

BEFORE THE
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

**PHILADELPHIA WATER
DEPARTMENT**

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)

FY17-2018 RATES

PUBLIC ADVOCATE
HEARING EXHIBIT VII

April 12, 2016

**DECISION OF THE
PHILADELPHIA WATER COMMISSIONER AND REVENUE COMMISSIONER
AS TO THE MEDIATION REPORT REGARDING THE INFORMAL DISPUTE AND
HEARINGS PROCESS**

I. INTRODUCTION

As a part of the negotiated settlement of the 2012 Rate Proceeding, the Philadelphia Water Department ("PWD"), Water Revenue Bureau ("WRB") and the Public Advocate (the "Advocate" and together with PWD 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.

The framework and estimated time-line for the Mediation are set forth in the Stipulation to Mediation between PWD/WRB and the Advocate ("Stipulation") which is attached as Exhibit A hereto. The Stipulation provides that the following issue areas be subject to Mediation: (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. Mediation of each issue area is to take approximately six months.¹ 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 identified in the Mediation. Within thirty days of the issuance of the Mediator's report, WRB and PWD are to issue a decision with regard to the Mediator's recommendations together with exceptions as to the aforesaid report ("Decision"). The instant Decision is

¹ We are now significantly behind schedule and will need to discuss how we can expedite future discussions so that all issue areas can be timely addressed. One alternative to be considered is to address tenant issues next as a part of a process driven by written submissions by each Party stating their respective positions which can be compared to identify any "common ground" to advance future discussions. As a practical matter, the discussion of WRAP related issues may have to be deferred to a later period, after the Parties have vetted affordable rate alternatives.

rendered consistent with the requirements of the Stipulation. The Decision specifically concludes the Mediation as to the informal dispute and hearings process with our findings, conclusions and directive with regard to implementation of negotiated improvements.

II. PROCEDURAL HISTORY

By way of background, 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 Mediator in the recently completed proceedings addressing the informal appeals process.² 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 Advocate as well as PWD, WRB and Revenue Department personnel.

During the period December 2013 through the issuance of the Mediation Report and Summary of Agreements on November 11, 2014 ("Mediation Report"), the Mediator presided over a series of meetings and telephone conferences related to the dispute resolution and informal hearing ("IH") process.³ The Mediation Report is attached hereto and referenced as Exhibit B. The Mediation Report sets forth a summary of the Mediation, including agreements reached by the parties, and various recommendations made in the absence of agreement of the parties. This Decision addresses the Mediation Report articulating specific findings and conclusions stated below.

² 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.

³ The Parties also met in person to discuss and prepare for the Mediation on June 6, 2013.

III. FINDINGS AND CONCLUSIONS

A. Comments Concerning the Mediation Report.

Upon review of the Mediation Report (with approximately 60 separate agreements, not including sub-headings), the City has identified several issues that are described as "areas of agreement" but which are at variance with our recollection of the position advanced by the City. The language reflecting our position advanced for purposes of agreement is set forth below:

Decisions that Can Be Appealed

[The following edits should be made, if this issue is to be listed as an agreement]

Section III(A), Bullet 7 (Mediation Report at 4-5) - For every ~~dispute-Decision~~, the Authorized User will receive a written ~~decision~~ copy of same along with a notice of appeal rights and a copy of the IH request form. If a HELP loan is denied for reasons unrelated to homeownership, such decision will be in writing with a notice of appeal rights and an IH request form.

Section III(A), Bullet 16 (page 5) - ~~Appeal procedures for any new programs that require an application will be similar to those agreed to for existing types of applications, unless otherwise determined by ordinance.~~ Unless otherwise determined by ordinance, informal hearing and appeal procedures will be utilized for any new PWD programs that require an application until new regulations are promulgated.

Stays of Enforcement Pending Appeal

[The following edits should be made, if this issue is to be listed as an agreement]

Section III (B), Bullet 2 (Mediation Report at 6) – A stay of enforcement⁴ will be triggered for the applicable period required by WRB policy and/or PWD regulations as to the following situations:

- From the initiation of a dispute⁵ ~~when an Authorized User states that he or she is not satisfied~~ until 30 days after the issuance of a decision on that dispute;
- Referral of a dispute to AAU for investigation ~~and until 30 days after the decision;~~
- request for WRAP application by residential customer;
- From filing of a completed IH Request form until 30 days after the issuance of a IH decision;
- From filing of a completed TRB/OAR hearing request until 30 days after the issuance of a TRB/OAR decision; and
- Medical emergency request pursuant to Section 100.10.

Scheduling/Timing

[The following edits should be made, if this issue is to be listed as an agreement]

Section III(C), Bullet 2 (page 7) - ~~Authorized Users whose service is off or whose account has been flagged will receive an expedited hearing within 10 days.~~ Expedited hearings will be completed within 10 days of filing an a completed IH request form.

Hearing Process and Decision Making

[The following edits should be made, if this issue is to be listed as an agreement]

Section III(F), Bullet 6 (Mediation Report at 9) - Hearing officer decisions that are not appealed to TRB/OAR at the end of the appeal period become final and are binding on PWD/WRB the parties, and the hearing officers are vested with all powers and authority to enforce their decisions.

Operations

[The City struck the following language in its Comments to the draft Mediation Report.

⁴ It should be noted for clarity, that a stay of enforcement is related only to the matter or that portion of the bill that is disputed. For example, if a Customer disputes the amount of the bill, the Customer is responsible for paying the undisputed portion of such bill and termination of service may occur, if the undisputed portion becomes delinquent.

⁵ See discussion *infra*. (at page 7), related to the use of broad definitions of “dispute” and “decision” in the Mediation Report.

This issue should not be listed as an agreement.]

Section III(H), Bullet 5 (Mediation Report at 11) – ~~All contacts on an account will be contemporaneously logged into the customer information system with an appropriate narrative entry.~~

This Decision adopts the above stated edits/revisions so as to address all remaining issues and conclude the Mediation as to the informal dispute and hearings process.

