

**DECISION OF THE
PHILADELPHIA WATER COMMISSIONER AND REVENUE COMMISSIONER
AS TO THE MEDIATION REPORT REGARDING
THE TREATMENT OF TENANT ARREARS AND APPLICATIONS FOR SERVICE**

I. INTRODUCTION

As a part of the negotiated settlement of the 2012 Rate Proceeding, the Philadelphia Water Department (“PWD” or “Water Department”), Water Revenue Bureau (“WRB”) and the Public Advocate (the “Advocate” and together with the Water Department and WRB, the “Parties”) agreed to enter into a mediation or facilitated process (“Mediation”) to examine ways to make substantial improvements in customer service and customer assistance programs. Community Legal Service serves as the Public Advocate on behalf of all residential customers of the Water Department for purposes of the mediation.¹

The framework and estimated time-line for the Mediation are set forth in the Stipulation to Mediation between PWD/WRB and the Public Advocate (“Stipulation”) which is attached as Exhibit A. As described in the Stipulation, the mediation was expected to take approximately two years and include the following issues: (1) improvement of the informal dispute and hearings process; (2) the structure and delivery of the Water Revenue Assistance Program (WRAP);² (3) the delivery of deferred payment agreements; and (4) the treatment of tenant arrears and applications for service. At the conclusion of Mediation for each issue area, the Mediator (hereinafter defined) is to issue a report including, among other things, recommendations for the resolution of any discrete points of disagreement. Within thirty days of the issuance of the Mediator’s report, WRB and PWD are to issue a decision noting any exceptions to the report or the proposed resolution of points of disagreement (“Decision”).

RESOLVE, Inc. was engaged to serve as Mediator in the proceedings (the “Mediator”) pursuant to a competitive procurement process. Gail Bingham of RESOLVE, Inc. specifically served as the

¹ Community Legal Services provides its service as the Public Advocate pursuant to a Provider Agreement with the City of Philadelphia, by and through the Water Department.

² Subject areas (2) and (3) above concerned the structure and delivery of WRAP and deferred payment agreements which were not mediated due to the introduction and eventual passage of Bill No. 140607-AA mandating the implementation of the new affordable rates program (I-WRAP) during the Mediation. Implementation of the I-WRAP program is scheduled to begin in FY 2018. See discussion *infra.*, Issue K.

Mediator in the completed proceedings addressing the informal appeals process and treatment of tenant arrears and applications.³ Ms. Bingham was supported by Scott Rubin and Mitchell Miller in the Mediation. The City of Philadelphia (“City”) is grateful to the Mediator for the significant services rendered in convening the Parties, sorting through all aspects of the informal hearing process and rendering her report. The City also acknowledges the significant commitment of time and effort made by the Public Advocate as well as PWD, WRB and Revenue Department personnel.

Mediation on the first issue (improvement of the informal dispute and hearings process) occurred in 2013 and 2014. The Mediator presided over a series of meetings and telephone conferences related to the dispute resolution and informal hearing process beginning in December 2013 and issued a report regarding the informal hearing process on November 11, 2014.⁴ The Water and Revenue Commissioners issued their Decision regarding that report on December 11, 2014, and subsequently clarified their Decision in response to a Petition for Reconsideration and Clarification received on December 27, 2014. By agreement of the Parties, the next issue addressed through the mediation process was the treatment of tenant arrears and applications for service. The Mediator proposed a general framework for the mediation of this issue in a memorandum dated February 12, 2015, and met with the Parties to discuss issues relating to tenant arrears and applications for service on April 7, 2015 and May 19, 2015. The Parties submitted written memoranda confirming agreements reached and stating their positions on the unresolved issues in June 2015. The City’s memorandum is attached as Exhibit B and the Public Advocate’s memorandum is attached as Exhibit C. The Mediator issued a Mediation Report on Tenant and Application Issues on December 11, 2015 (“Mediation Report”). The Mediation Report on these issues is attached as Exhibit D. This Decision addresses the findings/conclusions and/or recommendations as to following issues in the Mediation Report:

³ The City of Philadelphia issued a Request for Proposals in March 2013 and entered into a contract with the Mediator for the mediation services in 2013, with the initial term effective on June 1, 2013 and ending on May 31, 2014. The contract was amended in 2014 to add an additional term for the period of June 1, 2014 to May 31, 2015, and to increase the amount of compensation payable under the contract. The contract was amended again in 2015 to add an additional term for the period of June 1, 2015 to May 31, 2016.

⁴ The Parties also met to discuss and prepare for the Mediation on June 6, 2013.

Issue A – “Equitable Owners” Policy

Issue B – Process/Documentation Standards for Application for Service

Issue C – No Denial of Customer Status/Deprivation of Service Based on Pre-Existing Balances

Issue D – Foreign Load

Issue E – Owner Notice of Tenant Application and Landlord Cooperation Program

Issue F – Protocols for Communication Regarding PWD Violations

Issue G – Assign Proper Responsibility for Violations, Prior Balances and Updating Owner Address

Issue H – Ensure Rights of Co-Tenants/Co-Occupants Not Adversely Affected by Changes in Status

Issue I – Training

Issue K – Tenant Arrears

The instant Decision is rendered consistent with the requirements of the Stipulation and specifically concludes the Mediation as to fourth subject area identified above – the treatment of tenant arrears and applications for service.

II. THE ISSUES AND THE MEDIATOR’S PROPOSED RESOLUTION

The findings/conclusions and recommendations of the Mediation Report as to Issues A-K identified above are summarized in the discussion that follows. The positions of the Parties are summarized in their respective memoranda (attached as Exhibits B and C) which are incorporated herein by reference. As noted in Section III, for purposes of this Decision, the “tenant arrears and application for service” issues addressed in the Mediation generally fall within three categories (i) areas of general concurrence with the Mediator (Issues C, F, H, J and K); (ii) areas of disagreement with the Mediator (Issues A and D) and (iii) areas that require additional stakeholder input (most notably Issues E and I).

Issue A. “Equitable Owners” Policy

The Mediator recommended that the City adopt an "equitable owners" policy for water service similar to the policy used by the Revenue Department for property taxation.

Issue B. Process/Documentation Standards for Applications for Service.

The Mediator concluded that it is reasonable for the City to require proof of actual occupancy if there is an outstanding balance at the property and to confirm from its own records that the applicant is not the customer of record at another residential property. However, the Mediator recommended that the City amend its practice and procedures to require an applicant to provide proof of occupancy only when there is an outstanding delinquent balance at the property, or if it appears from the City's records that the applicant is the customer of record at another residential property. The Mediator also recommended adoption of the following practices for documentation of an applicant's identity: (a) one form of identification will be sufficient, if it is one of the seven primary forms of identification currently listed in the tenant manual; and (b) the tenant manual should instruct intake clerks to refer non-standard documentation of identity to a supervisor.

Issue C. No Denial of Customer Status or Deprivation of Service on the Basis of Pre- Existing Delinquent Balance.

The Mediator noted that the City agreed to continue its current policy and practice that bills run with the property and that service will not be denied to a tenant or occupant if there are prior unpaid bills at the property and water service has not been turned off. The Mediator concluded that this is a reasonable resolution of this issue.

Issue D. Foreign Load.

The Mediator concluded that there are valid concerns on both sides of this issue and recommended that the City amend its policy to explicitly state that if more than one dwelling unit is on a single meter, the bill should be in the name of the owner, but service to multiple units in the name of the tenant is permissible if the tenant affirmatively agrees to pay for that service. The Mediator also recommends that the City enforce its existing policy by implementing procedures that allow tenants to file complaints about foreign load and to place service in the name of the landlord if the landlord cannot prove the tenant gave affirmative consent to pay for the foreign load.

Issue E. Owner Notice of Tenant Application and Landlord Cooperation Program.

The Mediator concluded that she did not have sufficient information on which to base a recommendation.

Issue F. Protocols for Communication Regarding PWD Violations.

