

2. When used in reference to a natural person, the terms “identify”, “identity”, or “identification” mean:
 - (a) State the person’s full name;
 - (b) State the person’s present or last known business affiliation, business address and phone number;
 - (c) State the person’s present or last known position or title and a description of the person’s duties and responsibilities; and
 - (d) State the person’s relationship to the subject matter of the Interrogatory.

3. When used in reference to any entity other than a natural person, the terms “identify”, “identity”, or “identification” mean:
 - (a) State its full name;
 - (b) State the nature of the business;
 - (c) State its address and principal place of business;
 - (d) State the names and titles of its directors and principal officers; and
 - (e) State the identity of all persons who acted or who authorized another to act on its behalf with respect to the subject matter of the Interrogatory.

4. When used in reference to a document, the terms “identify”, “identity”, or “identification” mean:
 - (a) State the document’s name, date, type and any other information which would facilitate its identification;
 - (b) State the name, address and phone number of the document’s custodian. If its present custodian is not known, identify the last known custodian of the document and describe the document’s last known disposition;
 - (c) State the names of the person(s) who authored the document, and the names of all persons to whom the document was distributed;
 - (d) Describe the subject matter and substance of the document; and
 - (e) If the above requested information is apparent from the face of the document, a copy of the document may be attached in lieu of providing the information in the space provided below the applicable Interrogatory.

5. When used in reference to an oral communication, the terms, “identify”, “identity”, and “identification” mean:
 - (a) State the nature of the communication;
 - (b) State the time and place of its occurrence;
 - (c) State the name of the person(s) who initiated the communication and the names of all person(s) to whom the information was communicated; and
 - (d) Describe the subject matter and substance of the communication.
6. The terms “describe” and “description” mean:
 - (a) Provide a descriptive statement or account thereof, including but not limited to the general nature of the subject and its time and location;
 - (b) Identify each person who has any knowledge thereof;
 - (c) Identify each document which refers thereto, or which was used, referred to, or prepared in the course or as a result thereof; and
 - (d) Identify each oral communication which refers thereto, or which occurred in the course or as a result thereof.
7. The term “person” means any natural person, corporation, partnership or other business association, any agency, authority, instrumentality or entity of federal, state or local government, and any other legal entity.
8. The terms “PWD” and “Department” mean the Philadelphia Water Department.
9. The terms “relates to” or “relating to” mean that which refers thereto, or which was used, referred to, or prepared in the course or as a result thereof.
10. Rules of Construction:
 - (a) The singular shall include the plural and the plural shall include the singular; and
 - (b) A masculine, feminine or neuter pronoun shall refer to all other gender pronouns.
11. Claims of Privilege. In the event any information requested to be identified or described herein is not identified or described under any claim of privilege or otherwise, then for each item of information state:
 - (a) The information’s identity;

(b) The basis upon which privilege is claimed or other basis for withholding the information; and

(c) The name of each person having knowledge of the information.

12. Inability to Answer. If any Interrogatory cannot be answered after the answering party has conducted a reasonable investigation, state:

(a) The answer to the extent possible;

(b) What information cannot be provided; and

(c) What efforts were made to obtain the unknown information.

INTERROGATORIES

PF 1-1 [Ref. – See pp. 5-7 of Joint Petition for Settlement of Phase 2 of the [FY 2013-2015] Rate Proceeding, attached to this set of Interrogatories] In the Phase 2 settlement of the last rate-setting proceeding, PWD committed to evaluate and develop cost effective stormwater incentive programs that may reduce or eliminate the need for the Enhanced CAP program. Please describe PWD’s efforts to evaluate and develop each of the following types of programs:

- A. Stormwater retrofit project financing programs
- B. Offsite mitigation programs
- C. Aggregation programs
- D. Pay for performance instrument programs
- E. Loan programs
- F. Grant programs

In describing PWD’s efforts regarding any of the types of programs listed above that were not implemented, please explain why they were rejected. For any that were implemented, please describe the effect they are expected to have on the reduction or elimination of the need for the Extended CAP program.

PF 1-2 [Ref. – See pp. 9-13 of Scott Rubin’s Direct Testimony from FY 2013-2015 Rate Proceeding, attached to this set of Interrogatories]

- A. Did PWD consider the alternative mitigation approach for non-residential customers proposed by Scott Rubin (on behalf of PennFuture) in the last rate case, or other alternatives?
- B. If Mr. Rubin’s proposed approach was considered, why was it rejected?
- C. If it was not considered, please explain why not.
- D. If other alternatives were considered, what were they, and why were they rejected?

PF 1-3 [Ref. – PWD Statement 1, Testimony of Debra McCarty, Page 3- In response to the last question on page 3] - What are the programmatic expenditures (amounts by program and annual total) that the Department plans to include as part of its total revenue requirements over the next five years (FY2017 to FY2021) to satisfy the requirements of the Consent Order and Agreement dated June 1, 2011 (“COA”)?

PF 1-4 [Ref. – PWD Statement 3, Testimony of Stephen Furtek, page 2] – You list the total Capital Improvement Program projection for the next six years (FY 2016 to FY 2021) to be \$1,783,700,000. On average this translates to about \$357,000,000 each year. And, you state that the LTCP expenditures represent 17.2% of the total CIP over those years, which translates to a total of \$308.6 million for LTCP projects over those five years or about \$61.4 million each year. Please specify where in the Department’s Final Notice documents these programs and amounts can be separately identified on an annual basis (at a minimum for the two test years).

PF 1-5 [Ref. – PWD Statement 4, Testimony of Dahme and Williams, page 3] - On page 3 you list the four categories of interim milestones that the City is required to achieve according to the 2011 COA.

- A. What are the levels achieved by the City for each of those four categories through the second quarter of FY 2016?
- B. Please provide the City's best estimate of the levels it expects to achieve for each of the four categories through the end of the first five year period, which concludes with the end of FY 2016.

PF 1-6 [Ref. – PWD Statement 4, Testimony of Dahme and Williams, Top of page 4] – In the paragraph ending on the top of page 4 you indicate that if the costs of compliance with the COA cause the wastewater component of a customer's bill to exceed 2.27% of Median Household Income (MHI), then the City could petition the Pennsylvania Department of Environmental Protection for an extension of time to satisfy the requirements of that Agreement.

- A. What percentage of MHI did the wastewater bill for a typical residential customer of the PWD equal in fiscal years 2013, 2014 and 2015?
- B. Given 8 months of actual data and 4 months of estimated bills, what is PWD's best estimate of that percentage at the end of FY 2016?

PF 1-7 [Ref. – PWD Statement 4, Testimony of Dahme and Williams, Page 5] – In your answer to the second question on page 5 you provide three examples of programmatic expenditures related to the stormwater management that are supported by the proposed revenue requirements during the two test years.

- A. What annual amounts for each of those three examples are included in the revenue requirements for each test year?
- B. What are the other stormwater management programs, if any, that are supported by the proposed revenue requirements during the two test years?
- C. What annual amounts for each of these other programs are included in the revenue requirements for each test year?

