

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

In the Matter of a Proposed Rate Increase in :
Water, Sewer and Storm Water Rates : FY 2017-2018 Rates

**MAIN BRIEF OF THE
COMMUNITY LAWYERING CLINIC**

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I. Introduction

The Philadelphia Water Department (PWD)¹ is seeking to increase the cost of water service by nearly 12% over the next two years. This change would mean that the average monthly water bill would increase by approximately \$8.00 for most residents and by approximately \$6.00 for seniors.² Many seniors and low income Philadelphians living on a fixed income simply cannot afford this increase. Since wages will likely not increase by 12% over the next two years, they will be forced to make difficult choices between having running water and other vital needs.

PWD justifies its need for higher rates by citing decreased water usage, claiming that the decrease was in part caused by the stagnant growth of its customer base and the rise in “stormwater only” accounts.³ As will be documented in this report, the CLC believes that PWD is contributing to its own customer decline through systematically denying citizens’ fundamental right to water and its poor customer service.

Courts have determined that ratemaking boards, such as the Water Rate Board here, may consider fair return and quality service in evaluating a public utility's rates.⁴ Specifically, in determining a utility’s rate, a commission may constitutionally weigh whether “the caliber of a utility's service may . . . qualify as a prominent and even decisive factor in the regulation of its rates.”⁵ If the utility fails to meet that threshold, as here, the board should deny its proposed rate increase.

¹ Billing, collections, and certain customer service functions, including payment agreements, low income bill assistance, and the administration of informal dispute processes, and handled by the Water Revenue Bureau, a division of the Philadelphia Revenue Department. As used here, PWD refers to both Water Department and the Water Revenue Bureau.

² PWD Public Notice of Proposed Rate Change, available at <http://www.phila.gov/water/rateboard/PDF/Summary-RateRequest.pdf>.

³ Philadelphia Water Department Presentation Rate Board Hearing, February 22, 2016, p. 78-9, available at http://www.phila.gov/water/rateboard/PDF/OfficialTranscript_RateBoardHearingPhiladelphiaWaterDepartmentPresentation.pdf.

⁴ *D.C. Transit Sys. Inc. v. Washington Metro Area Transit Comm'n*, 466 F.2d 394, 421 (D.C. Cir. 1972).

⁵ *Id.* at 422.

Pennsylvania courts have ratified this doctrine by upholding a Pennsylvania Utility Commission's decision to deny a rate increase due to a regional water utility's poor customer service.⁶ Specifically, the Commonwealth Court held "a utility's fulfillment of its service commitment is a sine quo non to constitutional protection under confiscation principles. To hold otherwise would mean that regardless of the level of service provided by a utility, or if the utility provided no service, the [board] would be required to give the utility a reasonable rate of return solely because it exists."⁷

Accordingly, we urge the Water Rate Board to deny PWD's request for a water rate increase until it effectively addresses these systemic failures, by properly implementing the new affordability program, creating a grant program or installment plan for low income Philadelphians with infrastructure problems, and simplifying the documentation needed to establish a customer account to resolve the confusion of its staff and customers about what is required.

II. Background

a. Manmade Draught

Clients seeking help from the Community Lawyering Clinic ("CLC")⁸ have astounded us with a unifying trend: the lack of running water in their homes. The CLC has encountered numerous clients who have gone for years either purchasing jugs of water or receiving water from a compassionate neighbor to satisfy their basic human need for water. Although many of them have tried to negotiate with the PWD for access to water, they have been turned away.

⁶ *National Utils. v. Pennsylvania PUC*, 709 A.2d 972, 973 (Pa. Cmmwlth. Ct. 1998).

⁷ *Id.* at 979.

⁸ The CLC is a legal clinic at Drexel University's Thomas R. Kline School of Law staffed by third year law students working under the supervision of Professor Rachel Lopez that provides free legal services to West Philadelphians.

This manmade drought is not unique to our clients. Other legal and social service providers, including Philadelphia VIP, Community Legal Services (a legal service organization appointed as the Public Advocate to represent all residential customers in PWD's rate increase proceeding), and the Center for Hunger Free Communities, have also encountered numerous individuals whose households lack running water.⁹ Additionally, Roger Colton, an expert for the Public Advocate, has identified systematic barriers that impede citizens' access to water, including the absence of a transparent and consistent appeal process, an underutilized affordable billing plan, and poor customer service all around.¹⁰

b. Scope of the Issue

Statistics provided by PWD through this ratemaking proceeding corroborate the accounts given by our clients and other advocates. Although Philadelphia's population has grown by approximately 41,436 people in the last five year, residential water accounts have declined by 36,298 in that same period.¹¹ That is 36,298 accounts, not individuals, so the number of affected people is much higher.

The declining rate of residential customers may in part be explained by its high rate of shut offs. Through the ratemaking proceeding, PWD disclosed that it will shut off a residential account for non-payment when a customer has a delinquent bill of more than \$75.00 over two or