The Mediator recommended that the City provide information to the tenant concerning the nature of a violation that directly affects the tenant's right to occupy the property so that the tenant may be able to help bring pressure on the landlord to correct the violation and have water service restored to the property. The Mediator concluded that prior consent of landlords under such circumstances should not outweigh the ability of a tenant to inhabit the property.

Issue G. Assign Proper Responsibility for Violations, Prior Balances and Updating Owner Address.

The Mediator concluded that if water has been turned off due to an unsafe condition (such as a leak) or defective equipment (such as a malfunctioning meter), then the water should not be turned on until those conditions are remedied. If, however, there are other circumstances when water is turned off to a property (such as non-safety-related violations of L&I requirements or payment delinquencies), then the Mediator did not agree that those types of problems must be resolved before service can be restored to a tenant.

Issue H. Ensure Rights of Co-tenants or Co-occupants are Not Adversely Affected by Changes in Customer Status.

The Mediator noted that the City's current policy and practice is that tenant-customers and occupant-customers do not have the right to terminate service to the property and that the City agreed to continue this policy and to conduct appropriate training of City employees to ensure that these existing policies and practices are implemented consistently. The Mediator concluded that this is a reasonable resolution of this issue and recommended that it be applied to occupant customers as well as tenant customers. The Mediator offered no recommendation as to how this practice should be codified.

Issue I. Coding Properties as “Tenant Occupied” or as Including “Residential Dwelling Units.”

The Mediator encourages PWD and WRB to work with the Public Advocate, other City Departments, and the City's IT department to improve the accuracy and reliability of residential tenant identification in PWD/WRB records.

Issue J. Training.

The Mediator did not provide any recommendations as to training, but noted that any suggested changes in training can be addressed with the Public Advocate during quarterly meetings.⁵

Issue K. Tenant Arrears.

The Mediator did not recommend any changes in City policies and procedures at the present time in light of the enactment of Bill No. 140607-AA, which amends Title 19 of the Philadelphia Code by providing for an income-based water rates assistance program and installment payment agreements under certain terms and conditions.

III. RESOLUTION AND ORDER

Consistent with the terms of the Stipulation, this Decision is rendered to address the recommendations and conclusions of the Mediator as identified above. Based on the Mediator's Report and the memoranda of the Parties stating their positions on the unresolved issues, we accept the Mediator's general findings/conclusions and recommendations as to Issues C, F, H, J and K, and take exception to the Mediator's recommendations as to Issues A and D.⁶ We also note that Issues E and I are

⁵ It should be noted that the Parties generally agreed as to this issue, given the fact WRB has undertaken training in areas recommended by the Advocate in the 2012 rate case.

⁶ By way of explanation of our decision with regard to Issue A (Equitable Owners Policy), it should be noted that we adopt the position that the PWD/WRB policy on establishing occupancy for water service is appropriately different from the City policy for real estate taxation. That is because in a utility service context an occupant can burden the property (i.e., using water service without payment) during the legal process to establish ownership interest. Taking this factor into account, WRB provides other alternatives for occupants to obtain service and access to customer assistance programs such as WRBCC. That is, the putative owner can become an “occupant with ownership interest” which would give the occupant access to water service and WRBCC. Under the current regulations, the Homeowner Emergency Loan Program (HELP) is limited to homeowners who are the property owners of record. It should also be mentioned that the Public Advocate removed the issue of HELP loans from the “equitable owners” policy discussion.

With regard to Issue D (Foreign Load), we adopt the position that it is the property owner's decision to separately meter units in a multi-family property. If more than one unit is on a single meter, we concur with the current City policy that the bill should be in the name of the owner.

not ripe for decision in view of the fact that wider stakeholder input is required to fairly evaluate the policy questions presented. See discussion, *infra*.

With respect to Issue B, we accept the recommendation to require applicants to provide proof of actual occupancy if there is an outstanding balance at the property or if the City's records show that the applicant is a customer of record at another residential property. We also accept the recommendation regarding documentation of an applicant's identity, i.e., accept one form of identification if it is one of the primary forms of identification currently listed in the tenant manual and revise the tenant manual to instruct intake clerks to refer non-standard documentation of identity to a supervisor. However, we reject the recommendation that the City amend its practice and procedures to require an applicant to provide proof of occupancy only when there is an outstanding delinquent balance at the property or when it appears from the City's records that the applicant is the customer of record at another residential property.

As to Issue G, we concur with the Mediator's conclusion that if water has been turned off due to an unsafe condition (such as a leak) or defective equipment (such as a malfunctioning meter), then the water should not be turned on until those conditions are remedied, but we reject the conclusion that other types of problems do not need to be resolved before service is restored when water has been turned off for other reasons.

On issues related to coding of properties (Issue I), we direct our staffs to continue working with the Public Advocate, other City Departments, and the City's IT department to improve the accuracy and reliability of residential tenant identification in PWD/WRB records. We will further direct our staffs to present all of these proposals at the next meeting of the Residential Customer Assistance and Service Committee (R-CAS) and to request comment and additional input from the R-CAS members on these proposals and whether they appropriately balance the interests of tenant and landlord customers.

In light of the above discussion and disposition of issues related to Tenant Arrears and Applications for Service, the Mediation is concluded consistent with this Resolution and Order.



FRANK BRESLIN
Revenue Commissioner



DEBRA McCARTY
Water Commissioner

DATE ISSUED: January 11, 2016

EXHIBIT A

BEFORE THE
PHILADELPHIA WATER COMMISSIONER

IN THE MATTER OF THE)
PHILADELPHIA WATER DEPARTMENT'S)
PROPOSED INCREASE IN WATER,)
WASTEWATER AND STORMWATER)
RATES)

FY 2013 – 2016

STIPULATION TO MEDIATION BETWEEN PWD/WRB AND PA

Statement of Purpose: The Water Revenue Bureau (“WRB”) and Philadelphia Water Department (“PWD”) have agreed with the Public Advocate (“PA”) to enter into a mediation or facilitated process (hereinafter “Mediation”) to examine ways to make substantial improvement in customer service and customer assistance programs.

1. The purpose of the Mediation is to determine how to generate improvements in the customer service areas identified below.
2. The Mediation will be a series of interactions and conversations between PWD/WRB and the Public Advocate concerning the subject areas described below.
3. The Mediation will involve an outside mediator/facilitator who is mutually agreed to by the Public Advocate and PWD/WRB. Whether this person is referred to as a mediator, facilitator or by some other label does not lie at the heart of this principle. The mediator will be charged with facilitating conversation, offering summaries of discussions, proposing alternative resolutions to conflicts, and engaging in such other tasks as would make the Mediation work effectively and efficiently.
4. The Mediation will be structured, in that there will be regularly scheduled (rather than *ad hoc*) sessions, a pre-determined timeline by which resolution will occur (or a failure to reach resolution will be acknowledged), and general issue areas will be addressed.
5. PWD will budget/provide the Public Advocate with sufficient resources to participate meaningfully in the above described process.
6. The issue areas to be addressed by the Mediation will include, in this order of priority: (1) improvement of the informal dispute and hearings process; (2) the structure and delivery of WRAP; (3) the delivery of deferred payment agreements; and (4) the treatment of tenant arrears and applications for service.
7. The Mediation for the first of the four issue areas identified immediately above (informal disputes and hearings) will commence within 60 days after the entry of the final rate determination in this proceeding. The mediator/facilitator will issue a report summarizing the Mediation Process and the recommendations of the mediator/facilitator and the Parties at the end of the sixth month after the first session unless an extension of that time period is mutually

agreed to in writing by PWD/WRB and the PA ("Report"). The Report will be transmitted to the Water Revenue Bureau and Water Department at the end of each six month mediation period for each issue area for consideration and implementation. The Mediation for each succeeding issue area, in the order of priority identified above, will be addressed beginning within 30 days after a Report is issued concerning the preceding issue area.