B. Response to Recommendations in the Mediation Report.

1. Definition of Occupant without Ownership Interest.

One issue that remained unresolved in the Mediation concerned the City's proposed definition of "Occupant without Ownership Interest." The inclusion of the phrase in the definition "that the occupant accept responsibility for bill payment" was the source of controversy. The Mediator recommends the following definition be used in lieu of that proffered in the City's Affirmative Proposals. The Mediator's recommendation removes reference to the acceptance of responsibility for bill payment:

Occupant without ownership interest: A current occupant with proof of residency that has the owner's authorization to reside at the service location, and without any intent of gaining ownership of the service location.

Mediation Report at 13.

The City disagrees with the recommendation of the Mediator for purposes of this definition. The City believes that the individual disputing a utility decision in the Informal Hearing process must have appropriate standing (that is, he or she must be an Authorized User). Most appeals will be about bill payment for service rendered or a utility decision related to a PWD program or service for an Authorized User, who by definition must be responsible for bill payment, unless there is a medical emergency. The originally proposed definition of the City

which states "A current occupant with proof of residency that accepts responsibility for bill payments (outstanding bills and ongoing bills), and without any intent of gaining ownership of the service location" should be utilized.

2. Whether Determination that a WRAP Application is Incomplete is Appealable.

A second issue that remained unresolved concerned whether a determination that a WRAP application is "incomplete" is a utility decision subject to review under the IH process. The Mediator recommends the following two-step approach to address this issue.

In the first instance the Mediator recommends, that there should be an explicit, administrative escalation process (such as referral to a supervisor or other senior decision making authority) to quickly address alleged clerical or administrative errors in processing applications. The Mediator further recommends that any notice that an application is incomplete should include instructions as to how to escalate the matter if the Authorized User thinks the finding of incompleteness is in error.

Secondly, the Mediator recommends that if a dispute remains after escalation to a supervisor, the customer should have the right to an informal hearing. To reduce the potential administrative burden and address the concern about potential misuse of the process to achieve a stay, the City could establish a process in which there would be no stay but an expedited hearing would be provided. Alternatively, the agreements reached by the City and the Advocate concerning Frivolous Appeals should address the City's concern. Mediation Report at 13-14.

The City believes that this issue will be addressed in discussions related to the future of WRAP and whether this program should be replaced. A decision related to this issue should be

deferred until future discussions are completed concerning WRAP and alternative affordable rate programs.

3. Whether Any Authorized User Can Request an Informal Hearing on Any Decision.

A third issue that remained unresolved concerned whether any Authorized User has standing to request an Informal Hearing on any decision. During the mediation, the Advocate proposed that all decisions by WRB and PWD should be appealable. The Mediation Report essentially adopts the Advocate's position.

We disagree with the Mediator's recommendation that any "decision" by PWD or WRB should be appealable to a hearing officer. The Mediation Report defines "decision" as meaning PWD's or WRB's "written approval or denial of an application for service *or other request*" and defines "dispute" as "*any* interaction where an Authorized User disagrees with or is dissatisfied with a decision issued and/or action performed by the City with respect to a bill, and application *and/or service.*" (Emphasis added.) Given these broad definitions, numerous requests and interactions which are not appropriate for resolution through informal hearing process could constitute appealable "decisions" and "disputes." Examples include orders and other actions taken by PWD as a result of an inspection, such as Notice of Plumbing Defect notifying a Customer to repair a defective sewer lateral. Appeals of such notices are heard by the Board of License and Inspection Review under Section 5-1005 of the Philadelphia Home Rule Charter. A list of appealable issues under the current regulations and the additional appealable issues that the City proposed to add to this list during the mediation is attached and referenced as Exhibit C.

The Mediation Report also addresses concerns raised with regard to appropriate standing to request an informal hearing in recommending a motion to dismiss be utilized to challenge standing should this issue arise. As recommended by the Mediator:

The City may file a motion with the Hearing Officer that challenges the standing of an Authorized User to appeal a Decision. Such a motion must be contemporaneously served on the Authorized User, the Customer of record (if not the Authorized User) and any designated representative of the Authorized User.

Mediation Report at 14.

The City agrees with the Mediator that the Hearing Officer should have authority to entertain a motion to dismiss when standing issues arise. An Authorized User or Customer has standing to dispute utility decisions identified in Section 100.7 of PWD regulations (which will include the agreed upon expanded appeal rights). In addition, as a practical matter, the Hearing Officer must have the authority to determine, either *sua sponte* or upon the motion of a party to a hearing, that a matter is moot, not ripe for decision or is more appropriately decided by another City office, department, board or commission.

4. Access to Records.

A fourth unresolved issue concerned whether additional documents and other records (beyond those documents identified in the City's Affirmative Proposals) should be provided by the City as a part of the hearing preparation process. The Mediator recommends the following with regard to access to records by a party prior to an informal hearing:

Current City regulations requiring that documents be provided on request and in advance of informal hearings should be implemented to give complainants adequate opportunity to prepare. A reasonable notice to the City should be provided for records that are not normally maintained in publicly accessible form. Further, to be consistent with Pennsylvania law and due process requirements, the Mediator recommends that the City's regulation should be modified to specifically include electronic records in the "documents" that can be requested under Section 100.7(e).

The Mediator also recommends specific language for such a revised regulation. Mediation Report at 14-15.

The City concurs with the Mediator that documents to be proffered in preparation for hearings would include both written and electronic records. The City also agrees that, to the extent that documents are required in special circumstances that are not included in the standard categories set forth in the City's Affirmative Proposals, the hearing officer should be authorized to direct that such document be produced at or before the hearing. However, the City cannot fully accept the Mediator's recommendation, as the City believes that the "standard documents" and "additional documents" suggested as a part of the City's Affirmative Proposals suffice for hearing preparation in typical cases.

5. Implementation of Agreements in Regulations

A fifth unresolved issue concerned the identification of which areas of agreement are to be implemented through changes in regulations, as opposed to revisions in administrative policies. The Mediator makes three recommendations in this context. In the first instance the Mediator notes that the City retains the discretion as to which agreements require changes to regulations, but also provides assurance that the Advocate can have a reasonable explanation that, at a minimum, the following changes will be made in regulations to ensure consistency with the agreements reached in this Mediation:

1. Authorized Users (not only customers) have appeal rights.
2. Responsibility for stormwater charges is appealable.
3. Denial of HELP assistance is appealable.
4. Changes in Section 100.7(e) to reflect access to records in advance of hearings.
5. In-person hearing request requirements.
6. Expedited hearing where water service has been shut-off.
7. Recording of hearings at request of either party.
8. Ability to appeal all adverse decisions to a Hearing Officer.
9. Appeals to TRB/OAR from IHU decisions.⁶
10. Frivolous Appeals and effect of stay.
11. Customer information (52 Pa. Code Sec. 56.97 equivalent).

