
14 ordinance, specify the project or projects to be undertaken by the
15 authority, and no other projects shall be undertaken by the authority than
16 those so specified. If the municipal authorities organizing an authority
17 fail to specify the project or projects to be undertaken, then the authority
18 shall be deemed to have all the powers granted by this chapter.

19 Given that the Pittsburgh City Council has not authorized such storm water projects,
20 PWSA expenditures of monies collected from improperly collected storm water fees for
21 storm water facilities is improper and without legal authorization.

22 **Q. DID THE PUC IN 2021 ERR IN APPROVING PWSAs RATE SCHEDULE FOR**
23 **STORMWATER FEES?**
24

25 **A.** Yes, because PWSA never received the authority to impose the storm water fee by the
26

1 Pittsburgh City Council. In 2013, under Act 68 the General Assembly passed and
2 Governor Tom Corbett approved that a new category of services and fees be allowed by
3 any municipal public authority to provide storm water infrastructure, once the public
4 authority's articles of incorporation were amended by the municipal legislature (City of
5 Pittsburgh City Council in the case of PWSA). The only amendment made to the PWSA
6 Articles of Incorporation by Pittsburgh City Council since 1945 was to extend the
7 expiration date of the PWSA to 2045. Thus, PWSA has been charging stormwater fees that
8 were erroneously approved by the PUC. The required procedure for a municipal authority's
9 Articles of Incorporation are shown below:

10 5605 Amendment of articles.

11 (a) Purpose.--An authority may amend its articles for the following reasons:

12 (1) To adopt a new name.

13 (2) To modify or add a provision to increase its term of existence to a date not
14 exceeding 50 years from the date of approval of the articles of amendment.

15 (3) To change, add to or diminish its powers or purposes or to set forth different
16 or additional powers or purposes.

17 (4) To increase or decrease the number of members of the board of the authority,
18 to reapportion the representation on the board of the authority and to revise the
19 terms of office of members, all in a manner consistent with the provisions of
20 section 5610 (relating to governing body).

21 (b) Procedure.--Every amendment to the articles shall first be proposed by the
22 board by the adoption of a resolution setting forth the proposed amendment and
23 directing that it be submitted to the governing authorities of the municipality or
24 municipalities composing the authority. The resolution shall contain the language

1 of the proposed amendment to the articles by providing that the articles shall be
2 amended so as to read as set forth in full in the resolution, that any provision of
3 the articles be amended so as to read as set forth in full in the resolution or that the
4 matter stated in the resolution be added to or stricken from the articles. After the
5 amendments have been submitted to the municipality or municipalities, such
6 municipality or municipalities shall adopt or reject such amendment by resolution
7 or ordinance.

8 (c) Execution and verification.--After an amendment has been adopted by the
9 municipality or municipalities, articles of amendment shall be executed under the
10 seal of the authority and verified by two duly authorized officers of the corporation
11 and shall set forth:

12 (1) The name and location of the registered office of the authority.

13 (2) The act under which the authority was formed and the date when the original
14 articles were approved and filed.

15 (3) The resolution or ordinance of the municipality or municipalities adopting the
16 amendment.

17 (4) The amendment adopted by the municipality or municipalities which shall be set
18 forth in full.

19 (d) Advertisement.--The authority shall advertise its intention to file articles of
20 amendment with the Secretary of the Commonwealth as provided under section
21 5603 (relating to method of incorporation) for forming an authority.

22 Advertisements shall appear at least three days prior to the day upon which the
23 articles of amendment are presented to the Secretary of the Commonwealth and
24 shall set forth briefly:

- 1 (1) The name and location of the registered office of the authority.
- 2 (2) A statement that the articles of amendment are to be filed under the provisions
- 3 of this chapter.
- 4 (3) The nature and character of the proposed amendment.
- 5 (4) The time when the articles of amendment will be filed with the Secretary of the
- 6 Commonwealth.

7 (e) Filing the amendment.--The articles of amendment and proof of the required

8 advertisement shall be delivered by the authority or its representative to the

9 Secretary of the Commonwealth. If the Secretary of the Commonwealth finds that

10 the articles conform to law, he shall forthwith, but not prior to the day specified in

11 the advertisement required in subsection (d), endorse his approval of it and, when

12 all fees and charges have been paid, shall file the articles and issue to the authority

13 or its representative a certificate of amendment to which shall be attached a copy of

14 the approved articles.