PF 1-8 [Ref. – PWD Statement 4, Testimony of Dahme and Williams, page 3 and top of page 6] – In your response to the first question on page 6 you indicate that it costs the Department more to effectuate a COA greened acre than it costs a customer receiving a grant through the Stormwater Management Incentives Program. Please provide all assumptions, analysis and calculations used to support this assertion.

PF 1-9 [Ref. – PWD Statement 4, Testimony of Dahme and Williams, page 3] You state that the cost per private greened acre is approximately one-third the cost of a public greened acre executed by PWD. Please provide all assumptions, analysis and calculations that support this one-third cost ratio.

PF 1-10 [Ref. –PWD Statement 4, Exhibit JD-2] For each of the programs listed in Exhibit JD-2, please provide the revenue requirements for each test year considered in this proceeding. In your response, please also include any additional programs that are to be added in either of the test years.

PF 1-11 [Ref. – PWD Statement 4, Testimony of Dahme and Williams, second answer page 6] - Please provide the basis for the recommended level of rate mitigation proposed (Enhanced CAP Program) for non-residential customers that would receive increases significantly above average levels. In your response, include all assumptions, calculations, and analysis used to determine the threshold level for implementation (10% or more increase in stormwater charges from the preceding year) and the level of reduction to be applied (the amount above the 10% increase).

PF 1-12 [Ref. – the preceding question PF 1-11] – For participants currently enrolled in the Enhanced CAP program, will these reductions or subsidies continue indefinitely or will they end at some point in the future? If indefinitely, please explain in detail the justification or rationale for not limiting the duration. If there is an end date, why was that particular duration chosen, and not a shorter one? Please be specific.

PF 1-13 [Ref. – PWD Exhibit JD-2] – The bottom half of this Exhibit shows historic and budget numbers for the Stormwater Assistance Programs. Does the second line – “Stormwater Management Incentive Programs Grant (SMIP)” – include only SMIP amounts, or does it also include GARP program amounts? If it does not, where are the GARP amounts and what amounts are proposed to be expended for GARP in FY 2017 and FY 2018?

PF 1-14 [Ref. – PWD Exhibit JD-2] What program(s) is/are included in the last line (“Stormwater Credits”)? If more than one program is included in this last line, please list each separately along with its corresponding amount in each of the years shown.

PF 1-15 [Ref. – PWD Statement 9b, Testimony Q4, Page 3] –

- A. What is the “cost of greened acre projects executed by the Water Department (per acre)?”
- B. What is the “cost per private greened acre achieved through these incentive programs?”

Please indicate in the COSS or elsewhere in the Final Notice where these amounts are computed. If these computations/estimates are not contained in the Final Notice, please provide all assumptions, calculations and analysis used to derive each.

PF 1-16 [Ref. – PWD Statement 9b, Testimony Q4, Page 3] - Please provide the basis or rationale for determining that the “annual SMIP/GARP grant amount of \$15.0 million in the FY 2017 through FY 2021 wastewater O&M expenditures” is the appropriate or best level to use. Include any assumptions, analysis or calculations used to derive that amount.

PF 1-17 [Ref. – PWD Statement 4, Testimony of Dahme and Williams, second paragraph page 7] – Please reconcile the amount (\$30.5million) that the PWD has awarded in SMIP and GARP

grants to date with the annual amounts shown on Exhibit JD-2. Which lines and which years are included in that total? It appears that about \$22.4 million has been awarded in SMIP grants through FY 2015, and about \$28.6 million has been awarded in Stormwater Credits for the 3 historic years shown.

PF 1-18 [Ref. – PWD Statement 9a]

- A. Are the 40% and 60% proportionate cost responsibilities for right-of-way flows and customer flows an approximation, or were they derived as part of the COSS or from other analysis contained in the filing?
- B. If these levels were determined in the COSS or elsewhere in the filing, in what pages or schedules can their derivation be found?
- C. If they are only approximations, why weren't they computed within the COSS or elsewhere in the filing?

PF 1-19 [Ref. – PWD Statement 9b, page 3] - The FY 2017 stormwater revenue requirement is estimated to be \$153.7 million. What is the comparable stormwater revenue requirement estimate for FY 2018, and is it estimated in the same manner as the FY 2017 estimate? If not, please explain how it was estimated, including all assumptions, analysis and calculations used.

PF 1-20 [Ref. – PWD Statement 9b, Page 4, Answer to Q6.] - Please provide the detailed calculations used to derive the percentages of the stormwater Revenue Requirement (RR) allocated to GA (20%) and to IA (80%) charge components. If the basis and calculations for these percentages are provided in the COSS or elsewhere in the filing, provide the pages or schedules where they are located in the filing.

PF 1-21 [Ref. – PWD Statement 9b, Page 3, Paragraph before Q4.] – What portion of the revenue requirement of \$153,690,000 for stormwater management was a result of direct allocations to that total? The example of inlet cleaning costs was given on page 2. Please list each such direct allocation along with its total cost. Provide the same information for FY 2018 stormwater revenue requirements.

PF 1-22 [Ref. - PWD Statement 9b, Testimony Pages 8 and 9] –

- A. Please provide the basis for the CAP Revenue Impact for FY2016, including all assumptions, calculations, and analysis used to determine that specific amount (\$3.517 million), including how the first 3 months of data were used to project the full year amount.
- B. Given that there now are 8 months of actual data from FY 2016, what would the “annualized” amount be if you used the first 8 months (or first 6 months) of FY 2016 instead of just the first 3 months?

PF 1-23 [Ref. - PWD Statement 9b, Testimony Pages 8 and 9] –

- A. Please provide the basis for reducing the CAP Revenue Impact by \$100,000 each year after FY2016, including all assumptions, calculations, and analysis used to determine that specific amount.
- B. Does the Revenue Impact stop in FY 2021? If not, when is it expected to be phased out?
- C. Did PWD consider phasing these credits out in a fewer number of years? If not, why not?

PF 1-24 [Ref. – PWD Statement 9b, Page 10, Top Paragraph labeled “Residential”] –

- A. Has the Department considered weighting the GA factor charge in some manner that would provide some gradation of charges between residential customers based on their individual lot sizes? Please elaborate in your response including any other alternatives the Department considered.
- B. Is there any plan going forward to convert the current residential rate structure to a structure like the one used for non-residential customers (based on parcel size and/or characteristics)?

PF 1-25 [Ref. – PWD Statement 9b, Testimony Page 13] –

- A. Please provide the basis for the recommended maximum percentage allowed as a credit (80% without surface discharge) toward parcel based storm water charges applicable to non-residential customers who employ measures to control storm water flows on their properties; including all assumptions, calculations, and analysis used to determine that specific percentage.
- B. Provide the same information for customers with surface discharge (the 90% maximum limit).

PF 1-26 [Ref. – PWD Statement 9b, Testimony Page 12]

- A. Why did you choose 4 years for the period of time at which a customer receiving a stormwater service charge credit would expire?
- B. Were shorter and longer periods (number of years) considered?
- C. If they were, why were they rejected?

If the basis and supporting analysis are in the filing, simply provide the reference to it.