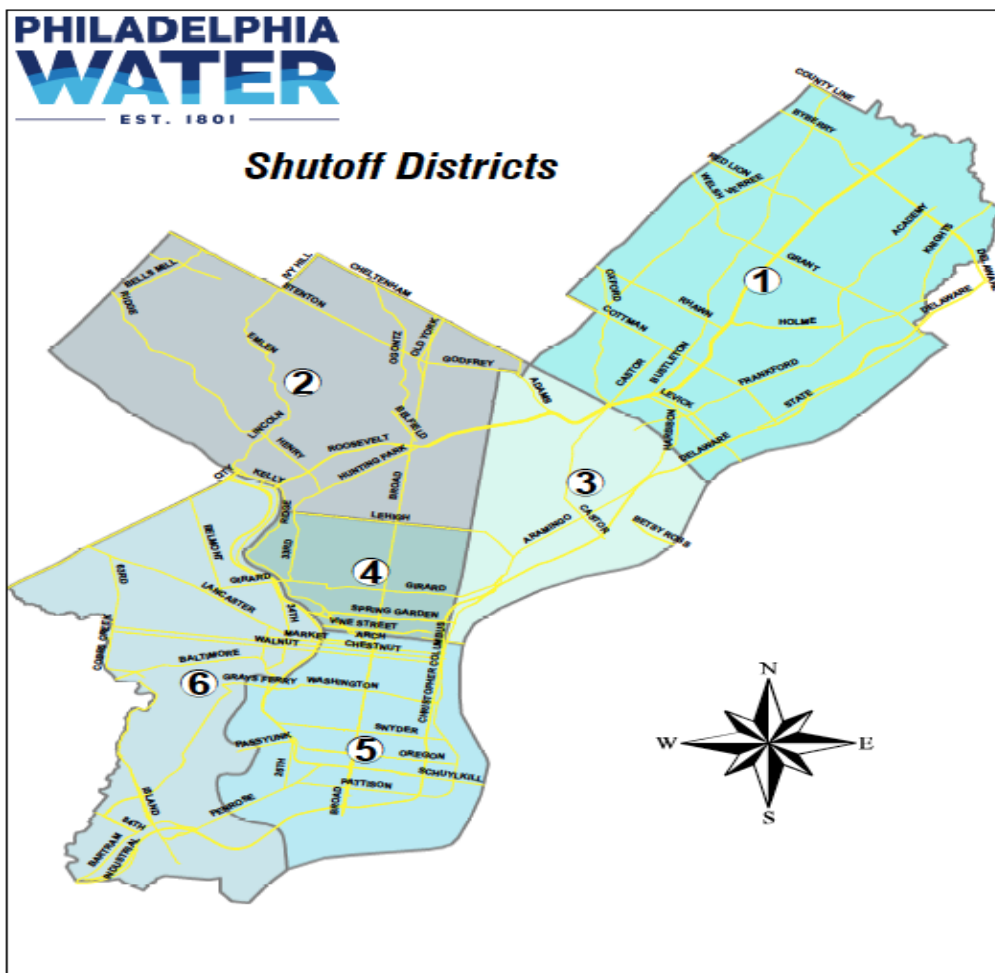
⁹ Interview with Roxane Crowley, Senior Attorney at Philadelphia VIP; Testimony of Mariana Chilton, Public Hearing, Water Rate Board, March 1, 2016, available at <http://www.phila.gov/water/rateboard/PDF/PublicHearingExhibit-3.1.16.PDF>; Testimony of Robert Ballenger, Finance Committee, Philadelphia City Council, Bill No. 140607, April 9, 2015.

¹⁰ Interviews with Community Legal Services attorneys, Robert Ballenger and Thu Tran. *See also*, Roger Colton, Water Bill Affordability for the City of Philadelphia, Testimony at Philadelphia's City Council (April 9, 2015).

¹¹ PWD Exhibit-6: Black & Veatch Corporation Cost of Service Work Papers, p. 91, available at <http://www.phila.gov/water/rateboard/PDF/PWDEXhibit6.pdf>; US Census Bureau, Quick Facts, Philadelphia, available at <http://www.census.gov/quickfacts/table/PST045215/42101>.

more billings periods and has received two notices.¹² As a result of this regressive policy, in 2015 alone, PWD shut off 32,916 households.¹³ According to PWD, the cost of shutting off water to a customer is \$50.¹⁴ That means that the city spent \$1,645,800 turning water off.

This mass shut off appears to disproportionately affect African-American communities in Philadelphia. In response to our second discovery request, PWD provided us with the following map.

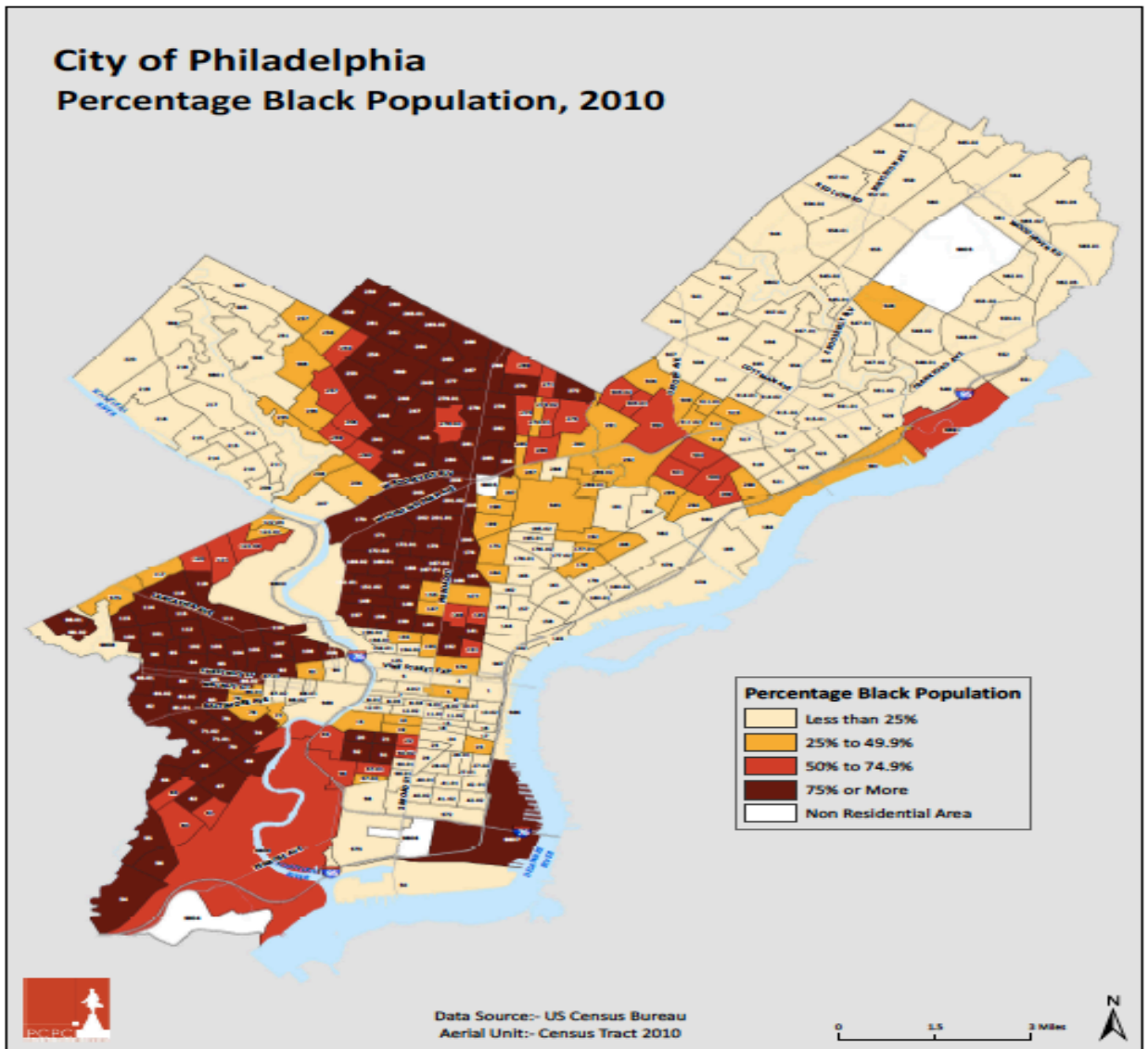


¹² PWD Response to the CLC’s Set I-2 Request for Production of Documents, available at <http://www.phila.gov/water/rateboard/PDF/CommLawClinicSet%201-MASTER.pdf>.

