

BEFORE THE PHILADELPHIA WATER, SEWER
AND STORM WATER RATE BOARD

IN THE MATTER OF A PROPOSED RATE INCREASE :
IN WATER, SEWER AND STORM WATER RATES : FY 2019-2021 RATES

**MAIN BRIEF
OF
THE PHILADELPHIA LAND BANK**

June 4, 2018

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I. INTRODUCTION AND PROCEDURAL HISTORY

The Philadelphia Water Department ("PWD") submitted its Advance Notice on February 12, 2018, followed by its Formal Notice on March 14, 2018, to the Philadelphia Water, Sewer, and Storm Water Rate Board ("Rate Board") commencing the process to review PWD's proposed \$116 million rate increase ("2018 Rate Proceeding"). Discovery commenced upon filing of the Advance Notice. On March 8, 2018, the Philadelphia Land Bank (the "Land Bank"), a public body corporate and politic,¹ notified the Rate Board of its decision to participate and intervene in the 2018 Rate Proceeding. On April 20, 2014, the Land Bank submitted the Direct Testimony of Angel Rodriguez, with accompanying exhibit,² and on May 17, 2018, Angel Rodriguez was cross-examined.

The Land Bank now files this brief to ensure that the Land Bank receives a full exemption from all water, sewer, and stormwater rates and charges for all unoccupied properties owned by the Land Bank as contemplated in §16-705(5) of the Philadelphia Code, which specifically provides that "[f]or the duration of the time a property is held by the Land Bank, the Land Bank is authorized to exempt such property from all real estate taxes, water, sewer, stormwater and other municipal charges to the extent permitted by law".³

II. OVERVIEW OF LAND BANKS

In 2012, Pennsylvania adopted legislation enabling municipalities to establish land banks as a way to facilitate the return of vacant, abandoned, and tax-delinquent properties to productive use ("Land Bank Act").⁴ The Pennsylvania legislature recognized "an overriding public need to confront the problems caused by vacant, abandoned and tax-delinquent properties through the creation of new tools to enable municipalities to turn vacant, abandoned and tax-delinquent spaces into vibrant places".⁵ Since adoption of the Land Bank Act, twenty land banks have been established in Pennsylvania.⁶

¹ 68 Pa.C.S. §2104(f) and Philadelphia Code §16-702(2).

² Errata Sheets for the Direct Testimony of Angel Rodriguez were submitted on May 16, 2018.

³ Philadelphia Code §16-705(5) (emphasis added).

⁴ Act of Oct. 24, 2012, P.L. 1239, codified at 68 Pa.C.S. §§2101-2120.

⁵ 68 Pa.C.S. §2102(4).

⁶ Philadelphia, Harrisburg, Dauphin County (excluding Harrisburg), Westmoreland County, Pittsburg, North East Pennsylvania (multi-municipal), Venango County, Lackawanna County, Schuylkill County, Northumberland County, Washington County, City of Lancaster, Lancaster County (excluding City of Lancaster), City of Erie, Tri-COG (multi-municipal), City of Lebanon, Lawrence County, Borough of Pottstown, City of Sharon, York County.

Land banks deal with properties that are neglected, blighted, may have little or no market value, may have clouded titles that make them unmarketable, and may have liens in excess of their market values.⁷ Repurposing blighted properties and returning them to the tax rolls presents major challenges,⁸ which often deters private investors and potentially responsible owners from redeveloping them.⁹

Land banks are important for several reasons. First, land banks make blighted properties more attractive to new owners by removing liens, clearing back taxes, and resolving title issues.¹⁰ Blighted properties are often encumbered with an overwhelming amount of liens as unscrupulous property owners often fail to pay property taxes in order to "milk" equity by financing and re-financing the property.¹¹ Once all the equity has been "milked", the lengthy amount of time needed to bring a property to tax foreclosure further encourages property owners to neglect the property.¹²

Second, land banks can change market dynamics. Often, a property is "underwater" because it is encumbered with liens greater than its market value or because the cost of demolition and rehabilitation exceeds the market value, making it extremely difficult to sell in the traditional real estate market.¹³ A land bank is better equipped to overcome the difficulties associated with "underwater" properties by removing liens, clearing title and then either maintaining the property in its inventory for future sale or placing the unencumbered property on the market for immediate sale, both of which can significantly affect market dynamics.¹⁴

Third, land banks address the high cost of blight.¹⁵ Vacant, abandoned and tax-delinquent properties are undermining Pennsylvania communities. These properties impose significant costs on communities and local governments, erode property values, increase fire and police protection costs, decrease tax revenues, destabilize neighborhoods, and undermine

⁷ Winifred M. Branton, Esquire, *Pennsylvania Land Banks*, at 1, <https://static1.squarespace.com/static/5342bfabe4b076ea499631f5/t/558850f7e4b0ca6f99b87d2d/1434997034638/Pennsylvania+Land+Banks+Article+ELF+2015.pdf> (last visited Apr. 30, 2018).