PF 1-27 [General Revenue Requirement Question]

- A. What is the level of funding (capital and O&M) that the PWD needs to spend on stormwater management in FY 2017 and FY 2018 to satisfy the requirements of the 2011 COA?
- B. What amount has the PWD budgeted for all stormwater management programs in FY 2017 and FY 2018?

- C. If the budgeted amount is less than the required amount, explain in detail why this is the case, and what amounts will be added in future years to compensate for the shortfall.

PF 1-28 [Ref. – Green Acres Retrofit Program (GARP)] Please provide the basis for the Award Amount Allocations between Group I (80%) and Group II (20%) Project Categories in FY 2016, including all assumptions, calculations, and analysis used to determine each percentage allocation. Also provide the basis for the Award Amount Allocations between Group I (70%) and Group II (30%) Project Categories for fiscal years 2017 through 2021, including all assumptions, calculations, and analysis used to determine each percentage allocation.

PF 1-29 [Ref. – PWD Statement 9a] –

- A. As part of the Cost of Service Study, was PWD's avoided cost (of not having to provide the reductions in storm water flows it would have had to but for the reductions resulting from on-site measures employed by non-residential customers in order to receive reductions in their parcel based storm water charges) determined or estimated?
- B. If this avoided cost was estimated in the cost of service study or elsewhere in the filing, what was that estimate and in what pages or schedules can its derivation be found?
- C. If this avoided cost was not estimated, please explain why not.

/s/ Michael D. Helbing
Michael D. Helbing
Staff Attorney
Citizens for Pennsylvania's Future
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Wilkes-Barre, PA 18701
(570) 208-4007
Email: helbing@pennfuture.org

Date: March 9, 2016

Attachments

BEFORE THE
PHILADELPHIA WATER COMMISSIONER

Re Philadelphia Water Department :
Proposed Increase in Rates and Charges : FY 2013-2015
for Water and Wastewater Utilities :

JOINT PETITION FOR SETTLEMENT OF PHASE 2 OF THE RATE PROCEEDING

TO HEARING OFFICER MICHAEL A. BOWMAN:

The Philadelphia Water Department (“Department” or “PWD”), the Public Advocate, Citizens for Pennsylvania’s Future (“Penn Future”), the Direct Discharger Group (whose members include Rohm & Haas Chemicals LLC, Dependable Distribution Services, Inc., Norfolk Southern Railway Company, Red Lion Associates, LP, Astro Holdings, Inc., Greenwich Terminals LLC, Delaware Avenue Enterprises, Inc., Penn City Investments, Inc. on behalf of Penn Warehousing & Distribution, Inc. and JH Stevedoring, Inc., and Arsenal Business Center/Arsenal Condominium Association/Arsenal Associates, LLC), Philadelphia Large Users Group (“PLUG”), PECO Energy Company and Exelon Corporation (“PECO/Exelon” and together with the above mentioned parties, the “Joint Petitioners”), by their respective counsel, submit this Joint Petition for Settlement of Phase 2 of the Rate Proceeding¹ (“Joint Petition”) and request that the Hearing Officer (1) approve the settlement of Phase 2 of these proceedings consistent with the terms and conditions of this Joint Petition (the “Settlement”); and (2) recommend that the Water Commissioner approve the Settlement and authorize PWD to submit Final Regulations and/or revise the PWD Stormwater Credits and Appeals Manual, reflecting the terms and conditions hereof. In support of their request, the Joint Petitioners state the following:

BACKGROUND

1. On February 3, 2012, the Department notified Philadelphia City Council of its intent to file proposed changes in rates for water, sewer and stormwater services to become effective October 1, 2012, or as soon thereafter as procedural requirements permit the promulgation of new rates by regulation. PWD Exhibits 1 and 2.

2. On March 6, 2012, pursuant to Sections 8-407 and 5-801 of the Philadelphia Home Rule Charter, the Department filed with the Department of Records proposed regulations to be promulgated in connection with the above proceeding to implement new rates.²

¹ Phase 2 is defined in Paragraph 4 below.

² Michael A. Bowman, Esquire was appointed to serve as Hearing Officer by the Mayor, City Council President and City Controller. Community Legal Services was appointed to serve as the Public Advocate on behalf of residential customers by these same elected officials. The following parties filed notices of intervention in Phase 2 of the rate proceeding: the Public Advocate, Direct Discharger Group, PECO/Exelon, PLUG and Penn Future.

3. The Hearing Officer convened a pre-hearing conference on June 8, 2012 to establish a schedule for the rate proceeding.

4. Pursuant to the agreement between the parties at the pre-hearing conference, the rate proceeding was bi-furcated into two phases to address the following issues:

Phase 1 - revenues, revenue requirements, cost allocation and rate structure issues with regard to water, sewer and stormwater, including the allocation of costs between stormwater and sanitary sewer functions of the utility; and

Phase 2 - stormwater credits, incentives, modified or enhanced CAP program and surface water discharge (as defined below) issues.

Statement of the Proceedings

5. Public input hearings were held during the period July 9-31, 2012. Technical hearings were convened on August 7-8, 2012 and October 24-25, 2012.

6. The parties to Phase 1 of the rate proceeding submitted a Joint Petition for Settlement to the Hearing Officer for his review and approval on or about August 22, 2012. Statements of Support of the settlement terms were filed by each party to the Phase 1 hearings promptly thereafter.

7. The Hearing Officer approved the Joint Petition for Settlement (Phase 1) by his Recommended Decision dated October 14, 2012. The Recommended Decision has been submitted to the Water Commissioner for his final approval.

8. During the course of Phase 2 of the proceeding, the Direct Discharger Group and PWD discussed the possibility of entering a stipulation regarding stormwater credit policy related to (i) the maximum impervious area credits ("IA Credits") and gross area credits ("GA Credits") and Open Space Credits (as defined below) that properties with direct discharge to surface water bodies ("surface water discharge") could attain; (ii) the application of stormwater credits for certain National Pollutant Discharge Elimination System ("NPDES") permit holders; and (iii) the proposed Enhanced CAP for non-residential customers. The scope of issues agreed upon was broad enough to entertain more expansive settlement discussions with the Public Advocate, Penn Future, PECO/Exelon and PLUG. This Joint Petition sets forth the specific terms and conditions of the proposed settlement agreement for Phase 2 of the rate proceeding.

TERMS AND CONDITIONS

9. The Settlement consists of the following terms and conditions:

Regulations

(a) Upon the Commissioner's Final Rate Determination adopting the terms of this Settlement, PWD shall file final regulations that implement the terms and conditions set forth herein (the "Final Regulations"). Settlement terms and conditions related to stormwater credit policy will be reflected in the Final Regulations and the Department's Stormwater Credits and Appeals Manual.

(b) The Joint Petitioners agree to exercise best efforts to obtain approval of this Settlement by the Water Commissioner on or before December 21, 2012 and the implementation of the Settlement rates effective January 1, 2013.

Statements of Support

10. The Joint Petitioners will indicate their support or non-opposition to the provisions of this Settlement by filing their respective statements and supporting affidavits after the execution of the Joint Petition.