¹³ *Id.*

¹⁴ PWD Regulations Sec. 306.4; see also Former Commissioner Howard Neukrug, PWD Letter to Maria Quiñones-Sánchez, April 8, 2015, at 2.

The Districts with the highest rates of shut offs since July 2013, in some instances with nearly twice as many as shut offs as the other Districts, are District 2 and 6. The following map of U.S. Census data from 2010, which tracked the percentage of African Americans by neighborhood in Philadelphia, demonstrate a dramatic correlation between race and the number of shut offs. The neighborhoods with 75% or more African American population (demarked by dark red) appear to be located in Districts 2 and 6.



c. Applicable Law

In addition to being a violation of citizens' rights under Pennsylvania's Constitution, this is also a violation of basic human rights.¹⁵ Past Philadelphia Water Commissioner Howard Neukrug and present City Councilwoman Maria Quiñones-Sánchez have both publicly recognized access to water as a human right.¹⁶ The United Nations Committee on Economic, Social, and Cultural Rights also recognizes that “[t]he human right to water is indispensable for leading a life in human dignity [and] a prerequisite for the realization of other human rights.”¹⁷ It identified five factors—(1) quality, (2) accessibility, (3) acceptability, (4) affordability, and (5) availability— that affect the enjoyment of the human right to water.¹⁸

The United States has a legal obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to ensure its laws and policies do not discriminate on the basis of race or ethnicity.¹⁹ As the former United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation remarked after visiting the United States, “those who are facing obstacles in the enjoyment of the rights to water and sanitation are disproportionately Black, Latino, American Indian, homeless, or otherwise

¹⁵ Art. 1, Section 27 of the Pennsylvania Constitution guarantees the “right to clean air, pure water”

¹⁶ Tricia L. Nadolny, *City testing the water on income-based utility bills*, THE PHILADELPHIA INQUIRER, Sept. 8, 2015, http://articles.philly.com/2015-09-08/news/66300883_1_water-bills-water-rates-debt-forgiveness.

¹⁷ Committee on Econ., Soc., & Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15 (2002): The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter General Comment No. 15].

¹⁸ General Comment No. 15, *supra* note 17, at ¶1.

¹⁹ *See* International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(e), Dec. 21, 1965, 660 U.N.T.S. 195; General Comment 15, *supra* note 13, at ¶3.

disadvantaged.”²⁰ Unfortunately, this holds true in Philadelphia, where the problems with water accessibility disproportionately affect communities of color.

I. Analysis

PWD alleges that a rate increase is necessary because water use is decreasing as people are using public water services less and the number of customer accounts is not growing.²¹ Records released as part of the ratemaking proceeding reveal that not only are customer accounts not growing, they are actually declining. Indeed, residential water accounts have declined by 36,298 in the last five years.²² This dramatic decline occurred at the same time that Philadelphia’s population grew by approximately 41,436, according to the US Census Bureau.²³

The CLC has identified three barriers that are preventing Philadelphians from accessing running water in their homes, which may explain this dramatic decline: 1) the onerous documentation necessary to establish a customer account; 2) the lack of affordable water service and PWD’s shut off policy; and 3) the cost of infrastructure needed to start water service in residential homes.

²⁰ UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, Mission to the United States of America, ¶ 79, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf (by Catarina de Albuquerque).

²¹ Philadelphia Water Department Presentation Rate Board Hearing, February 22, 2016, p. 78-9, available at http://www.phila.gov/water/rateboard/PDF/OfficialTranscript_RateBoardHearingPhiladelphiaWaterDepartmentPresentation.pdf.

²² PWD Exhibit-6: Black & Veatch Corporation Cost of Service Work Papers, p. 91, available at <http://www.phila.gov/water/rateboard/PDF/PWDEXhibit6.pdf>.

²³ US Census Bureau, Quick Facts, Philadelphia, available at <http://www.census.gov/quickfacts/table/PST045215/42101>.

a. Onerous Documentation Requirements

i. The Prevalence of Tangled Title in Philadelphia

Some Philadelphians lack running water as a collateral consequence of having a “tangled title.” Tangled title occurs when title to a property has not been formally transferred into the existing resident’s name. For example, tangled title might occur when a person dies and does not leave a will, but their heirs continue to live in the property. Many individuals with tangled titles are unable to satisfy PWD’s rigorous documentation requirement, which will be described more fully below. Consequently, individuals with tangled title are essentially barred from water access until they resolve title issues, which can take more than a year *even with the help of legal services*, during such time they remain without running water in their homes.

The CLC encountered this issue firsthand in our representation of Jay. Jay is a 62-year-old African American man with disabilities who has lived in West Philadelphia his entire life and has been without running water for seven years. Once a month, he makes the trek by bus to the grocery store and buys as many two-gallon bottles of water as he can carry back to his home. He worries that one day he will not physically be able to haul the water home. Jay has lived in this home since 1999 when an elderly neighbor went to a nursing home and the family asked him to move in and take care of the home.

Jay’s hard times started when he fell behind on his bills in 2009. He was able to reinstate electric and gas service. The Revenue Department allowed him to enter into a payment plan for back taxes. However, PWD refused to reconnect his water, telling him that he could not pay the bill because he was not the owner. Although Jay has not had running water since that time, PWD has continued to charge him for sewer and storm water services. The only living heir of the

elderly neighbor wants to formally transfer title into Jay's name, but this process takes time and in the meantime Jay is without water.