8. Each Report will include (a) a set of recommendations, including specific program designs, regulations and implementation plans; (b) a consideration of cost implications of the recommendations; (c) a consideration of the expense savings or revenue enhancement implications of the recommendations; and (d) such other material as the parties and the mediator/facilitator may deem appropriate.
9. Each Report will include an identification of a timeline and mechanism for monitoring and assessment of the expected outcomes of the recommendations included in the Report, including identification of specific metrics and data elements to be collected and publicly reported to help determine whether the recommendations generated the outcomes.
10. In the event that specific, discrete points of disagreement are identified by the Mediation, PWD/WRB and the Public Advocate agree that the Mediator will identify those discrete points of disagreement in the reporting to the Deputy Revenue Commissioner, Revenue Commissioner and Water Commissioner and will present a proposed resolution of those points of disagreement. WRB and PWD will promptly (within 30 days) issue a decision and note any exceptions as to any Report or proposed resolution so proffered.
11. The PWD/WRB and PA intend for this agreement to the above principles to be a condition of and be included in the terms of service of the Rate Determination in the above-captioned matter.

Andre C. Dasent, Esquire
Attorney for the Philadelphia Water
Department and Water Revenue Bureau

Thu B. Tran, Esquire
Attorney for the Public Advocate

Date:

EXHIBIT B

CITY SUMMARY OF AGREEMENTS AND STATEMENT OF POSITION

I. INTRODUCTION

The Philadelphia Water Department (“PWD”) and the Water Revenue Bureau (“WRB” and together with PWD, the “City”) submit this summary of agreements and statement of position for Issue 4 – Tenant Arrears and Applications for Service.

A. Equitable Owners Policy.

Description of Issue – The Public Advocate (“Advocate” or “PA”) maintains that PWD/WRB should (i) expand the existing rights of occupants to secure water service by adopting the “equitable owners” policy of the Department of Revenue (used for real estate taxation purposes); and further (ii) afford “equitable owners” those rights and privileges that are only available to record owners, such as HELP and WRBCC.¹

Summary of City Current Practice – PWD/WRB policy on establishing occupancy for water service is different from City policy for real estate taxation. In a utility service context, an occupant can burden the property (i.e., using water service without payment) during the legal process to establish ownership interest. WRB provides other alternatives for occupants to obtain service and access to customer assistance programs such as WRBCC. That is, the putative owner can become an “occupant with ownership interest” which would give the occupant access to water service and WRBCC. Under the current regulations, the Homeowner Emergency Loan Program (HELP) is limited to homeowners who are the property owners of record.

Summary of Agreements as to this Issue – There are no agreements as to the explicit subject matter described in Issue A (Equitable Owners Policy). It is the City’s position that WRBCC and HELP are outside the scope of tenant arrears and applications for service. At the second mediation session, the PA agreed that HELP will not be discussed in this forum.

B. Process/Documentation Standards for Application for Service.

Description of Issue – The Public Advocate indicates that WRB should adopt and implement a reasonable standard for proof of tenancy or authorized occupancy, which includes a minimum documentation standard similar to that currently provided in the Regulations. The Advocate believes that WRB should not require “over-documentation” for applications for service.

The PA observes that PWD Regulations² allow for denial of applications for service when “no evidence” is presented by the applicant as to his/her right of occupancy. WRB policy also requires that a tenant/occupant establish actual occupancy. The Advocate also maintains that affirmative consent from the record owner is required; and that tenants are further required to provide the complete address of the record owner.

¹ The Advocate agreed to remove the issue of HELP loans from the equitable owner policy discussion.

² Sections 100.2(a)(2), 100.2(b)(1)(A).

Summary of Current City Practice – PWD Regulations require that tenant/occupant applicants for service establish a right to occupy and actual occupancy at the premises where service is requested. See, PWD Regulations §§100.2(a)(2); 100.2(b)(1)(A) and (E). WRB also asks the tenant to provide the record owner's address. Record owner notification of a tenant's application for service is required to prevent fraud. The absence of an objection by the record owner after such notification is treated as an assent.

Summary of Agreements as to This Issue – The City believes that landlord input is required to resolve certain aspects of Issue B (e.g., elimination of landlord affirmative consent). The following indented paragraphs, as edited, are agreements between the parties, as referenced in the Meeting Summary (Agreements 1-6):³

The tenant manual will be amended to instruct ~~[be explicit that]~~ intake clerks ~~[should]~~ to refer non-standard ~~[types of]~~ documentation of identity and/or occupancy to a supervisor. ~~[rather than turning an applicant for customer status away because the documentation is not on the list in the tenant manual.]~~

Issues concerning documentation required to establish occupancy can be discussed at quarterly meetings between PA and City. Those discussions may result in adding types of documentation to the list in the tenant manual.

City agrees to change its policy to accept post office box for the landlord as a valid address.

City and PA agree that their attorneys will meet ~~[to attempt]~~ to develop a policy concerning documentation required for the status of occupant with ownership interest.

~~[Practice will be (and the tenant manual and regulations may be modified accordingly) that,]~~ If an applicant has identification (ID) that is one of the seven primary forms of identification, that will be sufficient. If not, then two forms of ~~[identification]~~ ID will be required (as listed in the tenant manual). If someone has some other form of ID that is not on the list, it will be referred to a supervisor.

Issues concerning documentation required to establish actual occupancy by a tenant can be discussed at quarterly meetings between PA and City. ~~[Those discussions may result in adding types of documentation to the list in the tenant manual. In addition, consistent with item 1 above, City and PA agree that the tenant manual will be amended to be explicit about referring non-standard types of documentation to a supervisor.]~~

C. No Denial of Customer Status or Deprivation of Service on the Basis of Pre-Existing Delinquent Balances.

Description of Issue – The Public Advocate indicated its concerns that customer status might be denied to tenant/occupant applicants based on pre-existing balances at the property where water service is requested.

Summary of Current City Practice – Bills run with the property and service is not denied to a tenant applicant if there are prior unpaid bills at the property. If service has been shut-off for non-payment at the time a tenant enters into a lease and applies for service, service will be restored upon payment by the

³ Edits to the indented paragraphs above are noted as follows – language additions are underlined; and omitted language is bracketed and stricken through.

landlord. Occupant applicants for service are not denied service based on pre-existing balances (although any arrears accumulated at the premises would be subject to lien imposition).

Summary of Agreements as to This Issue – The City sees an agreement as to this issue except when service was shut-off at the time the tenant entered into the lease. Occupants seeking to become customers are not denied service based on pre-existing delinquent balances.

D. Foreign Load.

Description of Issue – The Public Advocate maintains that when WRB is made aware that an existing water service account includes billing charges for usage attributable to a separate dwelling unit, WRB should list the account in the name of the owner/landlord.

Summary of Current City Practice – It is the property owner's decision to separately meter units in a multi-family property. If more than one unit is on a single meter, City policy is that the bill should be in the name of the owner. The City, however, does not attempt to enforce this, as it is possible for the owner and tenant(s) to contractually agree to a different arrangement. Landlord/owner input will be essential in addressing this issue.

Summary of Agreements as to This Issue – There is no agreement between the parties as to this issue.

E. Owner Notice of Tenant Application and Landlord Cooperation Program.

Description of Issue – The Public Advocate indicates that PWD/WRB should eliminate the landlord/owner notice requirements and the opportunities for a landlord/owner to object and revoke tenant customer status. Instead, a process similar to PGW's Landlord Cooperation Program ("LCP") should be adopted, whereby owners who cooperate can avert having a lien placed on the property due to tenant/occupant non-payment of the water bill.

Summary of Current City Practice – PWD/WRB does not have a program similar to PGW's LCP, but is considering the development of a similar program. Landlord/owner input will be essential in exploring LCP and related issues.

Summary of Agreements as to This Issue – This issue is deferred to the City-sponsored stakeholder process.

F. Protocols for Communications Regarding PWD Violations.

Description of the Issue - The Public Advocate maintains that when PWD violations are known, owners should be provided with information to achieve compliance in order to obtain service. Clear protocols for communication between WRB, PWD and the owner should be established, including the provision of HELP program information.

Description of Current City Practice – The City automatically provides notice to the customer (tenant) and owner when there is a meter or curb stop violation. For other types of violation, the process is not automatic, but notice is provided to the owner (these types of violations are addressed by PWD without WRB involvement).