⁶ The reference to "TRB/OAR Appeal" in the Mediation Report (at page 4) should indicate that such appeal is the final level of administrative review (as opposed to final level of review), as an appeal to the Philadelphia County Court of Common Pleas is an additional option.

Secondly, the Mediator notes that the City will need to modify its internal procedures and training materials to fully implement the agreements reached by the parties.

Finally, the Mediator recommends that the City consult with the Advocate as regulations and procedures are being developed.⁷ Any such consultation should be informal and designed to try to eliminate controversy and minimize the degree to which the Advocate may need to submit adverse formal comments during the regulation review process. Mediation Report at 16-17.

The City reasonably expects that expansion of appeal rights, TRB/OAR appeals and a number of other issue areas identified above will be included in future regulations, subject to comment and review by all interested parties. However, we do not fully agree with the Mediator's recommendations on this issue. As previously noted, we do not agree that all Authorized Users should have the ability to appeal all adverse decisions or all reasons for denying HELP assistance, as suggested by items 1 and 3 above, or that all of the Mediator's recommended changes to 100.7(e) of the Water Department's regulations are necessary and appropriate at this time. With regard to appeals of stormwater charges, the City only agreed to modify its regulations to allow customers to challenge *in personam* responsibility for stormwater charges. In addition, during the Mediation, the City stated that agreements related to providing customer service and payment agreements consistent with the policies in 52 Pa Code §56.97 (Chapter 56) could be appropriately addressed in internal procedures and policies.

As Commissioners, we have independent obligations to comply with the Philadelphia Home Rule Charter ("Charter") and the Philadelphia Code when promulgating regulations. The Charter requires that a City department promulgating regulations first submit them for approval

⁷ By way of clarification, it should be noted that any changes to PWD regulations would be made consistent with Philadelphia Home Rule Charter and Philadelphia Code requirements, which do not require City Council action. The Mediation Report reference to the contrary is misstated. See, Mediation Report at 16.

to the Law Department and upon receiving such approval file them with the Department of Records where they will be available for public comment for a period of thirty days. If any person affected submits a written request for a public hearing during the comment period, a hearing will be afforded. A report of the hearing reaffirming the regulations or modifying them with the approval of the Law Department is then filed by the affected department with the Department of Records.

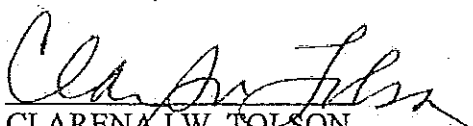
To expedite the process of revising the Water Department's regulations, we will instruct our staffs to begin working with the Law Department to prepare proposed amendments to the regulations governing residential customer rights and obligations (Chapter 1, Sections 100.00 through 100.14 of the Water Department's regulations) as necessary to implement this decision and the intent of the agreements reached during the first phase of the Mediation. Given that these regulations were first promulgated and became effective many years ago and have not recently been revised, the proposed amendments should include any changes that our staffs and the Law Department deem appropriate or necessary to make the regulations more consistent with potentially applicable requirements of the Pennsylvania laws, such as Utility Service Tenants Rights Act ("USTRA"), or analogous regulations applicable to PUC-regulated water and wastewater utilities under Pennsylvania regulations.


The City specifically accepts the Mediator's latter two recommendations with regard to (i) the needed modification of internal procedures and training materials to reflect agreements reached in the Mediation; and (ii) consultation with the Advocate in the development of future regulations and policy and will informally communicate our intentions to expedite any future rulemaking proceeding. The Advocate will also be able to formally comment on any proposed

regulations. The City further recognizes that the agreements in this Mediation will necessitate changes in internal policies and training.

IV. RESOLUTION AND ORDER

Consistent with the terms of the Stipulation, this Decision is rendered to address the recommendations of the Mediator as identified above and note any exceptions to the Mediation Report. The City accepts the Mediation Report to the extent its definitions, summary of agreements and recommendations are not inconsistent with the findings, conclusions and directives stated in this Decision. We direct our staffs to: (1) conduct a comprehensive review of the regulations governing residential customer rights and obligations (Chapter 1, Sections 100.00 through 100.14 of the Water Department's regulations); (2) work with the Law Department to identify those areas where policy changes or new regulations will be necessary to implement this Decision, and (3) revise procedures and regulations as necessary to implement this Decision. We further direct that quarterly stakeholder meetings commence no later than February 2015 to review progress with implementation of Mediation agreements among other issues; and acknowledge the execution of the Memorandum of Understanding between the Tax Review Board/Office of Administrative Review, the Department of Revenue and PWD as a part of the overall implementation of improvements to the informal hearing and appeals process.


CLARENA I.W. TOLSON
Revenue Commissioner


HOWARD M. NEUKRUG
Water Commissioner

DATE ISSUED: December 11, 2014

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

November 11, 2014

Philadelphia Water -- Informal Appeals

MEDIATION REPORT AND SUMMARY OF AGREEMENTS

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

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I. Introduction

The City of Philadelphia Water Revenue Bureau ("WRB") and the Philadelphia Water Department ("PWD") agreed with the Public Advocate ("PA"), in a 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), 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 first 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 four times beginning in December 2013 and concluding in April 2014 to discuss the informal appeals / hearings (IH) process. They also had several conversations by telephone and exchanged proposals by e-mail between meetings and as part of the review of a draft of this report. During their discussions, they reviewed existing regulations, policies, and practices. They also shared perspectives on their goals for improvements, with the intent to understand what each was seeking to accomplish. The mediation team considered these desired outcomes as important criteria in developing recommendations on the unresolved issues discussed in Section VII.

This document summarizes the agreements reached by the PWD, WRB (together with the PWD, the "City"), and the Public Advocate. Although the specific wording is that of the mediation team, it is our understanding that the parties have agreed to implement the intent of the items in Sections II through Section VI. Items included in an earlier draft that one or both of the parties identified as incorrectly stated to be agreements either were deleted or were moved to Section VII, if so requested by the other party.