Tangled title is not unique to Jay. It is a prominent issue in Philadelphia. According to a 2007 survey by Philadelphia VIP, approximately 14,000 homes are titled to individuals who are deceased.²⁴ The problem with tangled title is likely to be ongoing in Philadelphia and nationally, since approximately 55 percent of American adults do not have a will or other estate plan in place. Among minorities, the numbers are higher: 68 percent of black adults and 74 percent of Latino adults do not have a will.²⁵

ii. Documentation Required to Establish a Customer Account

To establish service with PECO, Philadelphia's electric company, and PGW, Philadelphia's gas company, you only need to provide your social security number, your contact information, the date you would like service, and the address where you would like it.²⁶ Additionally, both of these utility providers have online applications to make the process for establishing an account much easier.

The bar to create an account with PWD is much higher. PWD has delineated different documentation requirements to establish a residential customer account depending on an individual's "customer type." Specifically, PWD has created four different customer types: 1) Owner, 2) Tenant, 3) Occupant with Ownership Interest, and 4) Occupant without Ownership

²⁴ Dan Geringer, *Tangled titles threaten 14,000 Philadelphians*, PHILLY.COM. January 22, 2016, http://articles.philly.com/2014-10-29/news/55364280_1_logan-house-stepfather-family-member.

²⁵ A.L. Kennedy, *Statistics on Last Wills & Testaments*, DEMAND MEDIA, (accessed April 24, 2016) <http://info.legalzoom.com/statistics-last-wills-testaments-3947.html>.

²⁶ PWG, "Turn Service On" <http://www.pgworks.com/index.php/turn-service-on>; PECO, "Start, Stop or Transfer your service; New Residential Customer" <https://www.peco.com/CustomerService/ServiceRequest/Pages/StartStopTransfer.aspx?show=SelectNew>, on both website you social security number is required however your driver's license is requested not required

Interest. To establish an account with PWD, an individual must fall into one of these four “customer types” and provide PWD with the documentation required for that category.

A tenant must fulfill three requirements in order to become a PWD customer. Specifically, an individual must provide PWD with 1) his or her name and current address (and a current telephone number when available), 2) a United States or State government issued photo identification, and 3) satisfactory evidence of owner’s authorization to reside at the location.²⁷ PWD states that this evidence could include a “Rental Agreement or Agreement of Sale for the location which the applicant desires service, a lease, rent book, money order receipts, cancelled checks, other utility bills in the applicant’s name at that address, rent receipts, or other written evidence of tenancy or written evidence of the owner’s consent to occupancy.”²⁸

The only way that an owner of a property can establish a residential customer account with PWD is by providing the deed.²⁹ On the other hand, in addition to the same contact information and identification required for a tenant, an “Occupant with an Ownership Interest” must provide PWD with the following if the record owner is alive: 1) authorization to occupy the premises, 2) an unrecorded deed including one by gift or donation, and 3) correspondence from an attorney stating the applicant has a credible claim to the property and the attorney is representing the applicant in the process of obtaining title. Alternatively, if the record owner is deceased, the applicant must provide a) a death certificate, obituary, or letter from funeral director, b) the name and physical address of the Executor or Administrator of the Estate and all known heirs, c) proof of relationship to recorded owner or if not an heir, verification that the

²⁷ PWD’s Response to CLC’s Interrogatories and Document Request Set I-7, available at <http://www.phila.gov/water/rateboard/PDF/CommLawClinicSet%201-MASTER.pdf>.

²⁸ *Id.*

²⁹ *Id.*

applicant previously occupied the property with the deceased owner, 5) utility bills (e.g. PECO or PGW bills) in the applicant's name at the location for which the applicant is made, and 6) a completed application in which the applicant agrees to pay for service supplied in his or her name. The documentation required for an "Occupant without an Ownership Interest" are the same as an Occupant with Ownership Interest, but he or she must also provide the onerous documentation required to prove tenancy, described above.³⁰

These written policies are not being consistently articulated to customers either through its customer service representatives or its website. For example, PWD website lists the following requirements in order for a tenant to establish a customer account: 1) consent from the owner for applicant to have service in your name, 2) two pieces of personal identification, one with a photo, 3) proof of residency, such as a lease, rent book or canceled check, 4) utility bills in your name and 5) a water meter reading.³¹ Contrary to its written policies, PWD website has listed three additional requirements to becoming a customer, including an additional form of identification, utility bills in your name, and a water meter reading.

In contrast to the written policy provided in discovery and the information on PWD's website, over the phone, a PWD customer service representative told the CLC that an individual with a tangled title would need: 1) a copy of his Owner-Occupied Real Estate Payment Agreement (OOPA) Agreement,³² 2) six months of utility bills from PECO and PGW, 3) two

³⁰ PWD Response to the CLC's Set I-7 Request for Production of Documents, available at <http://www.phila.gov/water/rateboard/PDF/CommLawClinicSet%201-MASTER.pdf>.

³¹ PWD, "*Customer Information, Becoming a Customer.*" <http://www.phila.gov/Revenue/waterbills/Pages/BecomingaCustomer.aspx>

³² An Owner-Occupied Real Estate Payment Agreement (OOPA) allows homeowners to make monthly payments on their past due Real Estate taxes. Monthly payments are calculated using a four-tier system based on household income and family size.

forms of identification, and 4) a notarized letter from a neighbor confirming long-term occupancy of the property.

Advocates report that even when they accompany their clients to PWD, with proper documentation, PWD will still not recognize their clients as customers. The CLC shared a similar experience when it tried to help Jay establish water service to his home. The CLC collected all of the documentation described on the website from Jay and proceeded to the Water Department in hopes of restoring water at Jay's home. At this point, Philadelphia's Revenue Department had already recognized him as an equitable owner of the property and allowed him to pay back property taxes. The CLC was immediately met with resistant from the customer service representative at the front desk of the Water Revenue Board, who questioned why Jay needed legal representation and refused to allow his counsel to attend the meeting with Jay. Ultimately, Jay was told that he did not have the proper documentation to establish an account.

This confusion and chaos in PWD's policies are not limited to those that live on fixed-incomes but all Philadelphians. After Nicole Taylor and her husband signed a new lease, they easily transferred their PECO and PGW service to their new home, but when they went to the PWD they ran into trouble. Mr. Taylor presented PWD with a letter from the landlord consenting to put the service into their name, two pieces of identification, and a signed lease, as she was instructed to do by PWD's website. Additionally, they brought bills from PECO and Comcast and a water meter reading. The agent informed them that this was insufficient because they would need both a PECO and PGW in their names at the new houses address in order to receive transfer service. Neither PECO and Comcast bills, nor emails confirming the start of service from PGW at their new address would suffice. Mr. Taylor explained it would be impossible to obtain a PGW bill as they had not lived in their new house long enough to receive a bill. The

agent also warned them that there was an outstanding bill for \$160.00 on the property that if not paid before the next billing cycle would result in PWD turning off water service to their home.