Summary of Agreements as to This Issue – There is no agreement as to this issue. The City believes that this issue is outside the scope of the topic of tenant arrears and applications for service. Further, to the extent that it would require disclosure of information about the owner to tenants, such a change in policy should be made only after consulting with landlords.

G. Assign Proper Responsibility for Violations, Prior Balances and Updating Owner Address.

Description of Issue – The Public Advocate identifies three issues in this subject area related to (i) reporting uncorrected violations at tenant occupied properties; (ii) responsibility for prior balances; and (iii) responsibility for updating the owner’s address. The Advocate maintains that tenants should not be denied service when the following circumstances are presented:

- *Uncorrected Violations* – when a tenant dwelling is found with uncorrected violations, the property should be referred to L&I for enforcement against the landlord as a violation of the Property Maintenance Code.
- *Prior Balances* – tenants should not be held responsible for the owner’s prior arrearages or for arrearages of prior tenants.
- *Owner Address Update* – tenants should not be held responsible for updating the record owners address.

Description of Current City Practice:

Uncorrected Violations - L&I violations are not used by WRB in determining tenant customer eligibility for service. WRB and L&I communicate to confirm the rental license and the address of the landlord. L&I recently upgraded their system and WRB is in the process of obtaining access. If there is a PWD violation when an application for service is made, water service will not be restored until the violation is corrected. Tenant and owner responsibilities are set forth in detail in the Property Maintenance Code.

Prior Balances - As long as water service is “on” at the time the tenant signed the lease and there is a current property rental license, the tenant will be able to become a water customer. If water service is “off” at the time the tenant signed the lease, the owner must pay the bill in full or enter into a payment agreement before water service is restored.

Owner Address Update –WRB requires confirmation of the owner’s address to verify that required notices and duplicate bills are directed to the correct location. The LCP program may offer an additional means to confirm addresses for landlords.

Summary of Agreements as to This Issue – Although there is no agreement as to this issue, the parties have gained a better understanding of why certain requirements and practices are necessary. The City believes that this issue is outside the scope of “tenant arrears and applications for service.”

H. Ensure Rights of Co-Tenants or Co-Occupants are Not Adversely Affected by Changes in Customer Status.

Description of Issue – The Public Advocate is concerned that the actions of one tenant/occupant could adversely affect service to other tenants or occupants at a given premises.

Description of Current City Practice – The tenants and occupants with customer status do not have the right to terminate service to property, so a request to terminate tenant/occupant customer status does not adversely impact other tenants and occupants who may still be residing at the property.

Summary of Agreements as to This Issue – The following paragraph describes the agreement between the parties with regard to this issue, as set forth in the Meeting Summary (Agreement 9):

PA and City agree that tenant customers do not have ~~[and should not have]~~ the right to request that water be shut off. Tenants can only request that their customer status be terminated, but that does not stop the water from flowing to the property.

I. Coding Properties as Tenant Occupied or as Including Residential Dwelling Units.

Description of Issue – The Public Advocate indicates that coding of properties in the L&I database and Basis-2 should be linked.

Description of Current City Practice – WRB records information that a property is tenant occupied or that a property listed under a commercial account includes one or more residential dwelling units in Basis-2 when it receives such information from the owner or tenant; but it does not have a way to otherwise obtain this information. There is no linkage between the L&I database and Basis-2, so WRB is not automatically notified when a housing rental license is issued. WRB will have improved access to L&I data in the future but there will not be an automatic link between WRB and L&I.

Summary of Agreements as to This Issue – Although there is no agreement as to this issue, our discussions have led to a better understanding of City practices, current technology limitations that prevent WRB from having complete data on tenant occupancy and future improvements in data access.

J. Training.

Description of Issue – The Public Advocate indicates its concern that training is not being undertaken as to certain areas identified in Roger Colton’s testimony proffered in the 2012 PWD rate proceeding.

Description of Current City Practice – WRB currently conducts training with regard to the issues identified by Roger Colton in his direct testimony filed in the last rate case (page 61). Annual refresher training is also required for intake personnel.

Summary of Agreements as to This Issue – The following paragraph states the agreement between the parties as to this issue, as set forth in the Meeting Summary (Agreement 10):

The parties agree that training issues can be addressed at quarterly meetings. ~~[PA would like to have information provided in advance of meetings (e.g., draft manuals) to make meetings as productive as possible.]~~ The City is agreeable to having open discussions with regard to training.

K. Tenant Arrears.

Description of Issue – The Public Advocate is concerned that Section 100.9 of PWD Regulations is not being consistently applied.

Description of Current City Practice – The above referenced section of PWD Regulations will likely be impacted by legislation pending before City Council. Current WRB policies and practices related to payment agreements and WRAP are summarized below:

- Tenant customers are able to receive payment agreements based on income.
- At the call center or in-person intake, the discussion begins with the standard payment agreement. If that's not affordable, then the representative inquires into the customer's household size and monthly income and the customer is given a WRAP application if eligible.
- When the WRAP application is returned, it goes to Water Revenue Assistance Unit (handles screening for WRAP).
- If the customer's income is less than or equal to 250% of the federal poverty level (FPL), the customer qualifies for a 10/5 agreement (10% down, 5% of delinquency per month).
- The Regulations also refer to the down payment being no more than 15% of monthly income, but it is not the City's practice to set the down payment on that basis because the City grant (part of WRAP) has been increased to \$500, which is enough to pay the delinquency in full for many customers. So while the Regulations provide for the down payment to be set at no more than 15% of gross monthly income, in practice it does not come into play because of the \$500 City grant under WRAP.
- The City has not received any complaints about the amount of down payment.

Summary of Agreement as to This Issue – The City is reluctant to agree to numerous changes related to a program that may be significantly changed in the near term. Two general agreements reached in our discussions are stated below (as referenced in the Meeting Summary – Agreements 7 and 8):

City agrees to discuss other ways to broach the subject of income, so that the customer isn't first faced only with the standard agreement. For example, telling the customer that some payment agreements vary with the household's income, and asking if customer is willing to discuss income.

City agrees that the shut-off notice will include ~~[disclosure of]~~ the types of payment agreements available, in addition to medical certification and other methods to keep water on.

II. CONCLUSION

The foregoing summarizes the City's understanding of the agreements reached with regard to this segment of the Mediation (tenant arrears and applications for service) together with our stated position as to those issues we believe are outside the scope of the agreed upon subject matter.

EXHIBIT C

June 30, 2015

MEMORANDUM

To: Gail Bingham and Scott Rubin (for the Mediation Team),
Howard Neukrug and Clarena Tolson, Commissioners (for the City of
Philadelphia), Frances Beckley, Andre Dasent, Melissa Labuda, Scott Schwarz

From: Thu Tran, Robert Ballenger, Josie Pickens, and George Gould (for the Public
Advocate)

Re: PA Position on Mediation for Issue 4 (the treatment of tenant arrears and
applications for service)

INTRODUCTION

In settlement of the City's most recent water rate change proceeding, the City and the Public Advocate (PA) entered a Stipulation to Mediation "to examine ways to make substantial improvement in customer service and customer assistance programs." The stated purpose of the Mediation is "to determine how to generate improvements in the customer service areas identified." The City and the PA intended for the Stipulation to Mediation and the agreement to the principles therein "to be a condition of and be included in the terms of service of the 2013-2016 Rate Determination."

In the last two mediation sessions, the Mediation Team guided the City and Public Advocate through the identified Issue #4 of "tenant arrears and applications for service." At the end of these sessions, the City has made minor commitments to improve customer service in this area. Regarding larger issues requiring significant improvement, the City has essentially deferred potential resolution to quarterly meetings and new processes. The City's new Residential Customer Assistance and Service Committee (R-CAS), which will undertake review and discussion of a potential landlord cooperation program, a proposal discussed in these last two mediation sessions, was established unilaterally by the City without consultation or agreement by the Public Advocate. Although attorneys for PA and the City have had preliminary discussions, it is not clear at this time how the parties to the Stipulation to Mediation will proceed to address the remaining issues regarding tenant service, and those issues concerning WRAP (or a new low-income program that may replace it) and deferred payment agreements, required by the Stipulation.