II. Definitions

Although many of the terms are similar to the "customer categories" in the City's regulations, terms used in this report are understood to have the following meanings. In particular, the term "Authorized User" is intended to reflect the parties' agreement that individuals do not need to be customers for purposes of informal appeals.

"Authorized User" means the following types of users of the City's water, sewer, and stormwater utility systems.

1. **Owner-Customer:** The owner of a service location, and in whose name the utility account is set up.
2. **Tenant-Customer:** A tenant with legal proof of tenancy, and in whose name the utility account is set up.
3. **Tenant-USTRA:** A tenant with legal proof of tenancy, and where the utility account is set up in the service location owner's name.
4. **Occupant with ownership interest:** A current occupant with proof of residency, and with the intent of eventually gaining ownership of the service location.
5. **Occupant without ownership interest:** *Agreement was not reached on the definition of this term. A recommendation from the mediation team is included in Section VII.*
6. **Household Member for Medical Emergency:** Any person who resides at the service location and who seeks to delay shutoff of service pursuant to § 100.10 of the Regulations.

"Appellant" means any Authorized User who files a dispute with the City regarding a water, sewer, or stormwater utility issue.

"Inquiry" means any interaction where an Authorized User is merely requesting information, inquiring about a service, or seeking clarification. Examples include (i) requesting copy of billing statement, brochure, etc.; (ii) seeking clarification on the information presented in a billing statement; or (iii) requesting a meter test.

"Dispute" means any interaction where an Authorized User disagrees with or is dissatisfied with a decision issued and/or action performed by the City with respect to a bill, an application, and/or service. Examples include disagreements concerning (i) water charges; (ii) responsibility for bill payment; (iii) revocation of customer status; or (iv) denial of payment agreement.

"Response" means answers and/or actions that the City provides pertaining to inquiries. Examples include (i) explanation of a charge that the Authorized User doesn't understand; (ii) issuance of a duplicate bill or brochure; or (iii) initiating a customer requested temporary shut-off.

"Decision" means utility's written approval or denial of an application for a service or other request.

"Initial Review" refers to the first interaction with a CSR where a claim is made by the Authorized User in person or at the Call Center which can, at the Authorized User's request, be escalated to require the customer service supervisor's review. The Authorized User must be notified of his/her appeal rights during this interaction, if he/she is dissatisfied. In the context of billing charge disputes, an extended review may be performed by the Account Analysis Unit (AAU) as part of this initial review. In this context, a written decision with details must be issued to the Authorized User including a notification of appeal rights.

"Informal Hearing" refers to the second level of review, in the form of a hearing, after the Authorized User has indicated dissatisfaction with the outcome of the Initial Review and has completed and filed an IH Request Form.

"TRB/OAR Appeal" means the final level of review by an independent trier of fact, when an appellant files a TRB/OAR request.

"Frivolous Appeal" means an appeal taken other than in good faith and solely for purposes of delay. An Authorized User's first appeal cannot be considered a "frivolous appeal." Similarly, if a hearing officer decides in the Authorized User's favor in an appeal, a subsequent appeal cannot be considered a Frivolous appeal.

III. Agreements

A. Decisions that can be appealed and by whom, notification of appeal rights and filing

The City and the Public Advocate agree to the following:

- City will articulate specific standards to determine when a billing inquiry or dispute is referred to AAU.
- Enhanced and consistent verbal and written communications will be provided to all Authorized Users.
- At the end of every contact with an Authorized User, the Customer Service Representative (CSR) will ask if the individual is satisfied and, if they are not satisfied, inform them of the right to make an IH request. The process also will include referring the individual to a supervisor in most cases. City will ensure that interactions end with a recap that gives the name of CSR, a summary of what was discussed, and next steps in the process (if any).
- Decisions will be provided in writing accompanied by an IH request form.
- Each decision will provide the basis of its reasoning in sufficient detail so that affected persons can determine if they have a dispute.
- If an Authorized User disputes responsibility for a bill, the dispute will include all charges on the bill, including responsibility for stormwater.
- For every dispute, the Authorized User will receive a written decision from a CSR or AAU (as appropriate), along with notice of appeal rights and a copy of the IH request.

form. If HELP is denied for reasons unrelated to the account balance, the decision will be in writing with a notice of appeals rights and an IH request form.

- Informal hearings will be requested by an Authorized User filing the IH request form. City will consider allowing a CSR to complete the request form over the phone in exceptional circumstances on a case-by-case basis (e.g., where the Authorized User is visually impaired).
- Decision letters will be modified to state that the IH request form can be submitted in person or by mail.
- Authorized Users have the right to dispute both the refusal to provide water service and the refusal to place the bill in the name of applicant.
- The City will provide a tenant notice and opportunity for hearing in the event of rejection or revocation of application for service. In the event of a rejection or revocation of customer status, termination of service will be stayed until the matter is decided, including any period of appeals.
- Decision letters shall include a notice of appeal rights, a warning about the filing of frivolous appeals, the right to request documents, and the right to further appeal.
- The City will edit the IH request form to explain briefly what §100.10 (medical emergency hold) means.
- The City will edit the IH request form to make clear that future bills need to be paid or disputed separately.
- The PA will make recommendations for changes in City posters and brochures concerning appeal rights and process.
- Appeal procedures for any new programs that require an application will be similar to those agreed to for existing types of applications, unless otherwise determined by ordinance.
- If a delinquency has been transferred to the City Law Department or a collection agency, then customer service functions and IH process will be available on other transactions not subject to the transfer. Examples of available customer service functions include applying for WRAP or a medical emergency, or making any inquiry or dispute about matters that have not been transferred. However, payment agreements or issues related to the delinquency that has been transferred will be addressed during settlement negotiations between the Authorized User and the Law Department or collection agency.
- The IH request form will include an attestation substantially similar to the following: "By signing below, I am stating that I am an Authorized User of water service at the service address listed above. I will be able to verify through documents or testimony at the informal hearing that I am an Authorized User."
- At the hearing given the individual circumstances of an appeal, the hearing officer has the discretion to accept a lesser standard for proof of residency for the purpose of determining that an individual filing an appeal is an Authorized User for purposes of the regulations regarding hearings (§ 100.7) than for eligibility for customer status.