⁸ *Id.* at 1.

⁹ Winifred M. Branton, Esquire, *The Pennsylvania Land Bank Resource Guide*, (Housing Alliance of Pennsylvania, April 2016), at 11.

¹⁰ *Id.* at 11.

¹¹ Frank S. Alexander, *Land Banks and Land Banking*, (Center for Community Progress, 2015), at 14.

¹² *Id.* at 14.

¹³ Winifred M. Branton, Esquire, *The Pennsylvania Land Bank Resource Guide*, (Housing Alliance of Pennsylvania, April 2016), at 11.

¹⁴ *Id.* at 11.

¹⁵ *Id.* at 11.

community cohesion.¹⁶ Vacant, abandoned and tax-delinquent properties signal to the larger community that a neighborhood is on the decline, which tends to undermine the sense of community and discourage neighborhood investment.¹⁷ A 2010 study of Philadelphia found that (i) Philadelphia spends \$21 million each year to maintain vacant and abandoned properties for police, fire, pest control, and waste cleanup; (ii) Philadelphia's vacant and tax delinquent properties results in a \$2 million loss in property taxes each year; and (iii) vacant and abandoned properties diminish the value of nearby properties by an average of \$8,000.¹⁸

Lastly, land banks create economic development opportunities, stabilize the housing and job markets, and promote community cohesion.¹⁹ A study conducted by the University of Pennsylvania showed that eliminating blight through "greening" efforts or redevelopment increases property values by up to thirty percent,²⁰ reduces gun-related violence,²¹ and improves residents' exercise habits.²²

To overcome the impediments mentioned earlier, land banks were granted unique powers to acquire property, clear title, and extinguish liens, thereby making the property marketable and ready for transfer to a new, responsible owner.²³

¹⁶ Winifred M. Branton, Esquire, *Pennsylvania Land Banks*, at 1, <https://static1.squarespace.com/static/5342bfabe4b076ea499631f5/t/558850f7e4b0ca6f99b87d2d/1434997034638/Pennsylvania+Land+Banks+Article+ELF+2015.pdf> (last visited Apr. 30, 2018). 68 Pa.C.S. §2102(3).

¹⁷ Frank S. Alexander, *Land Banks and Land Banking*, (Center for Community Progress, 2015), at 14 (citing Edward G. Goetz, Kristin Cooper, Bret Thiele, & Hin Kin Lam, *Center for Urban and Regional Affairs, Pay Now or Pay More Later: St. Paul's Experience in Rehabilitating Vacant Housing* 12 (1998); James Goldstein et al., *Urban Vacant Land Redevelopment: Challenges and Progress* (Lincoln Inst. of Land Policy, *Working Paper*, 2001)).

¹⁸ Winifred M. Branton, Esquire, *The Pennsylvania Land Bank Resource Guide*, (Housing Alliance of Pennsylvania, April 2016), at 13.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 13 (citing Susan M. Wachter, Grace Wong (2008), "What Is a Tree Worth? Green City Strategies and Housing Prices", *Real Estate Economics*, 2008, 213–239; Susan Wachter, *The Determinants of Neighborhood Transformations in Philadelphia—Identification and Analysis: The New Kensington Pilot Study*, The Wharton School, University of Pennsylvania (Spring 2005), http://www.kabaffiliates.org/uploadedFiles/KAB_Affiliates.org/Wharton%20Study%20NK%20final.pdf).

²¹ *Id.* at 13 (citing Branas C.C., Gracia N., Rubin D., Guo W.: "Vacant Properties and Violence in Neighborhoods." *ISRN Public Health* 2012: 1–23, 2012; Garvin E., Branas C.C., Cannuscio C.C.: "Greening Vacant Lots to Reduce Violent Crime: A Randomized Controlled Trial." *Injury Prevention* 18(5): 1–6, 2012).

²² *Id.* at 13 (citing Garvin E., Branas C.C., Keddem S., Sellman J., Cannuscio C.: "More Than Just an Eyesore: Local Insights and Solutions on Vacant Land and Urban Health." *Journal of Urban Health* 12(7): 9782-7, 2012; Branas C.C., Cheney R.A., MacDonald J.M., Tam V.W., Jackson T.D, Ten Have T.R.: A Difference-in-Differences Analysis of Health, Safety, and Greening Vacant Urban Space. *American Journal of Epidemiology* 174: 1–11, 2011).

