

**BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD**

In Re: Application of the	:	
Philadelphia Water Department	:	Fiscal Years 2019-2021
For Increased Rates and Charges	:	

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**MAIN BRIEF OF THE  
PHILADELPHIA LARGE USERS GROUP**

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## APPENDIX A – URL REFERENCES FOR CITATIONS TO RECORD

## I. INTRODUCTION

On February 12, 2018, the Philadelphia Water Department (“PWD” or “Department”) submitted a preliminary rate increase proposal to the Philadelphia Water, Sewer and Storm Water Rate Board (“Board”). On March 14, 2018, the PWD submitted a final proposed rate increase preserving the same rate proposal initially presented on February 12, 2018. PWD proposes to establish rates for water, sanitary sewer, and stormwater services, projected to increase its annual revenues by \$116 million over Fiscal Years (“FY”) 2019, 2020, and 2021.

Pursuant to its Regulations, the Board appointed Nancy Brockway as the Hearing Officer to preside over formal proceedings concerning the rate filing. In accordance with the Regulations, the Hearing Officer established a schedule for litigated proceedings, including intervention, testimony, technical hearings, and briefs. Consistent with the approved schedule, the Philadelphia Large Users Group (“PLUG”)<sup>1</sup> intervened in the proceeding on March 21, 2018.<sup>2</sup> Additional intervenors include Community Legal Services (“Public Advocate”), Philadelphia Land Bank, PennEnvironment, PECO Energy Company and Exelon Generation Co., LLC (“PECO”), and *pro se* intervenor Michael Skiendzielewski.

The Public Advocate, PennEnvironment, and the Philadelphia Land Bank submitted Direct Testimony on April 20, 2018. In compliance with the procedural schedule, PLUG submitted the Rebuttal Testimony of Richard A. Baudino on May 4, 2018.<sup>3</sup> PWD also submitted Rebuttal Testimony from various witnesses on May 4, 2018.

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<sup>1</sup> PLUG is an *ad hoc* group of Large Commercial & Industrial (“C&I”) customers comprised, for the purposes of this proceeding, of Thomas Jefferson University, Temple University, Newman & Company, Inc., and Einstein Healthcare Network.

<sup>2</sup> PLUG additionally submitted an updated Notice of Intervention on April 20, 2018.

<sup>3</sup> PLUG Statement No. 1.

The Hearing Officer presided over technical hearings from May 10, 2018, through May 18, 2018, at which parties offered witnesses for cross-examination.<sup>4</sup>

Pursuant to the approved procedural schedule, PLUG hereby submits its Brief addressing select issues from PWD's filing, other parties' testimony, and the technical hearings.

## **II. SUMMARY OF ARGUMENT**

PLUG's interests in this proceeding are as follows:

1. The Board should reject the Public Advocate's recommendation to replace the Black & Veatch Class Cost of Service Study ("CCOSS") with its witness' analysis for purposes of revenue allocation.
2. The Board should reject the Public Advocate's proposals to change PWD's rate design.
3. The Board should reject PWD's proposal to increase its targeted Rate Stabilization Fund balance.
4. The Board should reject the Public Advocates' proposed adjustments to PWD's stormwater grant programs.
5. Aside from the Public Advocate's proposed adjustments to PWD's budgeted stormwater grant programs, the Board should approve the remainder of the Public Advocate's expense adjustments, subject to a proportional scale-back of any revenue reductions.

Each of these matters is addressed in detail below.<sup>5</sup>

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<sup>4</sup> The Rebuttal Testimony of Richard Baudino was admitted to the record without cross-examination, as both PWD and the Public Advocate waived cross, and no parties objected to admission of the testimony. Hearing Transcript, May 17, 2018, at 12-13.

<sup>5</sup> Silence on any matter shall not be construed as support thereof. PLUG reserves all rights to address additional issues through exceptions as may be appropriate, following review of the Hearing Officer's Report.

### III. ARGUMENT

**A. The Board must deny the Public Advocate's recommendation to replace the Black & Veatch Class Cost of Service Study ("CCOSS") with its witness' analysis for purposes of revenue allocation.**

Public Advocate witness Jerome D. Mierzwa recommends that the extra-capacity factors used in the Black & Veatch CCOSS be exchanged for "recent actual experience."<sup>6</sup> In effect, Mr. Mierzwa is requesting that the Board rely on incorrect data.