Direct Discharger Settlement

11. The following are the terms and conditions of the Settlement with the Direct Discharger Group which affect all parcels listed in Exhibit A to this Joint Settlement. The terms and conditions of the Settlement are also applicable to other properties that contribute surface water discharges, except as provided below. Unless otherwise defined herein, capitalized terms will have the meanings ascribed to them in the PWD Stormwater Credits and Appeals Manual. If there is any discrepancy between the terms in the Direct Discharger Settlement and the PWD regulations or credit policy as stated in the PWD Credits and Appeals Manual, the terms of this Direct Discharger Settlement with regard to (i) the application of IA Credits, GA Credits and Open Space Credits (as defined herein) to properties with surface water discharge; (ii) the application of NPDES Credits for properties with surface water discharge; (iii) the application of the Enhanced CAP to the Direct Discharger Group; and (iv) the implementation of stormwater credits for properties with surface water discharge, will govern.

Application of IA and GA Credits for Properties with Surface Water Discharge

(a) The stormwater credit maximum for each classification of credit negotiated in the Settlement, specifically applies to properties that can receive IA Credits for the impervious area that contributes surface water discharge ("IA Managed"), GA Credits for area underneath the IA Managed and gross area credits for any remaining open space outside of the IA Managed ("Open Space Credits"). The maximum stormwater credits for properties with surface water discharge are stated below.

(i) A property can receive 90% IA Credits for the square footage of IA Managed.

(ii) A property can receive 90% GA Credits for the square footage of GA underneath the IA Managed.

(iii) A property can receive up to 90% Open Space Credits for the remaining Open Space (total GA less IA Managed) via:

(A) application of the Natural Resources Conservation Service Curve Number (Curve Number); or

(B) a topographical survey, or information that is reasonably equivalent, that demonstrates surface water discharge.

Application of NPDES Credits for Properties with Surface Water Discharge

(b) The application of the NPDES credits negotiated in the Settlement relates specifically to properties that have active industrial stormwater discharge NPDES permits. The Settlement methodology is as set forth below.

(i) A seven percent (7%) NPDES credit will be applied up front to any applicable IA, GA, and Open Space Credits resulting in the following potential maximum credits:

- (A) A property can receive 97% IA Credits for the square footage of IA Managed.
- (B) A property can receive 97% GA Credits for the square footage of the GA underneath the IA Managed.
- (C) A property can receive up to 97% Open Space Credits for the remaining open space (total GA less IA Managed) via:
 - (1) a Curve Number; or
 - (2) a topographical survey, or information that is reasonably equivalent, that demonstrates surface water discharge.

Credit Requirement

(c) All properties with surface water discharge that have existing onsite Stormwater Management Practices (SMPs) must operate and maintain these SMPs as originally designed and the SMPs need to perform as designed in order to qualify for the credits described herein.

Application of Enhanced CAP to Direct Discharger Group

(d) The Settlement changes to the application of the Enhanced CAP relate specifically to the Base Fiscal Year (Base FY) to which the Enhanced CAP criteria will be applied to determine eligibility, and if eligible, then to determine the monthly Enhanced CAP increase amount. The Settlement terms related to the application of the Enhanced CAP for Direct Discharger Group parcels only, are as follows.

(i) For members of the "Direct Discharger Group," the Base FY SWMS charge to which the Enhanced CAP criteria is applied, and from which the Enhanced CAP increase amount is calculated, will be the FY 2011 SWMS charge (as it existed on June 30, 2011).

(ii) For members of the "Direct Discharger Group" whose properties had a Minimum Charge in FY 2011, the Base FY charge will be as determined by the Water Department in the Enhanced CAP application.

(e) There will be no changes to the Enhanced CAP eligibility criteria. To be eligible for Enhanced CAP, a property must meet all of the following criteria as of the Enhanced CAP application date:

(i) the property seeking an Enhanced CAP on the SWMS charges must be a non-residential property;

(ii) the current fiscal year SWMS charges (for a given month) must be at least 10% more than the prior fiscal year's SWMS charges;

(iii) the current fiscal year SWMS charges (for a given month) must be at least \$100 more than the prior fiscal year's SWMS charges; and

(iv) the property must not be delinquent in (i) any tax payments to the City or (ii) the payment of water/sewer/stormwater charges.

Implementation of Stormwater Credits for Properties with Surface Water Discharge

(f) For all of the existing stormwater credit holders with surface water discharge, their existing IA, GA and NPDES credits will be converted to IA, GA, Open Space and NPDES credits consistent with this Settlement, effective January 1, 2013. However, the expiration date of the existing credit period (four year term from the application date) shall remain in effect as previously designated by the Department.

To renew the existing credits for properties with surface water discharge, along with the requisite credit renewal form and fee, the properties shall supply an engineer's certification that the IA Managed and the Open Space area that discharges to the surface waters have not changed and any SMPs that exist on the property perform as designed and that any NPDES permit for stormwater discharges associated with industrial activities remains active and the permit holder is fully compliant with permit requirements.

For the parcels identified in Exhibit A hereof, to obtain IA Credits, GA Credits and/or Open Space Credits for areas that have not previously been awarded credits, the same type and character of information and documentation will be accepted by the Department as have been submitted in the previous credit applications submitted to the Department.

PECO Energy/Exelon Settlement

12. The following are the terms and conditions of the Settlement with PECO Energy Company and Exelon Corporation.

(a) Application of Surface Water Discharge SWMS Credit Policy to Exelon and PECO Parcels. The Exelon parcels at Richmond, Schuylkill and Delaware Stations and the PECO parcel at Schuylkill Station are included among the properties with surface water discharge which are addressed in the Direct Discharger Group settlement terms and conditions set forth in Paragraph 11(a), (b), (c) and (f).

(b) Real Estate Issues. PWD and Exelon will work to resolve issues related to the occupancy and use of facilities on Exelon's properties at Delaware and Schuylkill Stations.

(c) Curve Number. PWD and PECO will work to establish a Curve Number for certain PECO parcels (substations and rights-of-way) that gives recognition to the porous characteristics of such parcels and the permeable yardstone installed on such properties.

Public Advocate and Penn Future Settlement

13. The following are the terms and conditions of the Settlement with the Public Advocate and Penn Future.

Enhanced CAP Settlement Terms

(a) Application to and Duration of Enhanced CAP Program. The following terms and conditions (in addition to the eligibility criteria established by the Department) shall apply with respect to the application to and duration of the Enhanced CAP Program for non-residential stormwater customers (the “Enhanced CAP Program”):

(i) The Department will file final regulations that expressly limit the time to apply to the proposed Enhanced CAP program (for non-residential parcels other than the parcels within the Direct Discharger Group) to the period January 1, 2013 through September 30, 2013.

(ii) The Department will file final regulations that expressly recognize that the proposed Enhanced CAP program for non-residential customers remains subject to further review, extension, modification or termination in a subsequent Rate Determination.

(iii) The Department will expressly limit the time for enrollment in the Enhanced CAP program related to the Direct Discharger Group settlement in this case to a 90 day period beginning January 1, 2013.