Assuming that the Commissioners do not deviate significantly from the May 19 Meeting Summary prepared by the Mediation Team (Meeting Summary), at least some of the rate-funded mediation work to determine customer service improvements will be exported to R-CAS, quarterly meetings, and potentially other processes. This change, and the uncertainty surrounding resolution of other issue areas described in the Stipulation to Mediation, presents new layers of uncertainty and risk to PWD's residential customers.

There is currently no ongoing agreement between the City and the PA that the Stipulation to Mediation should be modified in order for the PA to continue to perform the commitments envisioned in the rate case settlement under a new framework or extended timeline. The PA submits that residential ratepayers are entitled to continued representation by the PA and the benefit of its consultant's expertise in the ongoing work toward resolution of these significant customer service issues. Accordingly, although the PA expresses no opinion about the likelihood of successful resolution of those issues deferred to later discussions and/or other forums, the PA submits that some agreement must be reached regarding the fulfillment of the ongoing and future work required by the Stipulation to Mediation.

BACKGROUND

Roger Colton, in his expert testimony submitted in the last water rate proceeding, highlighted the fundamentally flawed treatment of tenant and occupant applicants for service. These issues included, but were not limited to, the following: City non-compliance with current regulations; requests for over-documentation from applicants for service; inappropriate conditioning of non-owner applications for service upon meeting owner responsibilities (such as payment of owner's previously delinquent bill); and, lack of training on key customer service issues.

Prior to the first session on tenant arrears and applications for service issues, the Public Advocate submitted ten proposals for improvement of the non-owners applications for service process. Prior to the second session on these issues, the Public Advocate submitted a series of questions for discussion on the treatment of tenant arrears.

MEDIATION AGREEMENTS: TENANT ARREARS AND APPLICATIONS FOR SERVICE

Very minor agreements resulted from the two sessions on Issue #4. Except for the availability of HELP loan assistance to non-owners, regarding which the PA agrees discussions can be deferred, the PA continues to believe its proposals should be endorsed by the City, and includes as Exhibit A hereto its original submission regarding these matters.

Of the 10 agreements identified in the Meeting Summary, only the following changes reflect items the City has not proposed be deferred to later discussions or rejected:

- The City will change its policy to accept post office box for the landlord as a valid address.
- The City agrees that a tenant and occupant customers do not have (and should not have) the right to request that water be shut off (they can request their customer status be terminated), thus ensuring that co-tenants and co-occupants are not deprived of water service by a departing tenant or occupant.
- The tenant manual will be amended to be explicit that intake clerks should refer non-standard types of documentation of identity and/or occupancy to a supervisor,

rather than turning an applicant for customer status away because the documentation is not on the list in the tenant manual.

- The City's practice will be (and the tenant manual and regulations may be modified accordingly) that, if applicant has a form of ID that is one of the seven primary forms of identification, that will be sufficient. If not, then two forms of identification will be required (as listed). If someone has some other form of ID that is not on the list, it will be referred to a supervisor.

The PA notes the last two items above, regarding changes to the tenant manual, while reflecting potential future improvements, continue to be subject to yet-to-be-determined lists of acceptable non-standard types of documents. Thus there appear to be only two firm agreements, only one of which reflects a change in policy.¹

For the remainder of the issues submitted by the PA for resolution in this phase of the mediation, reflected in Exhibit A, the City either: (1) disagrees with the PA proposal, (2) agrees to discuss the issue further outside the mediation, or (3) otherwise submits that the resolution should be deferred to a City-driven process outside of the structured mediation. As discussed above, although PA would participate in further discussions about these issues outside the mediation, the lack of certainty this poses for residential customers leads PA to conclude that further agreement between PA and the City is necessary to reflect these changes as modifications to the Stipulation to Mediation.

PA POSITIONS ON ISSUES RAISED IN MEDIATION SESSIONS

A. Equitable Owners Policy

PA submits that the City's equitable owner policy for its "Owner Occupied Payment Agreement" program (OOPA) should apply for water customer status and availability of WRBCC grants. The OOPA program requires certification of ownership interest, occupancy, and income. The City asserts that there is a difference between paying off outstanding real estate taxes and receiving water service because the latter creates potential further property encumbrances in the form of in rem liability for unpaid water service, but disregards that OOPA requires payment of all current real estate taxes (which become in rem obligations when assessed). Accordingly, the City appears to assert that equitable owners who qualify for payment agreements under OOPA will disregard their responsibilities to pay for water service. No factual basis exists to suppose that applicants meeting the qualification standards to pay delinquent taxes and current taxes under OOPA will fail to pay for their water service.

The City prefers to maintain its "occupant with ownership interest" practice, which will require the same persons to satisfy more burdensome requirements (including, for

¹ As discussed in subsection K of this memorandum, the PA requests the City confirm another area of agreement: that the City will actually implement a changed approach to offering payment agreements that includes discussion of the availability of special agreements based on customer income. PA believes further discussions are warranted regarding the proposed script for customer service personnel to utilize, but that the City agreed in principle to a change in its approach.

example, referral to pro bono legal services for probate and tangled title assistance) to maintain water service than to obtain a hardship agreement on real estate taxes.

PA maintains that its recommendations eliminate administrative waste, ensure access to life-essential water service, promote safe occupancy of low-income customers' homes and avoid vacancy and blight. The Commissioners should reconsider the City's position, expressed in the mediation of this issue, and adopt the PA's recommendation.

B. Standards for Application for Service

PA believes a reasonable standard for proof of tenancy or authorized occupancy should be implemented and that the City's current processes require more documentation than authorized by PWD regulations. The City proposes that standards be discussed at quarterly meetings and that attorneys for the City and PA develop a policy concerning documentation for occupant customers having an ownership interest. Although, as discussed above, the PA is willing to continue work on this effort, it is nonetheless a postponement of resolution beyond the rate-funded mediation, and residential customers should be ensured representation in this process.

The Mediation Team notes that "the parties continue to disagree on the need to prove occupancy if the applicant has the right to occupy." PA maintains that a tenant need not prove actual occupancy, in addition to the right to occupy a premise. The regulations already require that tenant and occupant applicants show that they have a right to occupy the premises, such as through a lease and other documentation. PWD regulation 100.2(a)(2)(B). The City has taken the unreasonable positions, neither of which are supported by its regulations, that: non-notarized leases are unreliable; and, actual occupancy must be shown in all instances of non-owner applicants. There is no basis under current regulations to require all non-owner applicants to show actual occupancy, particularly given the landlord notice provisions in regulations and City Code.² The City should not be erecting barriers to customer status that are not supported by its regulations.

C. Denial of Customer Status – Code Violations and Pre-Existing Balance

The PA disagrees with the City policy to deny non-owners customer status when the owner has not complied with L&I licensing rules. These rules in no way affect the legality of the tenant's right to occupy pursuant to a residential lease agreement and the City's refusal to recognize such lawful tenants is unreasonable. As PA has suggested, the City should refer such premises to L&I for enforcement action (i.e., requiring the landlord to obtain appropriate licensure) rather than deprive tenants of service. In its apparent effort to avoid sanctioning a code violation (i.e., an unlicensed rental), the City instead deprives itself of a willing water customer, and disregards an opportunity to ensure an unlicensed tenancy is appropriately addressed (and associated fees are paid). The City erroneously believes denying customer status to a tenant that may be essential to maintain life-essential utility service in an unlicensed rental somehow "protects tenants."

² PA notes its continued opposition to provisions enabling an owner to affect a rescission of acceptance of a tenant customer's status.

The PA strongly disagrees with the City's current practice that if service is off, and there is a prior tenant or landlord delinquency, a new tenant cannot establish customer status to restore water service. City states that this is used as a means to force the landlord to address the delinquency by effectively ensuring the landlord does not collect further rent from a tenant who cannot reside at the service address without water. This practice instead insures that tenants either: continue to live without water service; or, forfeit rent and deposits to the landlord for a property they simply cannot inhabit. There are alternatives to address the landlord's delinquency that do not hold an innocent tenant hostage. Moreover, specific provisions of the City's regulations recognize the ability of a tenant to restore service by applying for customer status (100.2(d)(2), 100.2(e), 100.2(f)(1)), and so this practice is in no way supported by the City's regulations.