As explained in PLUG witness Richard Baudino's Rebuttal Testimony, Black & Veatch's CCOSS used reasonable extra-capacity factors based on PWD's actual historical experience.<sup>7</sup> PWD's CCOSS utilized 1.40 as the system-wide maximum day extra-capacity factor and 1.90 as the system-wide maximum hour extra-capacity factor. These factors are aligned closely with the peak historical data using a reasonable five-year analysis period.<sup>8</sup> In contrast, as observed by PLUG witness Richard Baudino, "Mr. Mierzwa's recommended 1.30 maximum day factor does not represent the maximum day ratio that occurred during the five-year study period used by Black and Veatch."<sup>9</sup>

Indeed, it appears that Mr. Mierzwa derives his recommended 1.30 system-wide maximum day extra-capacity factor from an error in the Black & Veatch Direct Testimony.<sup>10</sup> As explained in the Rebuttal Testimony from Black & Veatch, PWD's CCOSS reflects the system-wide maximum day extra-capacity factor of 1.40, but page 59 of PWD Statement No. 9A

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<sup>6</sup> Public Advocate Statement No. 2, at 3.

<sup>7</sup> PLUG Statement No. 1, at 2.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.

includes a typo reflecting a system-wide maximum day extra-capacity factor of 1.30.<sup>11</sup> As PWD subsequently corrected the typo through an Errata, PWD's CCOSS as originally proposed properly reflects a system-wide maximum day extra-capacity factor consistent with recent experience.<sup>12</sup>

Additionally, Mr. Mierzwa's criticisms of PWD developed extra-capacity factors should be rejected as Mr. Mierzwa relies on a false premise that PWD's extra-capacity factors conflict with the AWWA M1 Manual. Contrary to Mr. Mierzwa's allegation that the AWWA M1 Manual conflicts with PWD's extra-capacity factors, the AWWA M1 Manual explicitly cautions against overbroad application of the stated examples. As explained by Mr. Baudino, the AWWA M1 Manual provides that "[s]election of the appropriate methodology for determining customer class peaking factors should be considered on an individual utility basis."<sup>13</sup> Accordingly, the Board should defer to PWD's selected methodology, which accounts for system-specific characteristics such as the absence of summer usage peaks in comparison to more rural service territories.<sup>14</sup> Moreover, the selection of extra-capacity factors in the CCOSS is generally consistent with prior studies conducted by Black & Veatch and adopted by the Board.<sup>15</sup>

Consequently, the Black & Veatch CCOSS should be approved without modification.

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<sup>11</sup> PWD Rebuttal Statement No. 3, at 4.

<sup>12</sup> See PWD Rebuttal Statement No. 3, at 4. PWD corrected a similar typo where its Direct Testimony referenced a system-wide maximum hour extra-capacity factor of 1.74 instead of the correct 1.90 system-wide maximum hour extra-capacity factor. See PWD Rebuttal Statement No. 3, at 5-6.

<sup>13</sup> PLUG Statement No. 1, at 4-5.

<sup>14</sup> PWD Statement No. 3, at 7.

<sup>15</sup> PLUG Statement No. 1, at 5 (noting only minor changes to the class demand factors from PWD's 2016 rate case).

**B. The Board must reject the Public Advocate's proposals to change PWD's rate design.**

In his Direct Testimony, Public Advocate witness Mr. Mierzwa proposes that the Board require PWD to hold the costs of the 0-2 Mcf consumption block constant, shifting all volumetric cost increases to users of more than 2 Mcf. The Board should reject this proposal as (1) inequitable, (2) a recipe for rate shock, and (3) not supported by substantial evidence.<sup>16</sup>

There are several flaws in Mr. Mierzwa's rate design proposal. First and foremost, adopting Mr. Mierzwa's recommendation would inequitably allocate costs to a degree PLU witness Mr. Baudino characterizes as "radical."<sup>17</sup> As outlined in the Rebuttal Testimony of Richard Baudino, Residential class revenues represent 60% of total retail revenues, and most Residential customers use less than 2 Mcf.<sup>18</sup> Consequently, the burden of PWD's proposed rate increase would fall disproportionately on non-Residential customers.

As described by Mr. Baudino, this burden would be substantial. As a hypothetical example, if the Board increases total rates by 10%, the actual increase to non-Residential customers would more than double to 22.8% under the Public Advocate's rate design proposal.<sup>19</sup>

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<sup>16</sup> On pages 17-18 of his Direct Testimony, Mr. Mierzwa also proposes that the Board compel PWD to change its rate design by adopting separate volumetric usage rates for each customer class. As Mr. Mierzwa spends only about three sentences on this proposal and provides no specific rates for affected stakeholders to review, the proposal should be dismissed as unsupported. Public Advocate Statement No. 2, at 17-18.