(b) Evaluation and Development of Incentive Programs. The Department shall undertake the evaluation and development of cost effective stormwater incentive programs that may reduce or eliminate the need for the Enhanced CAP program, as follows:

(i) Promptly following the issuance of the final Rate Determination in this rate proceeding, the Department will continue the process of evaluation, development and planned implementation of cost-effective stormwater incentive programs that reduce or eliminate the need for the Enhanced CAP program, including, without limitation, consideration of (A) stormwater retrofit project financing programs; (B) offsite mitigation programs; (C) aggregation programs; (D) pay for performance instrument programs; (E) loan programs; and (F) grant programs.

(ii) The process of evaluation, development and planned implementation of the aforesaid incentive programs will be a part of a collaborative undertaking with Natural Resources Defense Council and the Joint Petitioners that desire to participate. Based upon the outcome of the above process and before proposing to extend, modify or terminate any non-residential stormwater CAP program, the Department will work with the Joint Petitioners and City Council on assessing whether there is a need to provide phase-in relief in a future rate proceeding.

(c) Evaluation and Development of Modifications to Enhanced CAP Program. The Department further agrees that before proposing to extend, modify or terminate any non-residential stormwater CAP program in a future rate proceeding, PWD will work with the Joint Petitioners (who desire to participate) to consider, evaluate and develop potential modifications to the Enhanced CAP program, including, without limitation, consideration of:

(i) An escrow concept, whereby participants must pay some amount into an escrow account that must be used for onsite or offsite mitigation upon graduation or exit from the program;

(ii) A loan concept, whereby rate relief is structured as a secured or unsecured loan to program participants, which is only forgiven when participants undertake onsite or off-site mitigation;

(iii) A recoupment concept, whereby rate relief may be recouped from participants who violate program terms and conditions;

(iv) Financial hardship or certification requirements for participants;

(v) Fixed-length phase-in rate relief;

(vi) Deposit-posting requirements;

(vii) Higher percentage and/or dollar increase eligibility thresholds; and

(viii) Higher percentage and/or dollar increases to stormwater charges.

(d) Information Gathering and Reporting. The Department will undertake information gathering and reporting related to the Enhanced CAP program and alternatives thereto, as follows:

(i) During the period beginning January 1, 2013 and ending with the last fiscal quarter preceding the Department's commencement of a future rate proceeding, the Department will gather the following information:

(A) For each individual Enhanced CAP program participant, parcel IA and GA and the dollar amount of the quarterly and fiscal-year-to-date phase-in relief provided by the Enhanced CAP program;

(B) Total number of Enhanced CAP program participants and aggregate IA and GA of their parcels;

(C) Total dollar amount of the quarterly and fiscal-year-to-date phase-in relief provided to all Enhanced CAP program participants; and

(D) Average cost to the Department to create a Greened Acre using public funds (i.e., total public funds spent on Greened Acres divided by the number of Greened Acres created using public funds).

(ii) During the period beginning January 1, 2013 and ending with the last fiscal quarter preceding the Department's commencement of a future rate proceeding, the Department will prepare and provide quarterly reports with the above information to the Joint Petitioners.

(iii) The Department will provide advance notice to the Joint Petitioners of its intent to commence any proceeding or propose any regulatory changes that would extend, modify or terminate any nonresidential stormwater CAP program, and will inform the Joint Petitioners as soon as practicable when made aware of any proceeding, investigation, inquiry, or similar circumstance or event initiated by any person other than the Department that would extend, modify or terminate any non-residential stormwater CAP program.

PLUG Settlement

14. The following are the terms and conditions of the Settlement with the Philadelphia Large Users Group.

(a) The Department will compile information for PLUG customer parcels related to IA/GA credits awarded to date and the eligibility of PLUG accounts for Enhanced CAP.

(b) The Department will offer assistance to PLUG parcel owners with regard to identifying and evaluating SMPs for onsite stormwater management.

(c) The Department will work with PLUG to resolve billing and service issues involving its members.

ADDITIONAL TERMS AND CONDITIONS

15. This Settlement is proposed by the Joint Petitioners to settle Phase 2 of the rate case. The Joint Petitioners preserve their rights to file exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the Hearing Officer in his report and recommendations to the Commissioner. Joint Petitioners also reserve the right to file replies to any exceptions filed.

16. This Settlement is conditioned upon the Commissioner's approval of the terms and conditions hereof without modification. If the Commissioner should disapprove the Settlement or materially modify the terms and conditions herein, without the express consent of the Joint Petitioners, the Settlement may be withdrawn upon written notice to the Commissioner and all active parties within three business days following the entry of the Commissioner's Rate Determination, and in such event, the Settlement shall be of no force and effect. If the Joint Petition is disapproved or the Settlement does not take effect for any reason whatsoever, the Joint Petitioners reserve their respective rights to fully litigate Phase 2 of the rate proceeding, including but not limited to the presentation of witnesses, cross examination of witnesses, the presentation of legal argument through submission of briefs, reply briefs, exceptions and oral argument. Upon approval of the Settlement by the Water Commissioner, the transcribed testimony taken in Phase 2 of this rate proceeding, will be stricken from the record.

17. This Settlement is conditioned upon the Joint Petitioners agreement that, upon approval of the Settlement by the Water Commissioner, none of the Joint Petitioners will challenge, enjoin or further litigate any elements of the final ratemaking decisions in this proceeding and the regulations implementing new rates (the "2013 Rate Determination") or any aspect of the rate setting process for FY 2013-2015 in the Philadelphia Court of Common Pleas or any other court of competent jurisdiction. This Settlement and the Water Commissioner's approval of this Settlement, however, shall not constitute administrative finality, issue preclusion or claim preclusion as to any matter in any subsequent rate proceeding.

18. The Department covenants and agrees that the proposed Settlement terms reflected in this Joint Petition, together with any other agreement, understanding or arrangement between the Department and any other Joint Petitioner, do not affect the Phase 1 settlement terms and conditions, including without limitation, the revenue requirement for the revised rate period (FY 2013-2015) and (a) the typical monthly residential bills calculated by the Department in Table 38A of the Department's Statement of Support for the Joint Petition for Settlement related to Phase 1 of the rate proceeding (dated August 29, 2012); and (b) the typical monthly non-residential bills shown in PWD Exhibit 28 (Exhibit JRM-3 Revised).

19. This Joint Petition may be executed in multiple counter-parts, each of which shall be regarded for all purposes as an original and such counter-parts shall be considered as one and the same instrument.

WHEREFORE, the Joint Petitioners respectfully request the following:

- (A) that the Hearing Officer receive and admit into the record all statements and exhibits, including verifications and affidavits filed as to each witness; and include the Joint Petition and related attachments as hearing officer exhibits.
- (B) that the Hearing Officer recommend the approval of the Settlement embodied in this Joint Petition, including all terms and conditions hereof;
- (C) that the Hearing Officer find the terms and conditions of the Settlement are supported by substantial evidence and recommend that the Water Commissioner authorize the Department to file Final Regulations implementing the Settlement; and
- (D) that the Hearing Officer officially close the record of this proceeding.