- All Hearing Officer decisions are appealable to the TRB/OAR, including but not limited to service deprivation. This issue will be addressed in the Memorandum of Understanding with TRB/OAR.

B. Stays of enforcement pending appeal

The City and the Public Advocate agree to the following:

- The City will provide customer service that is consistent with the process required of regulated public utilities under the Pa. Public Utility Commission's customer-service regulations at 52 Pa. Code § 56.97. The parties understand this to include the following procedures upon Authorized User contact prior to termination.
 - a) If, after the issuance of a termination notice and prior to the actual termination of service, an Authorized User contacts the City concerning a proposed termination, the City shall fully explain:
 - 1) The reasons for the proposed termination.
 - 2) All available methods for avoiding a termination, including the following:
 - i. Tendering payment sufficient under PWD regulations to avoid or postpone such termination or otherwise eliminating the grounds for termination.
 - ii. Entering a payment agreement.
 - iii. Paying what is past due on the most recent previous payment agreement.
 - iv. Enrolling in the City's Water Revenue Assistance Program, if the Authorized User is eligible for the program.
 - v. Requesting an "application for continued service" under USTRA (if the Authorized User states she or he is a tenant).
 - vi. Completing such other steps as may be required based on the reason for termination.
 - 3) The medical emergency procedures.
 - b) The City, through its employees, shall exercise good faith and fair judgment in attempting to enter a reasonable payment agreement or otherwise equitably resolve the matter.
- A stay of enforcement will be triggered as follows:
 - a) From the initiation of a dispute when an Authorized User states that he or she is not satisfied until 30 days after the issuance of a decision on that dispute;
 - b) Referral of a dispute to AAU for investigation and until 30 days after the decision;
 - c) From filing of a completed IH request form until 30 days after the issuance of a IH decision;
 - d) From filing of a completed TRB/OAR hearing request until 30 days after the issuance of a TRB/OAR decision; and
 - e) Medical Emergency request pursuant to Section 100.10.

Further, although the City and PA agree that a stay of enforcement is triggered by a WRAP application, they have deferred discussion of the precise way in which such a stay is triggered for the future mediation of WRAP issues.

- A stay of enforcement will be triggered, entered into the account system, and clearly evident to the CSRs on the main screen during the pendency of the dispute (including referral to AAU), the IH process, the TRB/OAR process, and through the expiration of the appeal period. While a stay of enforcement is in place, no referrals will be made to the Law Department or collection agencies. A stay will also be triggered at the time of a call when a caller says s/he is not satisfied and matter is sent to AAU.
- No stay will be triggered for inquiries.
- While a stay is in effect, subsequent shut off notices will only demand payment of undisputed portions of the bill.
- After a given billing cycle is disputed, it is the customer's responsibility to dispute the subsequent billing cycles, if the dispute is applicable to subsequent billing cycles. An informal appeal form must be submitted for each billing cycle, if subsequent charges are disputed. This requirement will be stated on the Informal Hearing Request Form.
- If an Authorized User is found by a decision of the Hearing Officer (made after motion by the City) to have filed a Frivolous Appeal and if this decision either is not appealed or is upheld after appeal, the account will be flagged for a period of 18 months. The City may not make such a motion on an Authorized User's first appeal. If the account is flagged, then an automatic stay will not apply to future disputes filed within the 18 month period, but the Authorized User will receive an expedited hearing within 10 days. If the Authorized User prevails on the merits of a subsequent hearing, then the flag will be removed. This provision will not take effect until the TRB/OAR appeal process is in place.

C. Scheduling/timing

The City and the Public Advocate agree to the following:

- Scheduling of hearings should be expeditious while allowing both the individual filing the appeal and the City to gather relevant information.
- Authorized Users whose service is off or whose account has been flagged will receive an expedited hearing within 10 days. Expedited hearings will be completed within 10 days of filing an IH request form.
- Pre- or post-hearing settlement or satisfaction of issue in dispute should be accepted and encouraged.
- The IH Scheduling Letter will be modified to inform the appellant of his/her right to request a telephonic hearing "for good cause shown." The form also will clearly state that if a request for a telephonic hearing is approved, that will be the only hearing (the Authorized User cannot request a second, in-person hearing if unhappy with the outcome or procedure of the telephonic hearing).

D. Preparation for the hearing

The City and the Public Advocate agree to the following:

- Documentation of customer service decisions/activities (including informal decisions/denials/communications) will be maintained by PWD/WRB.
- Notices will be given contemporaneously to complainant's designated representatives who have entered their appearance in a given dispute.
- The City and PA will discuss concerns about consistency in the application of policies in decisions reached in the context of quarterly meetings (see section VI, below).
- IHU staff will not unilaterally cancel a hearing. A hearing officer will make any decision about the appropriateness of canceling a hearing, after consulting with both parties to the dispute, except that a hearing officer may unilaterally postpone or continue a hearing due to illness, family death or other personal emergencies.

E. Hearing Officers and staff duties regarding the hearing process

The City agrees to implement and the Public Advocate agrees not to oppose the following, with mutual assessment of this approach being part of quarterly meetings:

- City will separate hearing officer and prosecutor functions in the IH process. Hearing Officer functions will be assigned to the Revenue Department's Tech Unit. The prosecutor functions will remain with WRB. This separation will include providing separate legal counsel for hearing officer and IHU staff, and prohibiting *ex parte* communications with a hearing officer concerning the substance of an informal appeal. Legal counsel to hearing officers also will be separate from legal counsel that presents cases to TRB/OAR, and legal counsel to hearing officers will not represent the City in court proceedings that were initiated as informal hearings.
- City will ensure that hearing officers receive appropriate training prior to and during their service, including training from an outside organization as appropriate. All hearing officers will receive at least two days of training during their first year of service.

Following are the types of training topics that may be appropriate for hearing officers:

- Best Practices For Cases Involving Self-Represented Complainants
- Building An Administrative Record
- Developing a Record with an Indigent, Self-Represented Complainant ("Inquisitorial" Nature of Being a Hearing Officer When That Need Arises)
- Demeanor Evidence And Credibility Determinations
- Ethics of a Hearing Officer
- History And Evolution Of Administrative Agencies
- Pennsylvania or Model Rules Of Professional Conduct
- Bench Skills
- Due Process

- Ruling On Objections
- Writing Skills 101: Writing Clear And Concise Decisions
- Writing Skills 201: Editing For Writers And Managers
- Should I Recuse Myself? Case Studies In Disqualification
- What Appellate Judges Look For In A Hearing Record
- Understanding Attention Deficit Disorders and Other Types of Diminished Capacity
- Areas where additional training may be required can be raised during the quarterly meetings between the City and PA (see section VI, below).