These case studies not only demonstrate the inconsistent nature of PWD's customer services and information, but also illuminate the gaps that exist between PWD's written policy and the documentation required by its customer service agents. This chaos and confusion regarding the documentation required to establish customer account may be partially responsible for the PWD's decline in customers.

b. Affordability

The PWD has an affordability plan that grants of up to \$200 in assistance on water bills to low-income customers for a period of 12 months (approximately \$18 per month), but the program is grossly underutilized.³³ Although forty percent of water department customers are delinquent in their water bills, only 7,200 payers currently were enrolled in the department's former Water Rate Assistance Program (WRAP).³⁴ That figure is in sharp contrast to the 61,000 people currently benefiting from PGW's affordable billing program.³⁵

Part of the reason for this remarkable disparity in the affordability programs is the high denial rate for WRAP applicants. PWD rejects between 40% and 45% of WRAP applications each year.³⁶ Robert Colton, an expert on utility affordability plans who testified on behalf of the Public Advocate at proceedings before the Philadelphia Water Commissioner in 2012, attributed the large number of denials to administrative barriers to enrollment, rather than ineligibility for

³³ Information about Customer Assistance Program on City of Philadelphia website, available at <http://www.phila.gov/water/educationoutreach/customerassistance/Pages/default.aspx>

³⁴ Nadolny, *supra* note 16.

³⁵ *Id.*

³⁶ Direct Testimony of Robert Colton on behalf of the Public Advocate before the Philadelphia Water Commissioner, July 20, 2012, at 25.

the program.³⁷ Indeed, his review of WRAP denials revealed that the onerous documentation requirements of the program, particularly the requirement that new applicants document all household expenses, presented the biggest hurdle to enrollment.³⁸ He also found it very troubling that applicants were not provided a specific reason for their denial, which made appeals very challenging if not impossible.³⁹ In addition, although the WRAP froze debt, it provided no forgiveness of debt in arrears.⁴⁰

PWD also offers deferred payment agreements (DPAs) for low-income residential customers who are behind on their bills; however, the process for obtaining DPAs is fundamentally broken.⁴¹ PWD does not inform customers of the range of options available to them, nor are they regularly informed of their right to appeal decisions regarding DPAs.⁴²

The story of Jacob illustrates the dire effect that a denial of a DPA can have on individuals seeking access to the basic human need of water. Jacob was well known in his neighborhood. When an elderly couple in his neighborhood, Mr. and Mrs. Miller, were having trouble making repairs and doing their regular yard work, Jacob step up and into their lives by helping them with house repairs and the yard work. As their relationship grew, Jacob became their support system. Unfortunately, Mr. Miller passed away and Mrs. Miller no longer wanted to live in the property. Mrs. Miller asked Jacob if he would like to rent-to-own the home since no one else was interested and he had already done so many improvements to the property. Jacob agreed and began to make monthly payments. After a while the Miller family stopped making him pay, but never formally transferred title into his name. Jacob does not have title to the

³⁷ *Id.*

³⁸ *Id.* at 26-28.

³⁹ *Id.* at 36.

⁴⁰ *Id.*

⁴¹ *Id.* at 40.

⁴² *Id.* at 48-49.

property but he continues to care and pay for the up keep of the house. He recently fixed the front roof.

Jacob ran into some health issues and had some medical bills to pay. He also began to help his son pay for his student loans. Living on a tight budget Jacob attempted to pay PWD \$200 a month to keep his water turned on. After a while Jacob could no longer afford the payments. He fell behind on his monthly water bills and PWD shut off his water. Jacob managed to scrape together some money and he went to PWD to get his water restored; PWD allowed Jacob to enter an agreement. He began to give PWD \$100 a month once he began to receive supplemental security income (SSI).⁴³ Unfortunately, John's social security benefits were reduced so he began to give PWD less money. PWD declared this a breach of the agreement and turned John's water off. Jacob recalls receiving a notice of shutoff but PWD had already turned off his water before he received the letter. Jacob attempted to enter another agreement with PWD but this time he was informed that he could not be given a repayment plan because he had already breached his payment agreement and did not have title to the property.

Jacob currently owes PWD \$12,300 and the amount keeps growing, because even without running water PWD is charging him for stormwater. Jacob fulfills his daily water needs with help from a compassionate neighbor, who allows him to shower and fill buckets of water to take back to his home for hydration, cooking, and hygiene. Jacob is embarrassed by the situation he is in and he hopes one day he will be able to restore water to his home.

⁴³ Supplemental Security Income (SSI) is a Federal income supplement program funded by general tax revenues (*not* Social Security taxes). It is designed to help aged, blind, and disabled people, who have little or no income; and it provides cash to meet basic needs for to meet basic needs for food, clothing, and shelter. <https://www.ssa.gov/ssi/> (Accessed April 11, 2016 5:05 p.m.)

The City of Philadelphia has made some strides to address water affordability, enacting a bill in December 2015 that requires PWD to create an Income-Based Water Rate Affordability Program (IWRAP), which restructures residential water billing to better account for income inequality. The new ordinance establishes a tiered approach to water affordability, with those in the lower income tiers being eligible for greater discounts on their water bills.⁴⁴ Additionally, customers who are enrolled in IWRAP will not be required to pay pre-IWRAP arrears to maintain service.⁴⁵ Some customers may be eligible for forgiveness of arrears, but the terms and conditions of such forgiveness will be set by future regulation. Not only will this reform improve access to water for citizens, but it will also create a more reliable and predictable source of revenue for the city.⁴⁶ While the new affordability bill is a giant step toward ensuring Philadelphians' right to water, the new IWRAP will only go into effect in FY 2018 after the proposed rate increase, if approved, would take place.

c. Infrastructure

Another fundamental barrier to Philadelphians' access to water occurs when customers' water infrastructure breaks and they cannot afford to repair it. PWD will not activate water service unless both the water meter and the internal pipes leading to and within the building work.⁴⁷ According to Section 306.4 of PWD Regulations, after termination of water service, PWD will not restore water service until the customer pays in full or makes arrangements "to the

⁴⁴City of Philadelphia, Bill No. 140607-AA, *Amending Title 19 of The Philadelphia Code (Finance, Taxes, and Collections), Chapter 1600 (Water and Sewer Rents), by providing for installment payment agreements, all under certain terms and conditions*, passed by City Council on Nov. 19, 2015 and signed by Mayor Nutter on Dec. 2, 2015.