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Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: Joseph S. Clare III

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

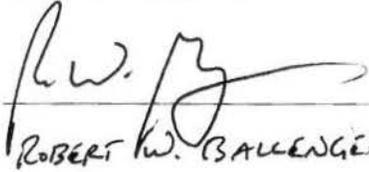
By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By:  _____
ROBERT W. BALLENGER

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

By: _____

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PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By:  _____
BRIAN GLASS

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

By: _____

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PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: Neil Nitrus _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON CORPORATION

By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

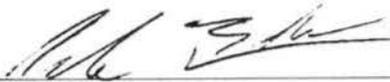
CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By:  _____

James P. Dougherty
Adeolu A. Bakare
MCNEES WALLACE & NURICK, LLC

PECO ENERGY COMPANY AND
EXELON CORPORATION

By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By:  _____

EXELON GENERATION COMPANY, LLC

By: _____

Signature Page to Joint Petition for Settlement

PHILADELPHIA WATER DEPARTMENT

By: _____

PUBLIC ADVOCATE

By: _____

CITIZENS FOR PENNSYLVANIA'S FUTURE

By: _____

DIRECT DISCHARGERS GROUP

By: _____

PHILADELPHIA LARGE USERS GROUP

By: _____

PECO ENERGY COMPANY

By: _____

EXELON GENERATION COMPANY, LLC

By:  _____

Exhibit A

Company	Parcel Address	OPA Number
Penn Warehousing	1951 S. Columbus Boulevard	781053600
Penn Warehousing	1901 S. Columbus Boulevard	771528000
Penn Warehousing	775 S. Columbus Boulevard	884018736
Penn Warehousing	9 Snyder Avenue	884463830
Penn Warehousing	78 S. Pier	884463820
Penn Warehousing	10 Snyder Avenue	884463835
Rohm & Haas	5000 Richmond Street	884209535
Astro Holdings	3117 S. Columbus Boulevard	781054000
Astro Holdings	2701 S. Columbus Boulevard	781053800
Delaware Avenue Enterprises	2937 S. Columbus Boulevard	884141020
Delaware Avenue Enterprises	2501 S. Columbus Boulevard	884138050
Norfolk Southern	4401 S. Broad Street	788012600
Norfolk Southern	2 Mustin Street	788012650
Dependable	84 S. Pier	884463825
Arsenal	5301 Tacony Street	882938550
Red Lion Associates	2701 Red Lion Road	884288000
Exelon - Richmond Station	3901 N. Columbus Boulevard	884352243
Exelon - Schuylkill Station	2600 Christian Street	772599000
Exelon - Delaware Station	1325 Beach Street	884351717

BEFORE THE
PHILADELPHIA WATER COMMISSIONER

In the Matter of the Philadelphia Water :
Department's Proposed Increase in Rates for : FY 2013-2016
Water and Wastewater Utility Services :

Direct Testimony of
Scott J. Rubin

on Behalf of
Citizens for Pennsylvania's Future

PF Statement 2

September 5, 2012

Introduction

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Q. Please state your name and business address.

A. My name is Scott J. Rubin. My business address is 333 Oak Lane, Bloomsburg, PA.

Q. By whom are you employed and in what capacity?

A. I am an independent consultant and an attorney. My practice is limited to matters affecting the public utility industry.

Q. What is the purpose of your testimony in this case?

A. I have been asked by Citizens for Pennsylvania’s Future (“PennFuture”) to review various proposals of the Philadelphia Water Department (“PWD” or “Department”) relating to the rates and related programs for storm water service.

Q. What are your qualifications to provide this testimony in this case?

A. I have testified as an expert witness before utility commissions or courts in the District of Columbia, the states of Alaska, Arizona, California, Connecticut, Delaware, Kentucky, Illinois, Maine, Maryland, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, and West Virginia, and the province of Nova Scotia. I also have testified as an expert witness before two committees of the U.S. House of Representatives and one committee of the Pennsylvania House of Representatives. I also have served as a consultant to the staffs of the Connecticut Department of Public Utility Control and the Delaware Public Service Commission, as well as to several national utility trade associations, and state and local governments throughout the country. Prior to establishing my own consulting and law practice, I was employed by the Pennsylvania Office of Consumer Advocate from 1983 through January 1994 in increasingly responsible positions. From 1990 until I left

1 state government, I was one of two senior attorneys in that Office. Among my other
2 responsibilities in that position, I had a major role in setting its policy positions on water
3 and electric matters. In addition, I was responsible for supervising the technical staff of
4 that Office. I also testified as an expert witness for that Office on rate design and cost of
5 service issues.

6 Throughout my career, I developed substantial expertise in matters relating to the
7 economic regulation of public utilities. I have published articles, contributed to books,
8 written speeches, served on expert panels, volunteered as a peer reviewer, and delivered
9 numerous presentations, on both the national and state level, relating to regulatory issues.
10 I have attended numerous continuing education courses involving the utility industry.
11 I also have participated as a faculty member in utility-related educational programs for
12 the Institute for Public Utilities at Michigan State University, the American Water Works
13 Association, and the Pennsylvania Bar Institute. A copy of my curriculum vitae is
14 attached as Schedule SJR-1.

15 **Q. Do you have any experience that is particularly relevant to the issues in this case?**

16 A. Yes. I have testified on numerous occasions as a rate design and cost of service expert. I
17 also have worked as a consultant to local government entities on rate design issues – both
18 to assist government-owned utilities in designing rates and to help government agencies
19 obtain reasonable rates from their utility. I also served on the editorial committee for the
20 preparation of the fifth edition of the major rate design manual for the water utility
21 industry, the American Water Works Association's Manual M1: *Principles of Water*
22 *Rates, Fees, and Charges*, published in 2000.

1 **Q. What documents have you reviewed specifically for this case?**

2 A. I reviewed testimony filed on behalf of the Department by Ms. Dahme and by
3 representatives of Black & Veatch (both direct and supplemental). In addition, I have
4 reviewed several portions of the Department's filing, standard interrogatories,
5 Department regulations, deposition transcripts, and numerous responses to discovery
6 requests.

7 **Q. Please summarize your conclusions.**

8 A. My conclusions can be summarized as follows:

- 9 • It is reasonable to recover the costs of providing storm water service
10 by a parcel-based charge. This cost allocation and recovery
11 methodology should not be disturbed.
- 12 • The Department's proposed rate credits for properties that control their
13 storm water flows are not fully justified. More information is required
14 in order to set the credit at an appropriate, cost-based level.
- 15 • I recommend a modification to the Department's proposed Enhanced
16 CAP. The limit on the maximum annual storm water increase paid by
17 any non-residential customer proposed by PWD could permit certain
18 non-residential customers to pay below-cost storm water charges for
19 the indefinite future. While I support a reasonable transition period, it
20 is not in the public interest to allow a select group of customers to pay
21 below-cost rates indefinitely, particularly if they have not taken any
22 action to control storm water flows.

23 **Background Information About Storm Water Utility Service**

24 **Q. What is storm water utility service?**

25 A. Storm water utility service is designed to safely and in compliance with environmental
26 regulations remove storm water flows (also known as run off) from a service area's
27 streets, rights of way, parking lots, roofs, sidewalks, and other impervious surfaces.

28 Unlike other utility services, storm water flows are not subject to being separately

1 metered, and they are not directly related to the consumption of another service that can
2 be directly measured.