²³ Winifred M. Branton, Esquire, *Pennsylvania Land Banks*, at 1, <https://static1.squarespace.com/static/5342bfabe4b076ea499631f5/t/558850f7e4b0ca6f99b87d2d/1434997034638/Pennsylvania+Land+Banks+Article+ELF+2015.pdf> (last visited Apr. 30, 2018).

III. THE PHILADELPHIA LAND BANK

A. Introduction

In 2013, the City of Philadelphia ("City") adopted an ordinance ("Land Bank Ordinance") creating the Philadelphia Land Bank ("Land Bank").²⁴ The Land Bank's mission is to "return vacant and underutilized property to productive use through a unified, predictable, and transparent process, thereby to assist in revitalizing neighborhoods, creating socially and economically diverse communities, and strengthening the City's tax base".²⁵

B. Property Acquisition

In pursuit of its mission, the Land Bank Ordinance empowers the Land Bank "to acquire real property or interests in real property through donation, gift, purchase, or any other legal means".²⁶ The Land Bank Act further provides that "a land bank may acquire real property or interests in real property by any means on terms and conditions and in a manner the land bank considers proper".²⁷ While this provides flexibility to pursue its mission, there are two main ways that the Land Bank acquires real property.

The first way is by obtaining surplus property from the City, the Philadelphia Redevelopment Authority ("PRA"), and the Philadelphia Housing Development Corporation ("PHDC"). In fact, the Land Bank Ordinance specifically tasks the Land Bank with *the primary purpose of acquiring and consolidating surplus property of the City, PRA, and PHDC, which the Land Bank shall endeavor to accomplish with due speed and diligence*.²⁸ Since inception, the Land Bank has acquired a total of 1,910 properties from the City, PRA, and PHDC.

The second way the Land Bank acquires real property is by acquiring tax-delinquent properties at a judicial sale (also referred to as a "sheriff's sale" or a "free and clear sale") using its "priority bid" power.²⁹ Because the minimum bid for tax-delinquent properties at a judicial sale is

²⁴ Philadelphia Code §16-700 *et seq.* The Land Bank is a public body corporate and politic. 68 Pa.C.S. §2104(f) and Philadelphia Code §16-702(2).

²⁵ Philadelphia Code §16-703.

²⁶ Philadelphia Code §16-705(2).

²⁷ 68 Pa.C.S. §2109(c).

²⁸ Philadelphia Code §16-705(1) (emphasis added).

²⁹ 68 Pa.C.S. §2117(d).

generally very low, these properties are often attractive to speculators.³⁰ When speculators purchase these properties and then take no steps to address deterioration and fail to pay real estate taxes, as is frequently the case, the property, now even more blighted, is often cycled back into the foreclosure process, further destabilizing the neighborhood.³¹ In order to break this cycle and transform these properties to a productive use, the Land Bank Act and the Land Bank Ordinance granted the Land Bank the power to acquire tax-delinquent properties at a judicial sale using a special power known as a "priority bid".³² The "priority bid" allows the Land Bank to acquire tax-delinquent property at a judicial sale without competitive bidding.³³ Through the execution of this power, the Land Bank can return vacant and underutilized property to productive use, revitalize neighborhoods, create socially and economically diverse communities, and strengthen the City's tax base. Since inception, the Land Bank has acquired 168 properties at judicial sale³⁴ and anticipates acquiring approximately 170 additional properties at judicial sale by June 30, 2018. Thereafter, the Land Bank anticipates acquiring 325 judicial sale properties each fiscal year, according to its 2017 Strategic Plan ("2017 Strategic Plan").³⁵

C. Issue

Despite the significant benefits provided by the Land Bank, the Land Bank is not exempt from water, sewer, or stormwater rates and charges, while the City, PRA, and PHDC are fully exempt.³⁶ As discussed more fully below, there is no justifiable reason for the Land Bank to have different water, sewer, and stormwater rates and charges than the City, PRA, and PHDC when they all share the same purpose and have the same interests in combating blight. Although the Land Bank Ordinance specifically contemplates a full exemption from all water, sewer, and stormwater management rates and charges for all properties owned by the Land Bank³⁷, such an

³⁰ Winifred M. Branton, Esquire, *Pennsylvania Land Banks*, at 3.
<https://static1.squarespace.com/static/5342bfabe4b076ea499631f5/t/558850f7e4b0ca6f99b87d2d/1434997034638/Pennsylvania+Land+Banks+Article+ELF+2015.pdf> (last visited Apr. 2, 2018).