D. Prohibit Foreign Load

The City refuses to agree to a policy addressing foreign load circumstances in a fashion that is consistent with other Pennsylvania utilities by requiring a tenant bill to revert to the landlord when foreign load is found on the tenant's account. The City instead suggests this circumstance be addressed on a case-by-case basis, rather than through consistent policy.

E. Owner Notices and Landlord Cooperation Program

Although the City is interested in the possibility of a landlord cooperation program, similar to that developed by PGW, it is unwilling to mediate this issue, electing instead to defer it to the R-CAS forum.

PA maintains that improving access to tenant customer status is the primary objective agreed to in the Stipulation to Mediation, and that a landlord cooperation program could be a useful means to accomplish that goal. PA seeks the City's commitment that such improved means of access to customer status must apply to all tenant-occupied properties, irrespective of L&I compliance, and irrespective of enrollment or participation in a future landlord cooperation program.

F. Protocols for Communication Regarding PWD Violations

PA proposed that clear protocols need to be established for communicating with affected individuals (including tenants and occupants) about defective conditions and violations. The City identifies constraints with technology among City Departments as impacting this issue, and appears to agree that a next best step to resolving these kinds of concerns is providing a list to applicants regarding which City office to contact and how to resolve these issues. The City states it is working on a homeowner's guide which *may* be an appropriate place to include this information.

The PA submits that information about property conditions/violations affecting the ability of any tenant, occupant or owner to receive life-essential utility service, and the means to

redress those conditions, should be made readily available to anyone so affected. The City should commit to providing such information.

G. Assign Proper Responsibility for Violations, Balances and Owner Information

As discussed above, an L&I violation regarding landlord licensure is not a valid basis upon which the City can deny customer status under PWD regulations or state law. This violation is the sole responsibility of the landlord, and a tenant should not be precluded from accessing customer status, and the bill payment assistance that is only available to customers, on the basis of the landlord's (in)action. The inability of a tenant to provide meter access also constitutes an (in)action solely within the control of the landlord/owner. Without an actual reason to believe that meter readings are inaccurate, the denial of service to a tenant under such circumstances is unreasonable.

Similarly, as also discussed above, denying service to a tenant when water service is "off" as of the lease signing date serves no legitimate purpose to the City or its ostensible customer. It unfairly penalizes an innocent tenant for nonpayment by prior tenants or others.

Finally, regarding owner addresses, and with the exception of PO box addresses, discussed above, the City again expresses its preference to defer possible resolution of this issue to the R-CAS forum. PA submits that imposing an obligation on a tenant to ensure actual notice to a landlord is not supported by PWD regulations (see 100.2(d)(i), requiring notice to be provided to "such other address as the WRB reasonably believes is the valid address of the Owner or his agent") and results in the City not fulfilling its obligations to tenant applicants.

H. Ensure Rights of Co-Tenants and Co-Occupants

In response to the PA's concern about tenants or occupants taking actions to deprive other tenants or occupants of water service, the City appears to have agreed not to permit such a practice to occur. A change to PWD regulations to reflect this agreement is warranted. The Meeting Summary expresses the agreement as follows:

PA and City agree that tenant customers do not have (and should not have) the right to request that water be shut off. Tenants can only request that their customer status be terminated, but that does not stop the water from flowing to the property.

PA submits that this agreement should extend equally to occupant customers and that there is no reason to distinguish between tenants and occupants for this purpose under PWD regulations. See PWD Regulation 100.2(i)(1)(b).

I. Improving Protocols to Code Properties as Tenant Occupied or Residential

PA requested that the City improve protocols to record information about tenant occupancy or residential property status in order to ensure that important customer protections are observed. The City responded that it does record information received about possible tenants or residents, but that it does not automatically update records based on L&I information or upon other information until an investigator confirms the property status. The City further asserts that there is a difference between the protections provided to tenants and those provided to occupants.

The City should have an interest in properly designating a property as tenant occupied or as containing one or more residential dwelling units. Failure to do so creates the risk that proper notices to residential tenants and occupants are not sent. There are protections beyond USTRA notices that should be of concern to the City. However, the City's method of "tenant certification" appears improper and out of compliance with USTRA.

PA again observes that the City's definition of "tenant" is tied to L&I information and unsupported by law. PA recommends the City reconsider its position in light of the obligations imposed on it as a utility to ensure against unlawful termination of service.

J. Training

PA recommended the City undertake specific staff training, consistent with the testimony of Roger Colton in the last rate increase proceeding. Again, the City's preference is not to commit to the specific staff trainings proposed by PA, but to address training issues in quarterly meetings.

If quarterly meetings are to be a productive venue, and PA is to participate on behalf of residential customers, PA submits that information regarding updated training materials should be provided in advance for PA review.

K. Tenant Arrears

When asked if the 15% of income down payment rule is made available to tenants and occupant customers, the City replied that the 15% option is not offered and that it is not needed since \$500 grants would cover the 15% of income down payment. The PA is skeptical of a policy that hides from customers options that are provided in City regulations. Further, the PA questions how often the so called \$500 grants are provided. The City states it has not received complaints about the amount of down payment. The City should examine its tens of thousands of shut off notices sent out each year and determine which of those customers had been quoted down payments that were in excess of the 15% option, were never submitted, and, ultimately, incurred a shut off of water service.

PA submits that the shut-off notice, and current policy, must be adjusted to comply with PWD regulations. Accordingly, PA submits that the City's policy not to offer payment agreement options available under PWD regulations must be discontinued.

Moreover, the City agrees that the shut-off notice will include disclosure of the types of payment agreements available, in addition to medical certification and other methods to keep water on. In order to effect this agreement, the City must ensure that it does not hide available payment agreement options from customers.

Finally, although the Meeting Summary states that the City agrees to further discussions on how to broach the subject of income (so that an applicant or customer isn't first faced with an unaffordable payment demand), PA's recollection is that the City actually agreed to implement a changed approach, with the recommended script for customer service personnel to be worked out in further discussions. PA requests the City's confirmation of this agreement.

CONCLUSION

Given the extensive deferral of issues raised in this mediation of Issue #4 to later discussions, PA believes that attorneys for the City and PA must revisit and come to agreement regarding how to move forward to satisfy the terms of the Stipulation to Mediation. PA similarly submits that attorneys for City and PA must address the terms of the Stipulation to Mediation concerning Issues #2 (the structure and delivery of WRAP) and #3 (the delivery of deferred payment agreements), and looks forward to discussions regarding how best to proceed in resolving those issues.

EXHIBIT D

Philadelphia Water – Tenant and Application Issues
MEDIATION REPORT

Submitted by Gail Bingham, RESOLVE
with assistance from Scott J. Rubin

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Introduction

This document serves as the Mediation Report agreed upon by the parties to the Stipulation to Mediation (see Attachment D in the Matter of the Philadelphia Water Department's Proposed Increase in Water, Wastewater and Stormwater Rates FY2013-2016). This Mediation Report is intended for use by the Commissioners of the Water Department and the Revenue Department. Memoranda by the parties stating their positions are attached.

The City of Philadelphia Water Revenue Bureau ("WRB") and the Philadelphia Water Department ("PWD") agreed with the Public Advocate ("PA"), in the above matter, to enter into a mediation or facilitated process *"to examine ways to make substantial improvements in customer service and customer assistance programs."*

The issue areas the parties agreed to address were: (1) improvement of the informal dispute and hearings process; (2) the structure and delivery of WRAP; (3) the delivery of deferred payment agreements; and (4) the treatment of tenant arrears and applications for service. This report addresses the fourth issue and follows the approach agreed to by the parties in the Stipulation to Mediation, with the exception that this report does not include explicit discussion of cost implementations of the recommendations or a consideration of the expense savings or revenue enhancement provisions. The mediation contract limited this to information provided by the parties.