3 **Q. Is the lack of metering the only important difference between storm water service
4 and other utility services?**

5 A. No, there is another important difference. A significant portion of storm water flows
6 arise from public streets and rights of way. I will refer to these as right-of-way flows.
7 Right-of-way flows are a shared responsibility of everyone in the service area. There are
8 different methods that can be used to recover right-of-way-related costs; but whatever
9 method is chosen, the charge for that service is neither avoidable nor controllable by any
10 individual customer.

11 **Q. Is there an analogy to right-of-way flows in other types of utilities?**

12 A. Yes. Every utility has common costs that are incurred to enable the utility as a whole to
13 provide service. Items such as office buildings, officers' salaries, water used for fire
14 protection, and spinning reserves on the electric grid are examples of common costs that
15 support the utility's function as a whole. These types of costs are allocated among all
16 customers, usually through cost-of-service studies, in a way that requires all customers to
17 pay a portion of the cost, even though no one customer causes the cost to be incurred or
18 can avoid the cost. Different parties might have different perspectives on the fair way to
19 recover these types of common costs, but the costs must be recovered from all customers.

20 **Q. What is PennFuture's interest in these issues?**

21 A. I am advised that PennFuture would like to ensure that the Department has the resources
22 necessary to reduce and control storm water flows in the city. PennFuture also would

1 like to see property owners take reasonable, cost-effective actions to control the flow of
2 storm water from their properties, and it is concerned that divorcing control of the flows
3 from payment for PWD's costs in managing those flows could inhibit control efforts.
4 Because no individual property owner can control right-of-way flows, it is important for
5 PWD to recover sufficient revenues from all customers to manage those flows. It also is
6 important that monetary incentives for controlling flows from a property be
7 commensurate with the costs that PWD would save (or avoid) as a result of those
8 customer-specific actions.

9 PennFuture approaches this question from an environmental perspective. My
10 approach is based on fairness in the context of economic regulation and consumer
11 protection; that is: Are the appropriate price signals being sent to customers, and do the
12 rates reasonably balance the concerns of different types of customers? While I approach
13 the question from a different perspective than PennFuture, we have reached the same
14 conclusions about these issues.

15 **Transition from Metered to Parcel-Based Storm Water Charges**

16 **Q. Do you have any recommendations related to the transition from meter-based**
17 **charges to parcel-based charges for storm water service?**

18 A. Yes. I support the Department's full implementation of parcel-based charges for storm
19 water service. In my opinion, it is fairer to customers, and much more consistent with
20 principles of cost causation, to collect storm water charges based on the physical
21 characteristics of the property rather than on the amount of potable water used on the

1 property. I recommend, therefore, that the Department be permitted to fully transition to
2 parcel-based billing for storm water service.

3 Credits for Controlling Storm Water Flows

4 **Q. Is the Department proposing credits for non-residential properties that control their**
5 **storm water flows?**

6 A. Yes, the Department is proposing that a property that controls its storm water flows can
7 receive a credit for up to 80% of its total storm water charges.¹

8 **Q. In your opinion, is it reasonable to give a credit to a property that controls its storm**
9 **water flows?**

10 A. Yes. In my opinion, there are two reasons why it is reasonable to give a credit to
11 customer-funded storm water control projects. First, when a customer reduces its storm
12 water flows, PWD incurs lower costs to manage those flows. Second, I am advised that
13 PWD is required to have in place certain controls (expressed as an increasing amount of
14 land area on which storm water flows are controlled) to remain in compliance with its
15 agreements with environmental regulators. A properly designed and implemented
16 control project by a customer may allow the Department to avoid undertaking a project of
17 its own. Thus, a customer-funded project can provide an “avoided cost” benefit to the
18 entire utility.

¹ I use the term “control its storm water flows” in the economic sense, not the physical sense. It may not be possible for certain properties to physically control the flows from the property, but I understand that PWD is developing options that would allow a customer in those circumstances to fund projects offsite and receive comparable credit. Generally, I will refer to the control of storm water flows as either controlling flows from a property or customer-funded projects.

1 **Q. Is the 80% credit proposed by PWD reasonably related to the cost savings the**
2 **Department would achieve from the reduced flows?**

3 A. I do not know. The Department has quantified the first benefit I described above: the
4 cost of not treating flows from the customer's property. Specifically, in response to
5 PECO interrogatory I-11 (a copy of which is attached as Schedule SJR-2), the
6 Department showed that approximately 60% of its storm water cost of service is
7 associated with managing flows from customers' properties, while 40% is incurred to
8 manage storm water flows from rights of way. Thus, if only the costs to treat customers'
9 flows were considered, the maximum cost savings would be 60% of the customer's bill.
10 The remaining 40% of the bill is for common, right-of-way costs.

11 In addition to this potential 60% credit, the customer could receive a credit
12 reflecting the avoided cost savings to PWD (that is, the cost that PWD would not need to
13 incur for a storm water control project). The Department, however, has not quantified the
14 avoided cost savings from not having to undertake its own control projects. Such savings
15 might vary over time, as PWD's portfolio of control options changes.

16 From the information available today, I can conclude that the maximum credit for
17 customer-funded projects should be at least 60% of the customer's storm water bill. But I
18 cannot state what the upper limit on the credit should be because we do not have
19 information on PWD's avoided costs.

20 **Q. What do you recommend?**

21 A. I recommend that the Department be allowed to implement its proposal to set the
22 maximum credit for controlling flows from a property at 80% for this case. In the next

1 case, however, the Department should be required to specifically quantify its avoided
2 costs, and to prepare a cost-of-service study that separately quantifies the costs associated
3 with managing right-of-way flows and customer flows.

4 **Setting Reasonable Limits on Storm Water Bill Increases**

5 **Q. Has the Department proposed any methods to mitigate the effects on customers of**
6 **moving from meter-based storm water charges to parcel-based charges?**

7 A. Yes, the Department has proposed a program it calls the Enhanced CAP.² As I
8 understand it, this proposal would limit the annual increase in storm water charges to a
9 non-residential customer to a 10% increase over the previous year's storm water bill, as
10 long as the increase is at least \$100. The 10% annual limit in the Enhanced CAP
11 proposal would apply without regard to the amount of increase that all other customers
12 must bear. The Enhanced CAP would be available to any eligible non-residential
13 customer. As PWD proposed it, the Enhanced CAP would remain in effect indefinitely.

14 **Q. Based on your understanding of the Department's proposal, would a customer**
15 **receiving the benefit of the Enhanced CAP be required to take any actions to control**
16 **storm water flows on its property?**

17 A. No. As I understand it, the only requirements to remain eligible for the Enhanced CAP
18 are that the customer must pay its PWD bills and remain tax compliant. The customer

² PWD proposed a CAP program in the original rate filing. Under that program, non-residential ratepayers who experienced a monthly increase of 10% (excluding the proposed revenue requirement increases for FY 2013-2016) and \$100 from one fiscal year to the next could request a capping of the charge at the 10% plus revenue requirement increase level. As I understand it, City Council introduced a bill that led to the discussion of a more extensive CAP program, which resulted in the Enhanced CAP program currently being proposed. Although my comments are directed at the Enhanced CAP program, they also would apply to the CAP program in the original rate filing.