Rate design changes directly impact customer's costs for PWD's services, yet Mr. Mierzwa has not provided any detailed supporting analysis. A proposal of such magnitude should only be considered by the Board after due investigation, including providing a substantial opportunity for all impacted stakeholders to participate in hearings on specific rate design proposals. See Philadelphia Home Rule Charter § 5-801; Philadelphia Code § 13-101(3)-(4); Regulations of City of Philadelphia Water, Sewer, and Storm Water Rate Board, Section II.1(a).

<sup>17</sup> PLUG Statement No. 1, at 6.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 8.

As accurately stated by Mr. Baudino, “[t]his is an inequitable and unreasonable result that would substantially harm non-Residential customers.”<sup>20</sup>

Not only is this result inequitable, it is also a recipe for rate shock. As discussed above, the Public Advocate’s proposal to exclude the 0-2 Mcf rate block from any rate increase could more than double the rate impact of this proceeding for non-Residential customers. To approve such an abrupt and unsupported change would result in rate shock for non-Residential customers, including schools, businesses, and industrial facilities.<sup>21</sup>

In summary, the Public Advocate has not demonstrated that there is a sound basis for this proposed change. Mr. Mierzwa has not provided the Board or other parties with an estimate of the rate impact of his proposal; rather, Mr. Mierzwa’s arguments are based on his disagreements with the extra-capacity factors in Black & Veatch’s CCOSS.<sup>22</sup> However, as described in Section A above, Mr. Mierzwa’s critiques of the Black & Veatch CCOSS are unfounded. Consequently, his rate design proposal should be rejected by the Board.

**C. The Board must reject PWD’s proposal to increase the target balance for its Rate Stabilization Fund (“RSF”).**

PWD has not provided credible support for increasing its targeted RSF balance by 36%—from \$110 million to \$150 million. The Board should reject PWD’s proposal and require PWD to utilize excess RSF funds for debt service coverage and make RSF funds available to offset rate increases.

As demonstrated on the record, PWD ended FY 2017 with RSF funds totaling \$201 million—approximately \$48 million in excess of the projections submitted with its 2016

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Public Advocate Statement No. 2, at 16.



rate case and more than \$90 million in excess of the \$110 million target balance.<sup>23</sup> Historically, the Department has accumulated reserves well in excess of its current target and even in excess of the proposed \$150 million target. Therefore, historical experience does not merit an increase to the targeted RSF balance. To the contrary, increasing the target balance would exacerbate PWD's modeling inaccuracies because the higher target would become the new target balance, which PWD's actual fund balances for FYs 2019, 2020, and 2021 would undoubtedly exceed as they have in prior years.

Instead of allowing PWD to continually set unreasonable RSF balances, the Board should maintain the current \$110 million target balance and use any excess RSF balances to minimize rate increases to customers.

**D. The Board must deny the Public Advocate's recommendation to reduce PWD's proposed budget for the Storm Management Incentive Program ("SMIP") and Greened Acre Retrofit Program ("GARP").**

As part of its rate filing, PWD proposed to increase its annual budget for SMIP and GARP to \$20 million from the current \$15 million budget. SMIP and GARP development and implementation have proven to be an enormous benefit to Large C&I customers and the City's stormwater management compliance obligations. Yet, the Public Advocate alleges that PWD failed to support this adjustment and asks the Board to deny the request. As the record shows significant past participation in both programs, PWD has furnished compelling evidence supporting a reasonable budget increase for SMIP and GARP. Accordingly, the Public Advocate's proposal should be denied.

PWD utilizes both SMIP and GARP to offer grants towards stormwater mitigation measures. Customers across the City can participate in SMIP, while GARP is available only to

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<sup>23</sup> See Public Advocate Statement No. 1, at 38.

customers in the combined<sup>24</sup> sewer sections of the City.<sup>25</sup> Additionally, GARP projects are initiated by third-party aggregators while SMIP projects are submitted directly from property owners.<sup>26</sup> Notably, despite budgeting just \$15 million for SMIP and GARP projects, PWD awarded \$16.7 million in SMIP and GARP grants in FY 2017.

The Public Advocate opposed PWD's proposed \$20 million budget for SMIP and GARP on grounds that the programs can be funded by excess revenues without a specific revenue adjustment.<sup>27</sup> PLUG submits that this proposal should be rejected due to the critical importance of the SMIP and GARP programs. The mitigation projects achieved through SMIP and GARP contribute substantially towards ensuring the Department remains in compliance with the Consent Order and Agreement signed by PWD and the Pennsylvania Department of Environmental Protection on June 1, 2011 ("COA").<sup>28</sup> Without these programs, the Department would not have met the 5-year milestone of its COA, as the SMIP and GARP programs accounted for 31% of the 744 greened acres requirement for the 5-year COA milestone.<sup>29</sup>

For the reasons referenced above, the Board should approve the funding for PWD's SMIP and GARP programs and direct PWD to use any excess revenues to offset other costs, including reducing any amounts collected from customers through the proposed TAP Rider.