⁴⁵*Id.*

⁴⁶Colton, *supra* note 10, at 3.

⁴⁷PWD, "Customer Information, *Becoming a Customer.*"

<http://www.phila.gov/Revenue/waterbills/Pages/BecomingaCustomer.aspx>

Revenue Department's satisfaction" to repair the water infrastructure.⁴⁸ The fees for repair piping can range from \$300 to \$1,805.⁴⁹ For low income Philadelphians on a very fixed income, this upfront cost poses too high a financial burden. When Philadelphian cannot afford this one lump-sum payment, they lose water service, in some cases for years at a time.

This was the case with Mrs. W, a 61-year-old African-American woman, who was denied water service when she could not afford PWD's fees to install a meter and consequently has been living without running water for five years. Mrs. W moved into a property that she inherited from her father after she lost her job. Upon moving in, she discovered that someone had taken the water meter and that there was a nearly \$4,000 outstanding water bill. She tried to enter into a deferred payment agreement so that she could get back on her feet while she looked for a job, but PWD refused. PWD explained to her that without a meter it could only estimate the amount she owed. She could not afford the meter installation fee of \$195 so has been without water since 2011. To meet her basic water needs, she regularly hauls jugs of water to her home. PWD has continued to charge storm water fees for the past five years. She has now paid over half of her delinquent bills and continues to pay what she can each month, despite not having any access to water in her home.

At the public hearing held on March 1, 2016, Dr. Mariana Chilton, a professor at the public health school at Drexel University, described a similar story of a woman she encountered at St. Christopher's Hospital. This woman, a mother of two children, learned of the faulty piping in her home when raw sewage started coming up through her basement floor. According to PWD she was on her own to make repairs because the pipes leading to her house were her

⁴⁸ Section 306.4 of PWD Regulations, available at <http://www.phila.gov/water/PDF/PWDRRegulationsRev01.14.16.pdf>.

⁴⁹ *Id.*

responsibility. She did not have the necessary \$2,000 to fix the pipes, so she and her two children have been living without running water ever since. She was fortunate enough to have a neighbor across the street who allows Mrs. Elliott and her children to use the toilet, wash their hands, and fill a pot of water to cook Oodles of Noodles on the hot plate in her living room, but this has not been enough to keep her children healthy. She practically lives at St. Christopher's Hospital emergency room because her children continue to develop rashes, colds, and infections.⁵⁰ As will be described further below, these health affects are not uncommon among individuals who do not have running water in their homes.

II. Impact

Losing access to the human right of water has severe collateral consequences that can cause permanent disruption to the affected individuals. It threatens the most important parts of human existence: housing, family, and health.

a. Disruption to Family Unity

PWD's policies and practices risk tearing families apart. Although the lack of clear title to their homes or pipes in ill repair can be the cause of losing water service at a home, many of the agencies that protect child welfare attribute it to poor parenting. Indeed, a recent report published by the United States Department of Human and Health Services' Office of Abuse and Neglect included the lack of running water as an example of neglect under the heading "inadequate supervision."⁵¹ In the past, the Department of Human Services have threatened to remove children from parents who do not have running water in their homes out of concern for

⁵⁰ Testimony of Dr. Mariana Chilton before the Philadelphia Water Department Rate Board Hearing, March 1, 2016, at 36, 37.

⁵¹ Child Neglect: A Guide for Prevention, Assessment and Intervention, The Office of Child Abuse and Neglect, United States Department of Health and Human Services, available at <https://www.childwelfare.gov/pubPDFs/neglect.pdf>.

the child's health and well-being.⁵² Consequently, when PWD refuses to provide water service to parents who have a tangled title, fall behind on their bills, or confront infrastructure issues they also might be denying them custody of their children.

b. Homelessness

Being deprived of water also affects housing. Many leases require that tenants maintain utilities at their homes. Consequently, when tenants are unable to afford their bills, they could also face eviction.⁵³ Some tenants face the scary reality of choosing between paying their rent or their water bill and either choice might result in homelessness.

Even Philadelphians who are homeowners may be in jeopardy of losing their homes due to their inability to pay their water bills. In his five year strategic plan published last March, Mayor Kenney explained his plan to increase foreclosures of properties where there is delinquency on water bills in the fiscal year of 2017.⁵⁴ This is before the new affordable billing plan goes into effect and so people who would potentially benefit from the program might lose their homes before they have a chance to take advantage of the new program.

c. Deteriorated Health

The Center for Hunger-Free Communities⁵⁵ confronts the negative health effects of lacking access to water on a regular basis and shared with us the following:

Families stretched to pay the water bill often struggle with multiple hardships including paying for the rent and putting nutritious food on the table. Limited resources to meet basic household needs and expenses leads to constant juggling of the family budget forcing families to

⁵² Testimony of Robert Ballenger, Finance Committee, Philadelphia City Council, Bill No. 140607, April 9, 2015 p. 2.

⁵³ *Id.*

⁵⁴ Mayor Kenney's Five Year Strategic Plan, at 90, available at <http://www.picapa.org/wp-content/uploads/2012/10/FY17-FY21-Plan-Mayoral-Proposal.pdf>.

⁵⁵ Kate Scully, the Policy Director for the Center for Hunger-Free Communities, authored this section.

make impossible choices between paying bills, medicine, or food. Often children in the family, especially the youngest, suffer most because their health is vulnerable to even the briefest experience of hardship.

Research conducted by the Children's HealthWatch site in Philadelphia at the Center for Hunger-Free Communities shows that too many families in Philadelphia are struggling to create and maintain healthy, stable environments for their children. In our sample of over 9,000 low-income families in Pennsylvania with children under age four, Children's HealthWatch found that 51% of the families interviewed had at least one hardship that included food insecurity, housing insecurity, and lack of ability to pay utility bills, including water. We know this hardship causes more infections and hospitalizations, and negatively affects a child's development, their schooling, and later, their ability to succeed in the work place.

Expensive water bill cause families to make impossible decisions and not having access to running water leave children vulnerable. Families need access to safe and affordable water in order to keep their kids safe and healthy.