1 would not be required to take any actions to control storm water flows to remain eligible
2 for the reduced rate.

3 **Q. In your opinion, is the Enhanced CAP a reasonable way to mitigate the impact to**
4 **customers of the transition to parcel-based billing for storm water?**

5 A. No. I fully support the use of some type of transition mechanism to mitigate the effects
6 of a major change in rate design, and I have proposed such mitigation measures myself in
7 other rate cases. In my experience, there are two important aspects to any mitigation
8 measure: (1) the need for mitigation that is part of an overall rate increase should be
9 evaluated by comparing the affected customer to the average customer, and (2) the
10 mitigation measure should be phased out over a reasonable period of time so that all
11 customers pay rates better reflecting the utility's cost of service.

12 **Q. Does PWD's proposed Enhanced CAP meet these criteria?**

13 A. No, the proposed Enhanced CAP does not meet either standard.

14 **Q. Please address your first criterion: that a mitigation measure caused in part by a**
15 **rate increase should reflect the relationship between the affected customer and the**
16 **average customer.**

17 A. In my experience, this criterion is measured by comparing the percentage increase to the
18 affected customer to the average percentage increase for a customer in the same class. In
19 cases where I have addressed mitigation measures, my typical approach is to limit the
20 increase to any customer class to no more than 150% of the system-average increase, and
21 to attempt to limit the increase to any customer within a class to no more than 300% of
22 the class-average increase. For example, if a utility were proposing a 10% increase

1 overall, then no class should receive an increase that is more than 15% (one and one half
2 times the system-average increase), as a class average. Taking the example further, if the
3 commercial class received a 12% increase, then my limits would mean that no
4 commercial customer would receive more than a 36% increase (three times the class
5 average increase). In my experience, these limitations enable utilities to transition to
6 cost-based rates over a reasonable period of time without having extremely severe
7 impacts on any particular customer. We must remember that any type of transition or
8 mitigation measure must be fair to all customers – including those customers who are
9 paying above-cost rates in order to fund the mitigation measure.

10 By setting an absolute increase of 10% in the annual bill, the Enhanced CAP
11 divorces the need for mitigation from the impact on other customers, and ignores the
12 importance of moving toward cost-based rates for all customers. For example, if PWD
13 needed to increase its storm water charges by 11% in a year, customers under the
14 Enhanced CAP would be receiving smaller increases than the average customer. This is
15 not a mitigation measure or a transition to a higher rate; it actually would be moving the
16 customer in the wrong direction – increasing the amount by which the customer’s bill is
17 below the cost of serving the customer.

18 **Q. Please address your second criterion: the mitigation measure should be phased out**
19 **over a reasonable period of time.**

20 A. PWD’s proposed Enhanced CAP also fails this standard. As proposed, the Enhanced
21 CAP could last indefinitely. When coupled with the Enhanced CAP’s relatively modest
22 increment over the average rate increase, the Enhanced CAP could remain in place for 20
23 years or more. I do not consider this to be a reasonable transitional time period. It would

1 greatly extend the time during which other customers would be subsidizing the rates of
2 those customers paying rates that are substantially below the cost of service.

3 **Q. Do you agree with PWD's proposal that the only criteria for participating in the**
4 **Enhanced CAP should be that the customer pay its PWD bills and remain tax**
5 **compliant?**

6 A. No. After an initial transition period, participation in the Enhanced CAP should be
7 contingent on a customer taking reasonable action to control flows from its property,
8 which under my proposal could reduce the customer's storm water bill by 60% or more.

9 **Q. Why is it important to have customers take action to control their storm water flows**
10 **in order to remain eligible for the Enhanced CAP program?**

11 A. A study that I helped prepare for the Water Research Foundation and U.S. Environmental
12 Protection Agency found that it was a best practice within the water and energy utility
13 industries to couple payment assistance with programs to reduce the size of the utility
14 bill.³ It is a fairly common practice to require low-income residential customers to
15 participate in programs to reduce their utility bills as a condition of receiving a
16 discounted rate for service. This is good public policy for two reasons. First, it reduces
17 the burden on customers who are not eligible for the discount. Second, it sends eligible
18 customers the message that they must exercise some control over their use of the utility
19 service, which can provide benefits – to the customer and to the utility as a whole – long
20 after the customer is no longer eligible for the discount.

³ John E. Cromwell III, et al., *Best Practices in Customer Payment Assistance Programs*, Water Research Foundation Publication 4004 (2010).

1 **Q. What do you recommend?**

2 A. I recommend that the Department implement a rate mitigation program for non-
3 residential customers. The program would remain in effect until the Department's next
4 rate case, at which time the continuing need for such a program should be reassessed. I
5 recommend a rate mitigation program that meets the following standards:

- 6 • During the time that rates set in this case are in effect, the maximum
7 increase in storm water charges for any non-residential customer in
8 any year will be three times the average storm water increase for non-
9 residential customers in that year. This discounted rate should be
10 available to all non-residential customers who are current on their
11 PWD bills and remain tax compliant where the increase in storm water
12 charges over the previous year would be at least \$100.
- 13 • In the next case, I recommend that PWD provide a report on the
14 number of customers participating in the program and the amount of
15 revenues lost as a result of the program. In addition, if PWD believes
16 such a discount should continue, then PWD should propose a
17 reasonable time period in which each participating customer must take
18 action to control flows from its property sufficient for the customer to
19 receive the maximum credit for a customer-funded project offered by
20 the Department.

21 **Conclusion**

22 **Q. Please summarize your recommendations.**

23 A. In summary, I recommend the following:

- 24 • The parcel-based methodology for storm water cost allocation and
25 recovery should not be disturbed as it is an equitable method to
26 apportion costs among customers.
- 27 • The Department should set the maximum credit for controlling flows
28 from a property to be 80% of the parcel-based storm water charge
29 while rates from this case remain in effect.
- 30 • In the next case, the Department should be required to specifically
31 quantify its avoided costs, and to prepare a cost-of-service study that
32 separately quantifies the costs associated with managing right-of-way
33 flows and customer flows.

- The Department should implement a rate mitigation program for non-residential customers. The program should remain in effect until the Department's next rate case, at which time the continuing need for such a program will be reassessed. The rate mitigation program should meet the following standards:

- While rates from this case remain in effect, the maximum increase in storm water charges for any non-residential customer in any year should be three times the average storm water increase for non-residential customers in that year. This discounted rate should be available to all non-residential customers who are current on their PWD bills and remain tax compliant where the increase in storm water charges over the previous year would be at least \$100.

- In the next case, PWD should provide a report on the number of customers participating in the program and the amount of revenues lost as a result of the program. In addition, if PWD believes such a discount should continue, then PWD should propose a reasonable time period in which each participating customer must take action to control flows from its property sufficient for the customer to receive the maximum credit for a customer-funded project offered by the Department.

22 **Q. Does this conclude your direct testimony?**

23 A. Yes, it does, but I reserve the right to supplement this testimony as other information
24 becomes available. In particular, I reserve the right to supplement this testimony to
25 respond to the Direct Discharger Group once I have a better understanding of the position
26 it is taking in this proceeding.