³¹ *Id.* at 3-4.

³² 68 Pa.C.S. §2117(d).

³³ 68 Pa.C.S. §2117(d). Philadelphia Code §16-705(3).

³⁴ As of June 4, 2018.

³⁵ Philadelphia Land Bank, *2017 Strategic Plan and Performance Report* (2017) at 23.

³⁶ Response to LB-I-1. Philadelphia Code §19-1602(1). Response to LB-I-2D. Also, "...while any property is held by PHDC all real estate taxes, water, sewer, and sewer charges and any other municipal charges which relate to the specific property so acquired or held by PHDC shall be abated...". Ordinance No. 369 dated October 2, 1968. Response to LB-I-1. Philadelphia Code §16-403(c).

³⁷ Philadelphia Code §16-705(5) (emphasis added).

exemption is only permitted upon approval of the Rate Board.³⁸ Therefore, the Land Bank respectfully requests a full exemption from all water, sewer, and stormwater management rates and charges for all unoccupied properties owned by the Land Bank as contemplated in §16-705(5) of the Philadelphia Code.

IV. ARGUMENT

A. The Rate Board must grant the Philadelphia Land Bank a full exemption from all water, sewer, and stormwater management rates and charges for all unoccupied properties conveyed from the City, PRA, and PHDC.

When the Land Bank acquires property from the City, PRA, and PHDC, as it is required to under the Land Bank Ordinance,³⁹ the Land Bank "stands in the shoes" of the City, PRA, and PHDC. It should logically follow that, as the Land Bank fulfills its legal obligations to acquire and consolidate the City's, PRA's, and PHDC's surplus property,⁴⁰ any exemption from water, sewer, and stormwater rates and charges applicable to the City, PRA, and PHDC should be equally applicable to the Land Bank. Although the Land Bank, the City, PRA, and PHDC are all similarly situated consumers or consumers of the same class by virtue of sharing the same purpose and having the same interests in combating blight, the Land Bank does not receive any exemption from water, sewer, and stormwater rates and charges. There is no justifiable reason for the Land Bank to have different water, sewer, and stormwater rates and charges than the City, PRA, and PHDC. Therefore, the Rate Board must grant the Land Bank a full exemption from all water, sewer, and stormwater management rates and charges for all unoccupied properties conveyed from the City, PRA, and PHDC.

The Land Bank Ordinance provides that *the primary purpose of the Land Bank is to acquire and consolidate surplus property of the City, PRA, and PHDC, which the Land Bank shall endeavor to accomplish with due speed and diligence.*⁴¹ To date, the Land Bank has acquired 1,910 properties from the City, PRA, and PHDC⁴² and expects to acquire additional surplus property from the City, PRA, and PHDC.

³⁸ Philadelphia Code §13-101(3).

³⁹ Philadelphia Code §16-705(1) (emphasis added).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Direct Testimony of Angel Rodriguez at 6, lines 14-16.

While a property is held by the City, PRA, or PHDC (prior to transfer to the Land Bank), they are fully exempt from all water, sewer, and stormwater rates and charges for (i) vacant or unoccupied properties acquired by the City⁴³, (ii) all properties acquired by PHDC⁴⁴, and (iii) vacant properties acquired by PRA under the provisions of §16-400 of the Philadelphia Code.⁴⁵ This is not the case, however, for the Land Bank. Once a transfer of unoccupied property from the City, PRA, or PHDC to the Land Bank occurs, PWD begins billing the Land Bank for all water, sewer, and stormwater rates and charges upon being notified of the transfer via the recorded deed.⁴⁶ The grant of this exemption to the City, PRA, and PHDC, but not the Land Bank, places the Land Bank at a financial disadvantage even though the Land Bank is essentially "standing in the shoes" of the City, PRA, and PHDC, as it is required to do under the Land Bank Ordinance.

Treating the Land Bank differently further raises the question of whether PWD is in compliance with §13-101(4)(d) of the Philadelphia Code, which prohibits rates from being discriminatory as to the same class of consumers.⁴⁷ Generally, courts have found that a public utility cannot unjustly discriminate in its rates to similarly situated consumers or consumers of the same class for the same service or kind of service.⁴⁸ PWD's compliance with §13-101(4)(d) of the Philadelphia Code is evident in Attachment A of PWD's Regulations, entitled Rates and Charges ("**Attachment A**").⁴⁹ Section 5.2 of Attachment A sets forth certain special customer groups⁵⁰ and the rates and charges associated with each special customer group.⁵¹ Each

⁴³ Response to LB-I-1. Philadelphia Code §19-1602(1).