F. Hearing Process and Decision Making

The City and the Public Advocate agree to the following:

- Hearings can be recorded at request of either party.
- Hearing Officers will have a flexible but consistent approach, tailored to the circumstances. HOs also will be expected to have reviewed the IH request and any preliminary response from WRB and to establish an accurate record and basis for a decision. HOs may ask for additional information and/or convene a conference with the parties and should provide time for introductions; explain the process; and allow the complainant and IHU rep to explain the dispute, provide the basis for the City's decision and/or changes to the City's position, and the complainant's explanation for why the decision is incorrect, unfair, etc. The parties may present evidence, statements from witnesses, etc.
- Hearing officers will have full authority to secure necessary information to make a decision, continue the IH to a later date if needed and will enter all information relied on for the decision into the record, ensure complainant has full opportunity to respond, and that applicable policy has been put on the record.
- Hearing officer decisions shall be in writing, shall provide a concise statement of the background, date of the hearing and persons present, evidence/information presented before or during hearings upon which the hearing officer relied, and the governing provisions of law/policy upon which the hearing officer's decision is based. Hearing officer decisions will be based on substantial evidence presented at the hearing and shall not be arbitrary or capricious.
- Hearing officer decisions should be provided to the parties within 30 days of the conclusion of the hearing(s). When an expedited hearing is held because of a flag on a Frivolous Appeal, because service is off, or because of a medical emergency, the hearing officer will give a verbal decision at the conclusion of the hearing, followed by a written decision within two business days.
- Hearing officer decisions that are not appealed to TRB/OAR become final and are binding on PWD/WRB, and hearing officers are vested with all powers and authority to enforce their decisions.

- Hearing officer decisions will include notice of the right to appeal to TRB/OAR and will attach any TRB/OAR appeal form or instructions that are required to initiate such an appeal.

G. Further Appeals

The City agrees to implement and the Public Advocate agrees not to oppose implementation of the following, with mutual assessment of this approach being part of quarterly meeting:

- All hearing officer decisions will be appealable to TRB or OAR, with the assignment to one or the other depending on the subject matter.
- The Water Department and/or Revenue Department will enter into a Memorandum of Understanding ("MOU") with Finance Department (OAR is a unit within Finance). The MOU is an internal matter within the City but is expected to cover the following topics, among others:
 - The MOU is to memorialize the agreed upon framework for the TRB/OAR appeals process.
 - This MOU will be followed by regulations that codify this framework for the respective agencies and PWD.
 - Customers and Authorized Users (as applicable) will be encouraged to utilize the IH process before pursuing an appeal before TRB/OAR.
 - TRB/OAR agree to hear all cases from PWD Authorized Users who file appeals, including but not limited to service deprivation cases.
 - All TRB/OAR appeals will be heard on a de novo basis.
 - An agreed upon timing for cases to be heard on an expedited basis when there is a medical emergency, service is shut-off, or an account is flagged for Frivolous Appeals.
 - TRB/OAR appeals will be commenced by filing the designated appeal form.
 - Stay of enforcement (collection and shut off activities) will apply during the period the TRB/OAR appeal is pending and for 30 days thereafter.
 - TRB/OAR agreement that all hearing masters will receive training with regard to PWD regulations, WRB policies and procedures, and applicable law.

H. Operations

The City and the Public Advocate agree to the following:

- All PWD staff handling visits and calls from the public must receive comparable training as WRB CSRs and call center staff.
- Constant supervisor presence at the walk-in customer service and call centers, including coverage during breaks and vacations.

- Supervisor will receive advanced training to identify and resolve tenant and occupant issues, such as USTRA rights, powers of attorney, heir property applicants, WRAP and other low-income payment agreements, among others.
- All Customer Service Representatives (CSRs) taking calls or interacting with individuals at the customer service centers will be alerted on their computer monitors when the account is in shut off status or enforcement action is pending. The CSR will advise Authorized Users of the account status and all options available to maintain utility service, including but not limited to assistance programs and appeal rights.
- All contacts on an account will be contemporaneously logged into the customer information system with an appropriate narrative entry.
- Large poster at all customer service centers, visible to all visitors, in large font regarding dispute rights and option to speak with supervisor, to be drafted with input from the PA.
- One page flyer or brochure (e.g., tri-fold) describing dispute process, to be drafted with input from the PA. Flyer to be conspicuously published on PWD, WRB and Philly Watersheds websites.
- Training and operations manuals will reflect agreements about IH process. The City will provide manuals in draft form before implementation for PA input. The City also will provide the PA with opportunities to provide input on implementation through quarterly meetings.
- The City will develop procedures for communicating IH decisions to working units. This will include ensuring that CSRs and similar staff continue to have access to documentation of customer service decisions/activities.
- The City will develop procedures for evaluating performance of CSRs to ensure consistent application of policies and regulations, so as to provide good customer service and reduce the number of disputes due to inconsistent application of policy.
- The City will provide a timeline for implementation and training, and report progress of all the above at quarterly meetings (see section V, below).

IV. Proposed Changes to Regulations

The City and the Public Advocate agree that the City will undertake the appropriate process to amend its regulations as necessary to fully implement the agreements they have reached in this mediation. While the parties agree that regulations will be reviewed, and changed as appropriate, the issue of which agreements will be addressed in regulations and which will be implemented through publically available policies or procedures remains unresolved.

V. Implementation Timeline

The process of implementing the agreements noted above will begin immediately, i.e. not waiting for the conclusion of the subsequent issues for mediation, with the recognition that some actions may take longer than others to complete, particularly those requiring hiring of new personnel and execution of the MOU with TRB/OAR. Changes in regulations will be on a different schedule due to legal requirements and to minimize the number of regulatory-change

proceedings. The City will prepare a timeline for implementation as expeditiously as possible and will share the timeline and report on progress of implementation at quarterly meetings.