IV. Recommendations for Reform to Increase PWD's Customer Base and Water Usage

Instead of raising rates, the PWD should institute reforms that will increase its customer base and waters usage, including streamlining the documentation needed to establish a customer account, effectively implementing the new affordability program, and creating additional grant programs or an installment plan to help low income Philadelphians make needed repairs to their home's water infrastructure.

A. Philadelphia's Access to Water

As discussed above, PWD maintains inconsistent and arbitrary residency requirements to qualify customers. The policies, as written, create numerous document hurdles that are difficult for low-income customers to overcome. To resolve this confusion, we propose that PWD align its policies with the City of Philadelphia's Revenue Department, PECO, and PGW, which only require basic identification and contact information so that residents who are willing, ready, and able to pay their bills can access water.

The Water Department derives its current policy from two sources: the statutory authority to impose *in rem* liens (meaning liens that attach to the property, not the individual) for delinquent utilities and common law precedent binding prospective water customers to their predecessors' debts. Under Pennsylvania law, the City of Philadelphia may register a lien against a property when an owner neglects to pay for services that it renders, such as water and sewage services but also property taxes.⁵⁶ In *Ransom v. Marrazzo*, the Third Circuit of Appeals held that these liens attach *in rem* (to the property), not *in personam* (against the person individually).⁵⁷

Although these liens attach to the property, PWD has no legal requirement to impose higher document requirements than PGW, PECO, or the City's Revenue Department. In fact, in 2013, Philadelphia's City Council passed an ordinance, which permits the Revenue Department to enter into a repayment plan for back property taxes with "equitable owners."⁵⁸ An "equitable owner" is defined a person who can demonstrate an ownership interest in a property as provided by law... [and] includes, but is not limited to: a person who has inherited an interest in a

⁵⁶ See 53 Pa.Stat. Ann. § 7107 (West 1972) (describing lien authority for Pennsylvania first-class cities).

⁵⁷ *Ransom v. Marrazzo*, 848 F.2d 398, 404 (3d Cir. 1988) (citing *Philadelphia v. Northwood Textile Mills, Inc.*, 149 A.2d 60, 62 (Pa. 1962) (holding that municipalities may not pursue personal liability for delinquent water bills as the lien instead attaches to the property)).

⁵⁸ "Property Tax Collection Reform Law," § 19-1305(1)(e) of the Philadelphia Code, available at <http://www.amlegal.com/library/pa/philadelphia.shtml>.

property; a person who has entered into a contract to purchase a property; and a person who was the owner of record before a fraudulent conveyance of the property.”⁵⁹

As described above, PECO and PGW have adopted much more lenient standards to establish customer accounts than PWD. PGW and PECO do not require customers to supply any documentation—only to affirm residency.⁶⁰ In fact, the only information PGW requires is a social security number, phone number, address, and move-in date.⁶¹ Additionally, PGW requires applicants answer affordability questions to determine if customers are eligible for a discounted bill.⁶² This method differs greatly from PWD which requires customers to affirmatively request access to the programs and provides no information on its customer application page on access to affordable programs.⁶³ And although information on WRAP exists online, the link from the Revenue Department's website directs people to homeownership grants, not WRAP.⁶⁴

PGW and PECO allow potential customers to apply online, unlike PWD.⁶⁵ Additionally, if a person wants to apply to PGW in-person, he or she may go to one of six locations scattered

⁵⁹ *Id.*

⁶⁰ See Philadelphia Gas Works, *Turn Service On*, <http://www.pgworks.com/index.php/turn-service-on> (Accessed April 24, 2016); PECO, *Start, Stop or Transfer Your Service*, <https://www.peco.com/CustomerService/ServiceRequest/Pages/StartStopTransfer.aspx?show=SelectNew> (Accessed April 24, 2016).

⁶¹ See Philadelphia Gas Works, *Turn Service On*, <http://www.pgworks.com/index.php/turn-service-on> (Accessed April 24, 2016).

⁶² *Id.*

⁶³ See Philadelphia Water Revenue Bureau, *Low Income Agreements*, http://www.phila.gov/waterrev/Low_Income_Assistanc.html (Accessed April 24, 2016); Philadelphia Revenue Department, *Becoming a Customer*, <http://www.phila.gov/Revenue/waterbills/Pages/BecomingaCustomer.aspx> (Accessed April 24, 2016).

⁶⁴ See Philadelphia Revenue Department, *Customer Assistance Programs*, <http://www.phila.gov/water/educationoutreach/customerassistance/Pages/default.aspx> (Accessed April 24, 2016).

⁶⁵ See Philadelphia Gas Works, *Turn Service On*, <http://www.pgworks.com/index.php/turn-service-on> (Accessed April 24, 2016); PECO, *Start, Stop or Transfer Your Service*, <https://www.peco.com/CustomerService/ServiceRequest/Pages/StartStopTransfer.aspx?show=SelectNew> (Accessed April 24, 2016). *But see* Philadelphia Revenue Department, *Becoming a Customer*, <http://www.phila.gov/Revenue/waterbills/Pages/BecomingaCustomer.aspx> (Accessed April 24, 2016).

throughout the city, compared to PWD's three locations.⁶⁶ PGW also offers Saturday hours at two locations, unlike PWD, which only offers Monday through Friday service.⁶⁷

In addition, PWD customer service employees fail to uniformly apply the written standards and deny potential paying customers who could meet PWD's standards. As our client stories and first-hand experiences reveal, telephone and in-person customer service representatives apply different rules to determine who can become a customer. These seemingly minor bureaucratic blunders deprive people of water access. So even if PWD improves its written policy, employees must receive effective training so that it is properly implemented.

Further, PWD needs to create formalized internal standards for customer acceptance and promulgate those standards through regular employee trainings so all of its employees both are aware of the law and consistently apply it. The CLC requested any internal guides or training requirements for how PWD accepts employees. PWD would not tell us how it trains its employees. If PWD does not create trainings on what documentation is needed to establish customer accounts, the policy are meaningless. PWD needs to create a memo detailing how its employees should accept customers and regularly train them on this process. Better customer service and streamlined policies can help preempt problems for both customers and PWD itself.

B. Affordability

Access to water means little if a customer cannot afford to pay for it. PWD must implement regulations that ensure water is both truly affordable and accessible. PWD's current

⁶⁶ See Philadelphia Gas Works, *Customer Service Centers*, <http://www.pgworks.com/index.php/residential/location> (Accessed April 24, 2016) (listing locations in Center City, Frankford, West Philadelphia, North Philadelphia, South Philadelphia, and Germantown); *but see* Philadelphia Revenue Department, *Contact Us*, http://www.phila.gov/waterrev/Contact_Us.html (Accessed April 24, 2016) (listing locations in Center City, North Philadelphia, and Northeast Philadelphia).