⁴⁴ Response to LB-I-1. Response to LB-I-2D. Also, "...while any property is held by PHDC all real estate taxes, water, sewer, and sewer charges and any other municipal charges which relate to the specific property so acquired or held by PHDC shall be abated...". Ordinance No. 369 dated October 2, 1968.

⁴⁵ Response to LB-I-1. §16-404(5) allows the "Vacant Property Review Committee, in conjunction with the City Planning Commission, upon making a determination that any property is blighted, and not readily acquirable by donation..., may certify said blighted property to the Redevelopment Authority for acquisition" on certain conditions one of which is that the property is vacant. "Blighted properties" include (i) premises because of its physical condition is regarded at law as a public nuisance or been declared unfit for use by the City, and (ii) vacant or unimproved parcel, which has accumulated debris or become a haven for vermin; or is designated has unsafe by the City or legally deemed a public nuisance. Philadelphia Code §16-402(1)(c).

⁴⁶ Response to LB-I-3.

⁴⁷ Philadelphia Code §13-101(4)(d).

⁴⁸ Time Warner Entertainment-Advance/Newhouse Partnership v. Carteret-Craven Elec. Membership Corp., 506 F.3d 304 (4th Cir. 2007) (applying North Carolina law recognizing that that public utility must render services without discrimination); Massachusetts Mun. Wholesale Elec. Co. v. City of Springfield, 49 Mass. App. Ct. 108, 726 N.E.2d 973 (2000)(recognizing that like customers are entitled to nondiscriminatory treatment regarding rates).

⁴⁹ Philadelphia Water Department Regulations, Attachment A – Rates and Charges, effective January 1, 2017.

⁵⁰ Philadelphia Water Department Regulations, Attachment A – Rates and Charges, effective January 1, 2017 Sections 5.2(a) – (f).

customer group on Attachment A is made up of similarly situated consumers or consumers of the same class. Each customer in a customer group is subject to the same rates and charges as any other customer in the same customer group.

For example, Group III consists of universities and colleges, while Group IV consists of public housing properties of the Philadelphia Housing Authority ("PHA").⁵² While the customers in Group III are distinctly different than those in Group IV, each separate group consists of similarly situated consumers or consumers of the same class – either universities and colleges or PHA properties. A university or college is subject to the same rates and charges as any other university or college. The same applies to PHA properties. In other words, pursuant to Attachment A, no university or college or PHA property is treated differently than any other university or college or PHA property. The same logic must also apply to the Land Bank.

The Land Bank, the City, PRA, and PHDC are similarly situated consumers or consumers of the same class when considering their purpose/mission. Each is a governmental or quasi-governmental entity with the purpose of eliminating blight and revitalizing neighborhoods. The City has a strong interest in eliminating blight and revitalizing neighborhoods as evidenced by the creation of the Land Bank⁵³ and other City programs. The PRA, as other Pennsylvania redevelopment authorities, was formed for the public purpose of eliminating blighted areas through redevelopment and otherwise encouraging healthful homes, decent living environments, and adequate places for employment.⁵⁴ Lastly, part of PHDC's mission is to "facilitate community development and to revitalize neighborhoods".⁵⁵ Clearly, the underlying theme in each purpose/mission is the elimination of blight and neighborhood revitalization. It is, therefore, reasonable to consider the Land Bank, the City, PRA, and PHDC similarly situated consumers or consumers of the same class.

By treating the Land Bank differently, PWD is essentially penalizing the Land Bank for fulfilling its mission of addressing blight, revitalizing neighborhoods, and for acquiring and consolidating the City's, PRA's, and PHDC's surplus property. The exemption extended to the City, PRA, and PHDC provide a level of financial relief that allows each of them to direct their

⁵¹ Philadelphia Water Department Regulations, Attachment A – Rates and Charges, effective January 1, 2017 Sections 5.2(g).

⁵² Philadelphia Water Department Regulations, Attachment A – Rates and Charges, effective January 1, 2017 Sections 5.2(c), (d).

⁵³ Philadelphia Code §16-702(1).

⁵⁴ 35 P.S. §1702.