VI. Monitoring and Assessment

- The City and the PA agree that quarterly meetings will be convened by City to exchange information with CLS and, perhaps, other community organizations to be determined by mutual agreement. The goals of these meetings will be to exchange information that would provide opportunities for continuous improvement and inform consumer representatives of changes and improvements being made. Topics may include: implementation of rate case or settlement issues; updates in policies or practices; performance standards, feedback from consumer representatives and community organizations concerning current practices observed in the field, including trends and/or consistency in application of policies and procedures, identification of potential training issues; and exchange of data about IHs, WRAP enrollments, trainings conducted, etc.
- Performance metrics will be discussed for time frames regarding notice of hearing date, scheduling of hearings and decisions following the discussions of issues two and three in this mediation, which are the structure and delivery of WRAP and the delivery of deferred payment agreements.

VII. Unresolved Issues

Through the process of reaching the agreements above, the parties also agreed to put some issues aside. Five unresolved issues remain, however, that are of sufficient significance to one or both of the parties that the mediator was asked to make a recommendation. These are:

1. Definition of "Occupant without Ownership Interest," which is one category of Authorized User.
2. Whether a determination that a WRAP application is incomplete is appealable.
3. Whether any Authorized User can request an informal hearing on any decision.
4. Access to records.
5. Implementation of agreements in regulations.

Criteria that the mediation team used in forming the recommendations that follow included consideration of the:

- City and PA's objective of making substantial improvements in customer service,
- cost to rate payers,
- practicalities of implementation, and
- Pennsylvania law.

These recommendations follow.

Issue 1: Definition of "Occupant without Ownership Interest"

There is a category of people who have the legal right to occupy a residence, but who are neither tenants nor owners. An example of this type of "occupant without ownership interest" is an adult child of a homeowner who does not currently reside in the residence.

PA wants to ensure that these types of occupants have the ability to obtain (or retain) water services from City, and that they have the ability to contest adverse decisions concerning their status. PA proposed the following definition of an Authorized User who is an "Occupant without Ownership Interest": "A current occupant with proof of residency that has the owner's authorization to reside in the service location, and without any intent of gaining ownership of the service location."

City proposed the following definition: "A current occupant with proof of residency that accepts responsibility for bill payments (outstanding bills and ongoing bills), and without any intent of gaining ownership of the service location."

As a category of Authorized User, the definition is supposed to define a category of persons who have the right to appeal an adverse decision. The Mediator finds that PA's definition defines that category of persons without prejudging the outcome of a matter that may be in dispute. In contrast, the Mediator finds that City's definition assumes a particular outcome of a matter that may be in dispute. It is possible (perhaps likely) that a dispute involving an Occupant without Ownership Interest would concern the person's responsibility for outstanding bills (for example, when the person started living in the residence or for what period of time he/she should be responsible for past-due amounts).

Based on these considerations, the Mediator recommends the following definition:

Occupant without ownership interest: A current occupant with proof of residency that has the owner's authorization to reside in the service location, and without any intent of gaining ownership of the service location.

Issue 2: Whether Determination that a WRAP Application is Incomplete is Appealable

The City and the Public Advocate disagree as to whether the decision that a WRAP application is incomplete should be appealable.

Under current practice, City does not permit appeals from incomplete WRAP applications. If there is a dispute about whether an application is actually incomplete, there is no formal process to resolve the issue.

PA proposes that if an Authorized User disputes a finding that an application is incomplete, the Authorized User should have a right to an informal hearing. City objects to PA's request, noting that no decision has been made as to the application; consequently there is nothing to appeal. City is concerned that an appeal of an incomplete application could place a stay on a customer's

account, leading to potential abuse. City also is concerned about the potential increased workload for the Hearing Office to deal with what should be an administrative matter.

The Mediator believes that both parties have raised valid concerns. The Mediator also recognizes, however, that clerical and administrative errors do occur (as PA documented) and that an administrative remedy should be available to correct such mistakes.

Based on these considerations, the Mediator recommends the following:

The first recourse should be an explicit, administrative escalation process (such as referral to a supervisor or other senior decision-making authority) to quickly address alleged clerical or administrative errors in processing applications. The notice that an application is incomplete should include instructions on how to escalate the matter if the Authorized User thinks the finding of incompleteness is in error. If a dispute remains after escalation to a supervisor, the customer should have the right to an informal hearing. To reduce the potential administrative burden and address the concern about potential misuse of the process to achieve a stay, the City could establish a process in which there would be no stay but an expedited hearing would be provided. Alternatively, the agreements reached by the City and the PA concerning Frivolous Appeals should address the City's concern.

Issue 3: Whether Any Authorized User Can Request an Informal Hearing on any Decision

Although the City and the Public Advocate agreed that an individual does not need to be a customer to have standing to file an informal appeal, disagreements remain about limitations on the matters about which an Authorized User can file an appeal. The City seeks clarity that not all Authorized Users can file an appeal on all issues, e.g. someone who is an Authorized User for purposes of a medical emergency should not necessarily be able to file an appeal to an adverse decision about a billing dispute or customer status. The Public Advocate is concerned about prejudging what decisions any Authorized User should be able to file.

The mediator believes it would be extremely rare for a person who did not have a right to initiate a dispute to attempt to appeal the Decision on the dispute. Nevertheless, in based on these considerations, the Mediator recommends the following:

The City may file a motion with the Hearing Officer that challenges the standing of an Authorized User to appeal a Decision. Such a motion must be contemporaneously served on the Authorized User, the Customer of record (if not the Authorized User), and any designated representative of the Authorized User.

Issue 4: Access to Records.

The City and the Public Advocate did not resolve issues associated with access to documents and other records, differing on what records would be made available and whether such records would be made available to complainants in advance of an informal hearing.

The City's current regulations state "The Customer or applicant, or his or her designated representative who need not be an attorney, may request in writing or may visit the WRB in person to review and

receive copies of any available documents at any time during regular working hours prior to the date of the hearing, including any computer printout relevant to the billings for water/sewer/stormwater service to the Residential Property." § 100.7(e).