15 **IV. WILL THE STORMWATER FEE PUT RIVER DEVELOPMENT**

16 **CORPORATION OUT OF BUSINESS?**

17 **Q. FROM AN ECONOMIC PERSPECTIVE DO YOU BELIEVE A**

18 **SMALL DISADVANTAGED BUSINESS CAN SURVIVE WITH PWSAs**

19 **CONTINUAL LONG TERM RATE INCREASES AS SHOWN IN TABLE 2**

20 **WITH A TAXABLE INCOME ACCORDING TO ITS 2021 TAX**

21 **RETURN OF \$84,000 (\$7,000/Month)?**

22

23

1

Table 2: River Development Stormwater Rate Increases

Year	ERU	Price per ERU for Nonresidential	Amount Paid Per Month	% increase Per year		
2022	123	\$5.96	\$733.08			
2023	123	\$7.95	\$977.85	33.4%		
2024	123	\$10.26	\$1261.98	29.1%		
2025	123	\$12.14	\$1493.22	18.3%		
2026	123	\$14.20	\$1746.6	17.0%		

2

A. No. In 2022, per the Table 2 above, the monthly stormwater fee was about 10% of net income, or higher than Pennsylvania’s corporate net income tax rate of 9.99%, and by 2026 this will rise to 24.9% of net income which will be on top of a variety of federal corporate net income taxes, state net income taxes, sales and use and local real estate taxes.

3

4

5

6

7

Q. IS BASING THE STORMWATER CHARGE ON AMOUNT OF HARD OR IMPERVIOUS SERVICE A PROPER METHOD OF MEASUREMENT?

8

9

10

11

12

A. No. The surface area of parking and roofs, which is the operational measure of responsibility, is not reasonably related to specific or general benefits of stormwater mitigation for several common sense reasons. FIRST, the use of fees for storm water runoff should be related to what is being mitigated, namely the volume of storm water runoff. The area of non-permeable surfaces is not reasonably related to the amount of storm-water run off for several reasons. SECOND, accumulation of roof water is

13

14

15

16

17

1 typically utilized in commercial properties to assist in cooling in the summer, and
2 retaining heat in the winter. The roof of the RDC property in question is horizontal in
3 design and use for that purpose. Excess water runoff from the roof has already been
4 planned and responsibly installed, and PWSA is NOT the vendor providing service in this
5 sense since the building was acquired 27 years ago. The property is a customer and
6 obtains all of its water services from Pennsylvania American Water, not PWSA.

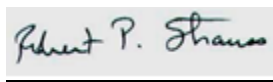
7 Third, according to 2020 calendar year, publicly available data on precipitation reported
8 by the National Oceanic and Atmosphere Administration of the US Government, the
9 annual precipitation in Pittsburgh zip code 15217 was 1032 inches, while in Pittsburgh
10 zip code 15214 the annual participation was 1145 inches, or a 7.7% difference. In 2019
11 the annual precipitation in Pittsburgh zip code 15214 was 1409 inches. Such wide
12 variations in precipitation among and within Pittsburgh zip codes must imply wide
13 differences in resulting storm-water runoff; however, the existing and proposed storm
14 water charge schedules being promulgated by PWSA, even if they were to legally apply
15 generally, or in particular to said property, are hardly just or equitable in view of this
16 extant variability. It should also be pointed out that another key feature of storm water
17 runoff entails the extent to which the non-permeable terrain enables evaporation, which
18 is benign, as contrasted with run off which is obviously impacted by the nature and
19 severity of slope of any terrain. Obviously, simply measuring a spatial area without
20 regard to water run off caused by slope of terrain will lead to inaccurate designation of
21 responsibility or use for storm water runoff.

By: *Cheryl R. McAbee*

River Development Corporation
By Cheryl R. McAbee

VERIFICATION

I, Robert P. Strauss, hereby verifies that the facts set forth in the foregoing Direct Testimony are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities, which provides for criminal penalties if a person with intent to mislead makes a written false statement which they do not believe to be true.



Date: August 9, 2023

Robert P Strauss