⁵⁵ Philadelphia Housing Development Corporation, *Annual Report* (2014 and 2015), at 1.

resources to putting properties back to productive use and back on the tax rolls, while improving neighborhoods. The Land Bank, however, does not receive any such financial relief. In fact, for fiscal year 2018 alone, the Land Bank budgeted \$530,000 for stormwater charges, which is approximately eight percent of the Land Bank's total budget.⁵⁶ A substantial portion of the Land Bank's budgeted stormwater charges are the direct result of the Land Bank acquiring and consolidating the City's, PRA's, and PHDC's surplus property, which totals 1,910 properties.⁵⁷ As the Land Bank continues to acquire and consolidate the City's, PRA's, and PHDC's surplus property, the financial burden will continue to grow and substantially reduce the Land Bank's ability to move properties back into productive use.

B. The Rate Board must grant the Philadelphia Land Bank a full exemption from all water, sewer, and stormwater rates and charges for all unoccupied properties acquired at judicial sale or other means (other than those acquired from the City, PRA, or PHDC, which is discussed above).

Regardless of how the property is acquired and for the same reasons previously discussed, the Land Bank must be treated no differently than the City, PRA, and PHDC when it comes to water, sewer, and stormwater rates and charges for properties it acquires via judicial sale or other means. Accordingly, the Rate Board must grant the Land Bank a full exemption from all water, sewer, and stormwater rates and charges for all properties acquired at judicial sale or other means (other than those acquired from the City, PRA, or PHDC, which is discussed above).

The Land Bank, City, PRA, and PHCD can acquire real property by various means, such as a private purchase, donation, or acquisition of tax-delinquent property at a judicial sale. In the last instance, the only difference is that the Land Bank can exercise a "priority bid".⁵⁸ Regardless of the method by which the City, PRA, or PHCD acquires real property, they all benefit from a full exemption from water, sewer, and stormwater rates and charges. The Land Bank, however, does not. Without the benefit of the same exemption, this disparity results in: (i) members of the same class of consumers not being treated equally, (ii) the Land Bank having to endure a financial burden that impedes its ability to fulfill its mission, and (iii) the Land Bank having to

⁵⁶ Direct Testimony of Angel Rodriguez at 6, lines 11-14.

⁵⁷ Direct Testimony of Angel Rodriguez at 6, lines 14-16.

⁵⁸ 68 Pa.C.S. §2117(d).

use limited funds, which would otherwise be used to acquire property and facilitate its redevelopment, to pay water, sewer, and stormwater rates and charges that neither the City nor any other City-related entity with the same purpose/mission is required to pay. Since the Land Bank, the City, PRA, and PHDC all have the same purpose/mission and interest in combating blight, the Land Bank must be treated no differently than the City, PRA, and PHDC with respect to properties acquired via judicial sale or other means.

C. Financial impact on PWD if the Rate Board granted the Philadelphia Land Bank a full exemption from all water, sewer, and stormwater charges for (i) properties conveyed from the City, PRA, and PHDC and (ii) property acquired at judicial sale or other means.

Since the City, PRA, and PHDC already receive a full exemption from all water, sewer, and stormwater rates and charges, the total cost of this exemption for properties conveyed to the Land Bank was already accounted for in the rates when the City, PRA, and PHDC owned these properties. Continuing this exemption for the Land Bank would not have any financial impact on PWD or result in any rate increase for PWD customers, but not allowing this exemption would result in an unplanned windfall to PWD. Accordingly, any analysis of the financial impact of any exemption provided to the Land Bank should only focus on properties acquired by means other than transfer from the City, PRA, or PHDC.

The Land Bank's analysis of the financial impact on PWD resulting from a full exemption from all water, sewer, and stormwater rates and charges considers only those properties acquired at a judicial sale or other means and excludes properties transferred from the City, PRA, or PHDC.⁵⁹ This analysis (i) only considers properties acquired at a judicial sale since that is one of the primary ways the Land Bank will acquire properties; (ii) assumes, for simplicity, that properties acquired by the Land Bank are residential, which the Land Bank anticipates will be a substantial portion (but not all) of its inventory; (iii) assumes that all properties are unoccupied since the Land Bank anticipates it will only acquire unoccupied properties; and (iv) assumes that these unoccupied properties will not have any water or sewer usage charges, so only service charges will accrue.⁶⁰

⁵⁹ Direct Testimony of Angel Rodriguez at 8, line 18 and Exhibit A.

⁶⁰ Direct Testimony of Angel Rodriguez at 8-9, lines 21-5.