City customarily provides documents at hearings and considers this appropriate for an informal proceeding. The City also offered to a standard list of documents that exist in paper form, which the City would make available to Authorized Users in advance of an informal hearing. This list excludes all computerized (electronic) records, except for billing records. PA noted the difficulty and inequity associated with Authorized users having to prepare for informal hearings without the same access to documents that City staff have. PA proposes that an Authorized User should have access to all relevant records in City's possession, regardless of the form in which they are kept. City is concerned about its ability to provide secure access to the electronic records associated with a specific account, or to efficiently and cost-effectively print copies of those records.

The Mediator previously provided the parties with a brief legal analysis explaining that under Pennsylvania law there should be no distinction between paper records and electronic records. See generally the Uniform Electronic Transactions Act, 73 P.S. § 2260.101, et seq. and the Right-to-Know Law, 65 P.S. § 67.101, et seq.

The Mediator recognizes the value of informality in the IH process, but questions whether doing less than currently is required by current City regulations and existing Pennsylvania law achieves the parties' objective to "make substantial improvements in customer service."

Based on these considerations, the Mediator recommends the following:

Current City regulations requiring that documents be provided on request and in advance of informal hearings should be implemented to give complainants adequate opportunity to prepare. A reasonable notice to the City should be provided for records that are not normally maintained in publicly accessible form. Further, to be consistent with Pennsylvania law and due process requirements, the Mediator recommends that the City's regulation should be modified to specifically include electronic records in the "documents" that can be requested under Section 100.7(e). The Mediator recommends that Section 100.7(e) should be amended to read as follows:

The Customer or applicant ~~Authorized User~~, or his or her designated representative, who need not be an attorney, may with five days notice request in writing or may visit the WRB in person to review and receive copies of any available records at any time during regular working hours prior to the date of the hearing, including any computer printout relevant to the billings for water/sewer/stormwater service to the Residential Property. Further, Authorized Users may obtain a postponement of the hearing if the City requests consideration of a document that was not supplied in advance when an Authorized User has requested the opportunity to review relevant records in advance of an informal hearing. As used in this section, the terms "records" and "documents" both refer to all physical and electronic records in WRB's possession that relate to the subject matter of the Authorized User's dispute with WRB.

Issue 5: Implementation of Agreements in Regulations.

The parties have reached numerous substantive agreements through this mediation. They also concur that those agreements will require changes in City regulations, policy statements, and/or internal procedures. They have not agreed, however, on which substantive agreements reached will require changes specifically to regulations as opposed to other document(s).

City proposes to conduct a review of relevant regulations and to propose such changes that City considers necessary to implement the parties' agreements. Any such changes would be made through the normal process of proposing and approving changes in regulations, which includes an opportunity for public comment prior to action by City Council. The City specifically noted the procedural importance of the Commissioners retaining their discretion to make final regulatory decisions until all input has been considered through the City's rulemaking process. City also proposes to make any changes in internal operating procedures that it believes are necessary to implement the parties' agreements.

PA proposes to specifically identify each area where changes in regulations are required.

The Mediator is sensitive to the concerns of both parties. By law, City must follow a certain process to propose changes in regulations and this mediation cannot circumvent that process. On the other hand, certain agreements reached by the parties are not consistent with current regulations; so there is no question that at least some changes in regulations are needed to implement the parties' agreements. Moreover, the Mediator notes that this mediation was created as a settlement of a case in which PA had proposed (among other matters) specific changes in City customer-service regulations and that the parties agreed in a stipulation to mediation that states in point 8 that the mediation report will address "specific program designs, regulations and implementation plans..."

Based on these considerations, the Mediator recommends the following:

The City retain the discretion as to which agreements require changes to regulations but also provide assurance that the PA can have a reasonable expectation that, at a minimum, the following changes will be made in regulations to ensure consistency with the agreements reached in this mediation:

1. Authorized Users (not only Customers) have appeal rights.
2. Responsibility for stormwater charges is appealable.
3. Denial of HELP assistance is appealable.
4. Changes in Section 100.7(e) to reflect access to records in advance of hearings
5. In-person hearing request requirements.
6. Expedited hearing where water service has been shut-off.
7. Recording of hearings at request of either party.
8. Ability to appeal all adverse decisions to a Hearing Officer.
9. Appeals to OAR/TRB from IHU decisions.
10. Frivolous Appeals and effect on stay.
11. Customer information (52 Pa. Code § 56.97 equivalent).

In addition, City will need to modify its internal procedures and training materials to fully implement the agreements reached by the parties.

The Mediator also recommends that City consult with PA as regulations and procedures are being developed. Any such consultation should be informal and designed to try to eliminate controversy and minimize the degree to which the PA may need to submit adverse formal comments during the regulation review process.

VIII. List of Abbreviations Used:

AAU	Account Analysis Unit
CLS	Community Legal Services
CSR	Customer Service Representative
IH	Informal Hearing
IHU	Informal Hearings Unit
OAR	Office of Administrative Review
PA	Public Advocate
PWD	Philadelphia Water Department
TRB	Tax Review Board
WRAP	Water Revenue Assistance Program
WRB	Water Revenue Bureau
WRBCC	Water Revenue Bureau Conference Committee

Exhibit C

Utility Decisions Subject to Appeal to TRB/OAR

Fact #	Dispute Situations	Current PWD Regulations Reference
1	Rejection or denial of payment agreement.	100.9 100.7 (a) 4
2	Application of payment agreement terms.	100.9 100.7 (a) 3
3	Payment responsibility for water, sewer, and stormwater charges.	100.7 (a) 1
4	Dispute grant of application to become a customer-Owner.	100.2 (d) 2
5	Rejection or revocation of application to become a Customer: Owner, Tenant, Occupant.	100.2 (g); 100.2 (h); 100.7 (a) 4
6	Rejection or revocation of application for: Tenant USTRA certification.	100.3 and 100.2 (h) 100.7 (a) 8
7	Denial of medical emergency shut-off delay request	100.10 100.7 (a) 7
8	Dispute regarding the denial of HELP assistance due to a delinquent bill.	
9	Dispute regarding responsibility for water and sewer charges and <i>in personam</i> responsibility for stormwater charges.	100.7 (a) 1
10	Failure to permit meter reading or provide access to meter.	100.7 (a) 5
11	Shut-off either due to non-payment and/or due to lack of access to meter for repair or for any other reason.	100.7 (a) 6
12	Any other decision of PWD/WRB subject to review in IH process consistent with PWD Regulations.	