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<sup>24</sup> "Combined sewer system" refers to the parts of PWD's sewer system where both sanitary sewer and stormwater are conveyed through a single pipe to the sewage treatment plant. *See* PWD Statement No. 1, at 15. During peak rain events, the level of stormwater in the combined system may exceed the system's capacity, resulting in untreated overflows discharged directly into the local waterways. *See* PWD Statement No. 1, Schedule DM-2.

<sup>25</sup> *See* PWD Statement No. 6, at 7.

<sup>26</sup> *Id.*

<sup>27</sup> Public Advocate Statement No. 1, at 17-19.

<sup>28</sup> PWD Statement No. 4, at 7.

<sup>29</sup> *See id.*

**E. The Public Advocate's remaining expense adjustments should be approved subject to a proportional scale-back of any revenue reduction.**

In its Direct Testimony, the Public Advocate proposed several revenue adjustments set forth in Schedule LKM-2. As discussed above, the Public Advocate's recommendation to recover any increase in water rates from all usage blocks except the 0-2 Mcf usage block must be rejected. Therefore, PLUG recommends that any revenue adjustments approved by the Board be proportionally scaled-back for *all* water, sewer, and stormwater service rates.

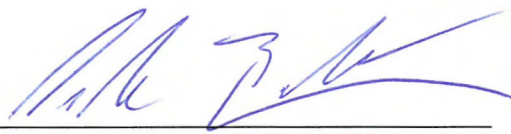
#### IV. CONCLUSION

**WHEREFORE**, the Philadelphia Large Users Group respectfully requests that the Philadelphia Water Rate Board:

- (1) Deny the rate increase request proposed by the Philadelphia Water Department; or
- (2) Grant alternative relief consistent with this Main Brief.

Respectfully submitted,

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Dated: June 4, 2018

## APPENDIX A

### URL REFERENCES FOR CITATIONS TO RECORD

#### Testimony

Public Advocate Statement No. 1

<https://beta.phila.gov/media/20180423163119/PAS1MorganFinalDirect.pdf>

Public Advocate Statement No. 2

[https://beta.phila.gov/media/20180430171526/PA-St-2-Mierzwa-Final-Direct\\_Corrected.pdf](https://beta.phila.gov/media/20180430171526/PA-St-2-Mierzwa-Final-Direct_Corrected.pdf)

PLUG Statement No. 1

<https://beta.phila.gov/media/20180504174306/RebuttalTestimony-RBaudinoPLUG.pdf>

PDW Statement No. 1

<https://beta.phila.gov/media/20180212144514/PWDStatementNo1DirectTestimonyandSchedulesofDebraAMcCarty.pdf>

PDW Statement No. 3

<https://beta.phila.gov/media/20180212144518/PWDStatementNo3DirectTestimonyandSchedulesofStephenJFurtek.pdf>

PDW Statement No. 4

<https://beta.phila.gov/media/20180212144506/PWDStatementNo4DirectTestimonyandSchedulesofDonnaSchwartz.pdf>

PDW Statement No. 6

<https://beta.phila.gov/media/20180212144520/PWDStatementNo6DirectTestimonyandSchedulesofErinWilliams.pdf>

PDW Statement No. 9A

<https://beta.phila.gov/media/20180212144522/PWDStatementNo9ADirectTestimonyandSchedulesofBlackVeatch.pdf>

PDW Rebuttal Statement No. 3

<https://beta.phila.gov/media/20180504173402/PWDRebuttalTestimonyNo3Mierzwa20180504FINAL.pdf>

**Hearing Transcript**

Hearing Transcript, May 17, 2018

<https://beta.phila.gov/media/20180521103544/May17TechnicalHearingTranscript.pdf>

**Miscellaneous**

Philadelphia Home Rule Charter § 5-800

[http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia\\_pa/philadelphiahomerulecharter?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:philadelphia\\_pa\\$sanc=](http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/philadelphiahomerulecharter?f=templates$fn=default.htm$3.0$vid=amlegal:philadelphia_pa$sanc=)

Philadelphia Code § 13-101(3)-(4)

[http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia\\_pa/title13waterandsewer?f=templates\\$fn=altmain-nf.htm\\$q=\[field%20folio-destination-name:%2713-101%27\]\\$x=Advanced#JD\\_13-101](http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/title13waterandsewer?f=templates$fn=altmain-nf.htm$q=[field%20folio-destination-name:%2713-101%27]$x=Advanced#JD_13-101)

Regulations of Water, Sewer, and Storm Water Rate Board

<http://www.phila.gov/water/rateboard/PDF/RegsFinal.pdf>