Based on the Land Bank's analysis, the potential lost revenue for fiscal year 2019, 2020, and 2021 is estimated to be approximately \$132,000, \$146,000, and \$149,000, respectively.⁶¹ But, when adding in the monthly service charges that will be generated when the Land Bank sells property for productive use, the estimated potential lost revenue is significantly less - for FY2019 it is approximately \$40,000, for FY2020 it is approximately \$41,000, and for FY2021 it is approximately \$29,000.⁶² When the Rate Board granted community gardens a full exemption from stormwater charges in 2016, the estimated financial impact for 2017 and 2018 was approximately \$46,000 and \$48,000, respectively, for a total of \$94,000 over two years.⁶³ The Land Bank's estimated potential lost revenue is only approximately \$17,000 more at \$111,000, but over three years (not two).⁶⁴

The Land Bank's analysis is based only on residential water, sewer, and stormwater service charges and does not take into account the significant usage charges that would accrue to PWD when the Land Bank repositions these properties back to productive use.⁶⁵ In addition, this analysis assumes that each parcel sold will be a single residence, but in many instances the development of a parcel will result in a multi-unit building with more than one PWD customer.⁶⁶ The Land Bank acknowledges that this may be a simplified approach, but it clearly shows the Land Bank's potential to create new customer accounts and generate revenue for PWD.⁶⁷ And, the more resources the Land Bank has, the faster it can dispose of property and the greater its potential to create additional revenue for PWD.⁶⁸

This analysis also clearly shows that the financial impact on the PWD is minuscule for a utility with over \$700 million in operating revenues.⁶⁹ The revenue loss from granting a full exemption from water, sewer, and stormwater rates and charges for properties acquired from the City, PRA, and PHDC, or by other means, such as a judicial sale, is estimated to have only an extremely small impact on PWD revenue and not trigger the need for additional revenues for the

⁶¹ Direct Testimony of Angel Rodriguez at 9, lines 6-8.

⁶² Direct Testimony of Angel Rodriguez at 9, lines 8-11.

⁶³ Direct Testimony of Angel Rodriguez at 9, lines 11-14.

⁶⁴ Direct Testimony of Angel Rodriguez at 9, lines 14-16.

⁶⁵ Direct Testimony of Angel Rodriguez at 9, lines 17-20.

⁶⁶ Direct Testimony of Angel Rodriguez at 9, lines 20-22.

⁶⁷ Direct Testimony of Angel Rodriguez at 10, lines 1-3.

⁶⁸ Direct Testimony of Angel Rodriguez at 10, lines 3-4.

⁶⁹ Direct Testimony of Angel Rodriguez at 10, lines 5-6.

upcoming rate period.⁷⁰ For the reasons cited in this brief, the Rate Board must grant the Land Bank a full exemption from all water, sewer, and stormwater rates and charges for all unoccupied properties owned by the Land Bank.

V. PROPOSED EXEMPTION

The Philadelphia Land Bank respectfully requests that Section 5.2 of the Philadelphia Water Department's schedule of rates and charges be revised to establish the Philadelphia Land Bank as a new special customer and that the Philadelphia Land Bank receive a full exemption from all water, sewer, and stormwater rates and charges for all unoccupied property owned by the Land Bank pursuant to Section 16-705(5) of the Land Bank Ordinance. The proposed revisions for Section 5.2 are set forth in Exhibit LB-1 attached hereto and meet the terms of Section 16-705(5) of the Land Bank Ordinance. Proposed changes in the schedule of rates and charges include, in pertinent part, a new special customer group (Group VII):

"(1) All unoccupied properties of the Philadelphia Land Bank."

Also, a section describing charges for Group VII Special Customers would be added under a new Section 5.2(h), which would state in relevant part:

"(4) Group VII: Effective with bills issued on or after [insert date]⁷¹, Group VII special Customers are fully exempt from all water, sewer, and stormwater management rates and charges."

⁷⁰ Direct Testimony of Angel Rodriguez at 10, lines 6-10.

⁷¹ It is anticipated that the effective date of the rate determination will be September 1, 2018.

EXHIBIT LB-1

5.2 Special Customers.

The water, sewer and stormwater management service charges established in Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq. shall be applied to all general Customers, except the following groups of special Customers:

(a) GROUP I

(1) Public and private schools which provide instruction up to or below the twelfth grade but not beyond that grade, and excluding service to any separate or adjoining facilities or structures not used exclusively for educational or instructional purposes.

(2) Institutions of "purely public charity", as defined by Pennsylvania law, except universities and colleges and excluding service to any separate or adjoining facilities or structures not used exclusively for the principal purpose of the charity.

(3) Places used for actual religious worship.