The parties met in person twice (April 7 and May 19, 2015) to discuss the issues relating to tenant arrears and applications for service (Issue 4). They also exchanged documents by e-mail outside of the meetings. During their discussions, they reviewed existing regulations, policies, and practices. They also shared perspectives on their goals for improvements and considerations to take into account, with the intent to understand what each was seeking to accomplish.

The parties' memoranda state their positions on the issues. The Mediator has not attempted to determine definitively whether the parties have reached agreement on any relatively minor issues because it is clear that the parties have not reached agreements that would "make substantial improvements in customer service and customer assistance programs" as contemplated by the Stipulation to Mediation. We also urge the Commissioners to refer to each party's own position statements and not their characterization either of the other party's position or of what may have been agreed to by the other party.

This document will review the issues raised by the parties and provide the Mediator's recommendations for ways in which the City could "make substantial improvements" in the treatment of tenant arrears and applications for service.

Issue A. “Equitable Owners” Policy

PA Concern: In addition to existing, recognized rights of occupants to service, PWD/WRB should adopt the “equitable owners” policy of the Department of Revenue for purposes of giving “equitable owners” those rights and privileges that are currently only available to record owners, such as HELP.

Current City Practice: City applies a different policy for “occupant” customers (water/wastewater) than for taxation because of the ability to burden the property, i.e. to use but not pay for water. A putative owner can become an “occupant with ownership interest” which gives the occupant access to WRBCC, but not to HELP. To receive a HELP loan, the owner must agree to a lien being placed on the property in the amount of the HELP loan. Eligibility for HELP is outside the scope of the issues concerning tenant arrears and applications for service.

Recommendation

Separate from the issues above, it appears to the Mediator that the City is foregoing an opportunity that would simultaneously enhance revenue collections and improve customer service. If the City's current practice and rationale for allowing equitable owners to assume responsibility for property taxes were applied to the water account, the City immediately would begin collecting storm water charges and the water and wastewater customer charges (that is, charges that do not vary with the amount of water consumed). Those charges go unpaid when a responsible owner is not identified (as is the case when the record owner is deceased and there is a “tangled title”). Presently, those charges that do not vary with consumption total more than \$27 per month (more than \$300 per year) for a residential customer.*

The Mediator recognizes the City's concern that if an equitable owner does not pay water and wastewater bills currently, then the City may incur costs that go unrecovered. The Mediator also considered the typical difference between incremental production and treatment costs compared to the rates charged to consumers.† Using round numbers, it appears that for each \$65 in volumetric charges to a residential customer, the City's incremental out-of-pocket costs to treat and pump the water and wastewater would be less than \$10, a ratio of 6.5 to 1. Thus, even if the non-payment rate among equitable owners were as high as 15%, the City would be no worse off than it is now. If the non-payment rate is lower than 15%, which the Mediator believes to be likely for people trying to establish home ownership, then the City would benefit -- its recovery of fixed costs (more than \$300 per year per customer) and its collection of volumetric revenues in excess of the incremental treatment and pumping costs would be cash-flow positive to the City.

* PGW's rates are from http://www.phila.gov/water/PDF/2014_WaterRates_BillStuffer.pdf.

† For example, PWD's 2012 rate case showed that treatment-related operating costs averaged approximately \$8.00 per 1,000 cubic feet, compared to the current charge to retail customers of more than \$39.00 per 1,000 cubic feet. Similarly, the rate case showed that the incremental pumping and treatment cost for wastewater was less than \$2.00 per 1,000 cubic feet, compared to the current retail charge of more than \$28.00 per 1,000 cubic feet. See PWD Exh. JRM2 in the rate case.

Based on the benefits to potential customers identified by the PA and on the Mediator's analysis of the likely costs and benefits to the City, the Mediator recommends that the City adopt an "equitable owners" policy for water service similar to the policy used by the Revenue Department for property taxation.

The Mediator does not express an opinion about the effect such a policy change would have, if any, on access to HELP funding for "equitable owners."

Issue B. Process/Documentation Standards for Applications for Service.

PA Concern: WRB should adopt and implement a less burdensome standard for proof of tenancy or authorized occupancy, which includes a minimum documentation standard similar to what is currently provided in the regulations. WRB should only require one of the documents listed in the regulations, since the regulations allow for denial of applications for service where there has been "no evidence" of right to occupy.

The City should not require affirmative consent from the record owner. Tenants should not be required to provide address of landlord, and post office box should be acceptable address for owner.

Current City Practice: The regulations require both a right to occupy (§ 100.2(a)(2)) and actual occupancy (prohibition of agency in § 100.2(b)(1)(A) and (E)). Current practice requires proof of both. Currently, notice is provided and if the owner does not object within 10 days, consent is assumed.

City will accept a post office box as an acceptable address for the owner. City asks tenant to provide owner's address because L&I database does not always provide current / accurate information on owner. City also believes that any change in policy regarding landlord notice should be made only after consultation with landlords.

Recommendation

PWD's regulations do not expressly require an applicant for service to be the occupant of the property. Section 100.2(b)(1)(A) of the regulations does not prohibit all 'agency' (that is, service in the name of someone other than the occupant), but only an "agent of a current or previous delinquent Customer" where there is an attempt to avoid collection or shut-off efforts. In other words, if there is no delinquent balance on the property, agency is not prohibited under § 100.2(b)(1)(A).

Section 100.2(b)(1)(E) also prohibits a person from applying for service if the person "is a Customer currently receiving service at another residential service address." That is, this section prohibits someone from being the customer of record at two residences at the same time.

The Mediator believes that it is reasonable for the City to require proof of actual occupancy if there is an outstanding balance at the property. It also is reasonable for the City to ascertain from

its own records that the applicant is not the customer of record at another residential property. The City's current practice, however, goes well beyond what is required to assure compliance with its regulations, and that practice appears to impose an unnecessary burden on applicants for service.

The Mediator recommends, therefore, that the City amend its practice and procedures to require an applicant to provide proof of occupancy only when there is an outstanding delinquent balance at the property, or if it appears from the City's records that the applicant is the customer of record at another residential property.

Further, the Mediator recommends adoption of the following practices for documentation of an applicant's identity: a) one form of identification will be sufficient, if it is one of the seven primary forms of identification currently listed in the tenant manual; and b) the tenant manual should instruct intake clerks to refer non-standard documentation of identity to a supervisor.

Finally, it should be the City's responsibility to maintain an accurate data base that includes landlords' addresses.

Issue C. No Denial of Customer Status or Deprivation of Service on the Basis of Pre-existing Delinquent Balance.

The City agrees in the attached memorandum to continue its current policy and practice that bills run with the property and that service will not be denied to a tenant or occupant if there are prior unpaid bills at the property, because tenants are not held responsible for any previous unpaid bills.

Recommendation

The Mediator agrees that this is a reasonable resolution of this issue. Note that there is a separate issue regarding applications for service when water is turned off. This is addressed under Issues F and G, below.

Issue D. Foreign Load.

PA Concern: When WRB is made aware that an existing water service account in the name of a tenant includes billing charges for usage attributable to a separate dwelling unit, WRB should list the account in the name of the owner/landlord.

Current City Practice: City policy is that whether to separately meter units is the owner's decision. Either way (master meter or individual meter) the water bills stay with the property. If more than one unit is on a single meter, City policy is that the bill should be in the name of the owner. City, however, does not attempt to enforce this, as it is possible for owner and tenant to agree to a different arrangement. Further, any change in policy regarding landlord responsibilities should be made only after consultation with landlords.

Recommendation

There are valid concerns on both sides of this issue. The Mediator agrees with the PA that a tenant should not be paying for water used outside of the tenant's apartment. The City states that it has a policy that usage from more than one apartment on a single meter should be in the name of the landlord. Both the City policy and the PA's concern, however, fail to include an important qualifier: unless the landlord and tenant agree otherwise. The City may implicitly recognize this qualifier by its decision to not enforce its policy. .