(b) GROUP II

(1) Residences of eligible senior citizens provided that the senior citizen shall:

- (i) Make application for such reduction to the Revenue Department within the first billing period for which reduction is sought; and
- (ii) Submit satisfactory proof that the applicant is 65 years of age or older and that he or she makes payment directly to the City for water, sewer, and stormwater service to his or her residence which is located in the City of Philadelphia; and
- (iii) Submit satisfactory proof to the Revenue Department that the applicant does not exceed the household income limitation of \$31,500 per year established by the Department. The above income limitation shall apply to those applying for this discount subsequent to June 30, 1982.
- (iv) Effective with each subsequent change in the water/sewer/stormwater charges, the Department shall adjust the Senior Citizen Income Limitation using the latest Consumer Price Index data available, as defined in the Philadelphia Code at Section 19-1901.

(c) GROUP III

(1) Universities and colleges, excluding service to any separate or adjoining facilities or structures not used exclusively for educational or instructional purposes.

(d) GROUP IV

(1) Public housing properties of the Philadelphia Housing Authority.

(e) GROUP V

(1) Group V Customers are Customers enrolled in the Income-Based Water Revenue Assistance Program (IWRAP) described in Section 19-1605 of the Philadelphia Code after the Water Revenue Bureau begins to issue IWRAP bills. Monthly bills for a Customer enrolled in IWRAP will be determined based on the Customer's family size and household income and will be charged in lieu of the service, usage and stormwater charges established in Sections 2.0 et seq., 3.0 et seq. and 4.0 et seq. for general Customers. Group V Customers will pay a percentage of his/her household income depending on where that Customer falls within the Federal Poverty Guidelines (FPL), subject to a minimum bill amount of \$12 per month.

(2) For determining the amount of service, usage and stormwater charges on monthly bills, Group V Customers will be defined according to three income tiers as follows:

- (i) Group V-A. Group V Customers whose gross household income has been verified as being from 0% of FPL and up to and including 50% of FPL
- (ii) Group V-B. Group V Customers whose gross household income has been verified as being greater than 50% of FPL and up to and including 100% of FPL.
- (iii) Group V-C. Group V Customers whose gross household income has been verified as being greater than 100% of FPL and up to and including 150% of FPL.

(f) GROUP VI

(1) Customers with parcels eligible for a discount from the stormwater management service charge as a qualified Community Garden pursuant to Section 19-1603 of the Philadelphia Code and regulations promulgated by the Water Department under that Section.

(g) GROUP VII

(1) All unoccupied properties of the Philadelphia Land Bank.

(h) Charges for Special Customers

(1) As of July 1, 2016, the charges to Groups I, II, and III of special Customers listed above shall be seventy-five percent (75%) of the charges as established in Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq., including both the water and sewer service and quantity charges, and the SWMS charges. The charges to Group IV Customers shall be ninety-five percent (95%) of the charges as established in Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq., including both the water and sewer service and quantity charges, and the SWMS charges.

(2) Group V Customers enrolled in IWRAP after the Water Revenue Bureau begins to issue IWRAP bills will be responsible for paying the following charges for service, usage and stormwater charges, or \$12 per month, whichever is greater:

- (i) Group V-A: 2.0% of household income.
- (ii) Group V-B: 2.5% of household income.
- (iii) Group V-C: 3% of household income.

(3) Group VI: Effective with bills issued on or after January 1, 2017, Group VI special Customers will receive a 100% discount on the stormwater management service charges for parcels classified by the Department as Community Gardens upon approval of an application for a discount consistent with Section 19-1603 of the Philadelphia Code and regulations promulgated by the Department under that Section.

(4) Group VII: Effective with bills issued on or after [insert date]⁷², Group VII special Customers are fully exempt from all water, sewer, and stormwater management rates and charges.

(ih) All of these special Customers shall meter all water connections and they shall be subject to all provisions herein not inconsistent with Sections 2.0 et seq., 3.0 et seq., and 4.0 et seq.

(ji) All special Customers are subject at any time to review as to their special charges by the Department or the Water Revenue Bureau and may be required to furnish adequate evidence supporting the continuance of such charges to the Department or the Water Revenue Bureau upon written notice to do so. Failure to furnish such evidence shall be sufficient ground for denial or termination of such special charges.

(kj) Special charges may be granted subject to the Department's review and approval of the size of the meter installed.

(lk) When the special use for which the special charge is granted ceases, the special charge ceases and the charges for general Customers shall apply thereafter.

⁷² It is anticipated that the effective date of the rate determination will be September 1, 2018.

BEFORE THE PHILADELPHIA WATER, SEWER
AND STORM WATER RATE BOARD

IN THE MATTER OF A PROPOSED RATE INCREASE :
IN WATER, SEWER AND STORM WATER RATES : FY 2019-2021 RATES

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document by e-mail upon the parties listed below:

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Dated June 4, 2018