The Mediator also notes that, unlike the law governing privately owned utilities, Pennsylvania law does not contain a prohibition on foreign load for government-owned utilities like PWD. Specifically, Section 1529.1 of the Public Utility Code, 66 Pa. C.S. § 1529.1, requires privately owned utilities to place service in the name of the property owner when a meter includes foreign load (that is, service to more than one rental unit). The Utility Service Tenants Rights Act (USTRA) that governs service by government-owned utilities, however, does not contain a similar requirement. See 68 Pa. S. §§ 399.1, *et seq.*

Based on these considerations, the Mediator recommends that the City amend its policy to explicitly state that service to multiple units is permissible if the tenant affirmatively agrees to pay for that service. The Mediator also recommends that the City enforce its existing policy by implementing procedures that allow tenants to file complaints about foreign load. In such a complaint, if the landlord cannot prove the tenant gave affirmative consent to pay for the foreign load, then service should be placed in the name of the landlord.

Issue E. Owner Notice of Tenant Application and Landlord Cooperation Program.

PA Concern: PWD/WRB should eliminate the ability of landlord/owner to object and revoke tenant customer status. Instead, a notice-only requirement or a process similar to PGW's Landlord Cooperation Program ("LCP") should be adopted, whereby owners who cooperate with PWD/WRB can prevent having a lien placed on the property due to tenant/occupant nonpayment of the water bill.

Current City Practice: City does not have a program similar to PGW's LCP, but is considering the development of a similar program. Owner notice and consent still will be required, but process may be streamlined. It is important to get landlords' input into these issues.

Recommendation

In light of on-going litigation involving landlord notice by another City-owned utility (Philadelphia Gas Works)m, the Mediator does not have sufficient information on which to base a recommendation.

Issue F. Protocols for Communication Regarding PWD Violations.

PA Concern: When PWD violations are known, owners should be provided with information on the process to come into compliance and lift the violation in order to obtain service. Clear protocols for communication between WRB, PWD and the owner should be established, including provision of information about the HELP program that may assist with remedying violations. Further, the PA observed that information about property conditions/violations that affect the ability to receive water and how to redress those conditions should be available to anyone affected, including tenants and occupants.

Current City Practice: When the violation involves meter or curb stop, notice is provided automatically to customer (tenant) and owner. When the violation involves another type of problem, the process is not automatic, but notice is provided to the owner (these types of violations are addressed directly between PWD and the owner without WRB involvement / notification).

City believes that this issue is outside scope of the topic of tenant arrears and applications for service. Further, to the extent that it would require disclosure of information about the owner to tenants, such a change in policy should be made only after consulting with landlords.

Recommendation

The Mediator understands that this issue arises when a tenant has entered into a lease, but water service is not turned on to the property because of a PWD violation. As such, the Mediator considers this to be a tenant-related issue that is properly within the scope of the mediation.

The PA's concern is that a tenant is being denied water service (which, in effect, makes the property uninhabitable) through no fault of the tenant. In that circumstance, the Mediator recommends that it is reasonable for the City to provide information to the tenant concerning the nature of the violation that is directly affecting the tenant's right to occupy the property. In that way, the tenant may be able to help bring pressure on the landlord to correct the violation and have water service restored to the property -- providing a benefit to the City and the tenant. Prior consent of landlords under such circumstances should not outweigh the ability of a tenant to inhabit the property.

Issue G. Assign Proper Responsibility for Violations, Prior Balances and Updating Owner Address.

PA Concern: In the event a tenant dwelling is found with uncorrected PWD violations, the property should be referred to L&I for enforcement against the landlord as a violation of the Property Maintenance Code. In addition, tenants should not be denied service because the landlord does not provide access to the meter. Further, WRB should not hold tenants responsible for the owner's prior arrearages, for arrearages of prior tenants or for the owner's failure to provide an updated physical address to the City.

Current City Practice: WRB and L&I regularly communicate; in the near future WRB will have access to L&I's computer records so the process will be more automated. As long as water is on at the time the tenant signed the lease, any L&I violations will not prevent the tenant from occupying the property; the water will stay on and will be billed to the owner. Once the owner satisfies L&I's issues, then tenant will be able to become customer.

If water is not on when the tenant signed the lease, then water cannot be turned on until L&I issues are resolved by the owner (though usually if water is not on, the critical concern is with a PWD violation [such as a leak], not with an L&I requirement.) Tenant and owner responsibilities are set forth in detail in the Property Maintenance Code.

City believes that this issue is outside scope of the topic of tenant arrears and applications for service.

Recommendation

The Mediator considers this to be a tenant-related issue that is properly within the scope of the mediation because these are potential barriers to tenant access.

The Mediator is unclear about the underlying facts concerning this issue. It appears that the City turns off water to a property only when there is an unsafe condition (such as a leak) or defective equipment (such as a malfunctioning meter). If those are the only circumstances when water is turned off, then the Mediator agrees that water should not be turned on until those conditions are remedied. It is not safe to restore water service when there is a leak or other unsafe condition. It also is not reasonable for the City to provide water service when it cannot properly record the amount of water being consumed. Although there may be adverse consequences to a tenant if the landlord denies PWD access to a meter, this would be a private matter between the landlord and the tenant that is outside the scope of this mediation.

If, however, there are other circumstances when water is turned off to a property (such as non-safety-related violations of L&I requirements or payment delinquencies), then the Mediator does not agree that those types of problems must be resolved before service can be restored to a tenant. The tenant (and his/her security deposit with the landlord) should not be held hostage to try to force a landlord to comply with non-safety-related requirements.

The question of responsibility for updating owner addresses is discussed in Issue B above.

Issue H. Ensure Rights of Co-tenants or Co-occupants are Not Adversely Affected by Changes in Customer Status.

Current City policy and practice is that tenant-customers and occupant-customers do not have the right to terminate service to the property, so a request to terminate tenant/occupant customer status does not adversely impact other tenants and occupants who may still be residing at the

property. The City agrees to continue this policy and to conduct appropriate training of City employees to ensure that these existing policies and practices are implemented consistently.

It appears the parties agree.

Recommendation

The Mediator agrees that this is a reasonable resolution of this issue. The PA urges that this be applicable equally to occupant customers. The Mediator agrees, seeing no reason to distinguish between tenants and occupants for this purpose. The PA further urges that the practice as stated warrants a change to PWD regulations. The Mediator has no recommendation as to how this practice is codified.

Issue I. Coding Properties as “Tenant Occupied” or as Including “Residential Dwelling Units.”

Current City policy and practice is that WRB records information that a property is tenant occupied or that a property listed under a commercial account includes one or more residential dwelling units in BASIS2 when it receives it from owner or tenant; but it does not have a way to otherwise obtain the information. There is no linkage between Licensing & Inspection's ("L&I") system and BASIS2, so WRB is not notified automatically when a housing rental license is issued. WRB will have access to L&I data, but (as currently understood) there will not be an automatic link between L&I data and BASIS2.

The City agrees to conduct appropriate training of City employees to ensure that these existing practices are implemented consistently.

Recommendation

In order to protect the rights of customers, and to protect the City from potential liability under USTRA, it is important for the City to be able to accurately identify tenant-occupied residential dwelling units. The Mediator encourages PWD and WRB to work with the PA, other City Departments, and the City's IT department to improve the accuracy and reliability of residential tenant identification in PWD/WRB records.

Issue J. Training.

Current City policy and practice is that WRB conducts overview training on the issues noted by Roger Colton in his direct testimony in the last rate case (at page 61) for all new customer service employees, and in-depth training for intake (walk-in center) employees. Tenant and occupant applications must be made in person, so intake personnel handle all such applications. Annual refresher training is required for intake personnel. The City agrees to continue this training and to make the City's current training manual that contains these elements available to the PA within one month of this report, unless it has already done so. Suggested changes in training can be addressed with PA during quarterly meetings.

Issue K. Tenant Arrears.

On November 19, 2015, City Council approved Bill No. 140607-AA that would create a new Income-Based Water Rate Assistance Program. This was signed into law and became effective on December 1, 2015. In light of this development, the Mediator does not recommend any changes in City policies or procedures at the present time and encourages the parties to work together to ensure a smooth implementation of the new law.