⁶⁷ See Philadelphia Gas Works, *Customer Service Centers*, <http://www.pgworks.com/index.php/residential/location> (Accessed April 24, 2016); *but see* Philadelphia Revenue Department, *Contact Us*, http://www.phila.gov/waterrev/Contact_Us.html (Accessed April 24, 2016).

WRAP discount program failed due to high denial rates. Prior to the enactment of the new ordinance, the PWD only had about 7,200 customers enrolled in WRAP as compared to the 61,000 customers PGW has in its low-income program.⁶⁸ PWD has disclosed that 40 to 45% of applications for WRAP are denied.

While the new affordability law is a giant step toward ensuring Philadelphians' right to water, the implementation of the new bill rests with PWD who has discretion to determine what discounts will apply to each income tier and when arrears will be forgiven. The new ordinance establishes a tiered approach to water affordability, with those in the lower income tiers being eligible for greater discounts on their water bills. It also provides that customers who are enrolled in IWRAP will not be required to pay pre-IWRAP arrears to maintain service. However, the effectiveness of the new law rests with the implementation of it by the City according to the affordability targets to be established by the Water Rate Board.

IWRAP regulations should minimize areas of discretion for PWD. For example, the Water Rate Board should create a clear path to debt forgiveness with clear regulations rather than deferring to PWD to later informally and internally set a policy. Specifically, the Water Rate Board should regulate who, how, and when a customer is eligible to apply for IWRAP rather than deferring to the utility. Only if IWRAP has a clear structure in place will the ordinance's intent of enlarging PWD's affordable program be realized.

In addition to ensuring IWRAP regulation achieves the law's intent to make water service affordable for individuals on a fixed income, PWD should also increase customers' awareness of its benefits. One way PWD could increase affordable rates is instructing its employees to

⁶⁸ Tricia L. Nadolny, *City testing the water on income-based utility bills*, THE PHILADELPHIA INQUIRER, Sept. 8, 2015, http://articles.philly.com/2015-09-08/news/66300883_1_water-bills-water-rates-debt-forgiveness.

encourage IWRAP applications. For example, the San Antonio Water System encourages its customer service officers to notify indigent customers of the utility's six affordability programs.⁶⁹ If PWD similarly encouraged its employees to discuss affordable options, customers could avoid shutoffs. So when a customer calls PWD to discuss a delinquent account, the employee should discuss a repayment plan and ask the customer about his or her eligibility for IWRAP. Under this system, PWD avoids losing a potentially steady customer and paying shutoff costs, and the customer secures affordable and continual access to water.

The CLC advocates the PWD promulgate regulations that encourage its customer service officers to accept applicants. We implore the City to implement an effective low-income program, targeting monthly bill payment amounts that are truly affordable, according to international standards, in order to ensure that access to safe water is recognized as a human right.

C. Infrastructure

As we saw with Ms. W's case, she continues to pay for her water bill without having running water in her home due to her inability to pay the upfront cost of repairing her property's water infrastructure. To combat this issue, we suggest the city create grant programs or installment plans for water infrastructure fees to correct this barrier to water. The CLC requests that if PWD must raise rates 12% it should at least utilize its available resources and help its low-income customers install infrastructure to obtain running water. At minimum, PWD could create a repayment program where PWD fronts the initial cost of meters and/or piping, and the low-income customer repays PWD on a monthly installment plan. This net-zero revenue proposal will allow customers to clear the currently insurmountable upfront infrastructure costs.

⁶⁹ See *Affordability Programs*, San Antonio Water System, available at <http://www.saws.org/service/affordability>.

Through partnerships with local plumbers, PWD could fix lower income customers infrastructure problems and increase conservation goals. In San Antonio, the Plumbers to People program pairs indigent water customers with local plumbers to repair leaks, faulty hot water heaters, and water line issues at no cost to the customer.⁷⁰ The utility annual spends \$225,000 on the program, and estimates it saves 59,000 gallons of water a year.⁷¹ The program has helped 8,383 customers since 1994 and the utility hails its cost effectiveness as only \$80-per-acre-foot for water saved.⁷²

Additionally, the City of Atlanta established the Care & Conserve Program, which provides a one-time grant to indigent residential customers for paying outstanding bills and also repairing plumbing issues.⁷³ The program receives funding from private donations and the city. By enacting similar programs, PWD could avoid water shutoffs and fix infrastructure problems of our poorest systems while aiding conservation.

The following statistics demonstrate the PWD has the revenue to put in place installment plan programs for low-income customers as it has historically over-estimated the rate increase needed from customers to cover expenses. PWD projected that they would end FY 2015 with \$74.5 million dollars in the Rate Stabilization Fund (RSF).⁷⁴ At the end of FY 2015 the RSF had \$206.5 million dollars;⁷⁵ PWD overestimated the 2012 rate increase by \$132 million dollars. Additionally, at the end of FY 2015, PWD had the following cash/unrestricted assets:

⁷⁰ *Plumbers to People Water Conservation Program*, San Antonio Water System, April 2, 2002, http://www.saws.org/conservation/CaseStudies/docs/P2P_20120402_.pdf.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Care and Conserve*, City of Atlanta, <http://www.atlantawatershed.org/customer-service/care-and-serve>.

⁷⁴ Rate Stabilization Fund was established in conjunction with the Series 1993 Revenue Bonds to provide funds to cover annual expenditures when the revenues are less than projected and to prevent the need for large swings in rates year to year. Sourced from: <http://www.phila.gov/water/rateboard/PDF/PWDEXhibit2.pdf>

⁷⁵ Response to PA-EXE-103

- \$80,040,000 in current assets designated “Equity In Treasurer’s Account”⁷⁶
- \$14,993,329 in the Residual Fund⁷⁷

PWD currently has over 300 million available resources at its disposal when combining the RSF, Equity In Treasurer’s Account, and the Residual Fund.

Conclusion

Through its work with indigent clients in West Philadelphia, the CLC has witnessed the Philadelphia Water Department denying potential customers willing to pay for access to water. The three main barriers we have identified are property title issues, affordability, and high infrastructure costs. When PWD denies access to water, Philadelphians experiences collateral consequences to their family, health, and housing.

To combat these problems, the CLC recommends that: (1) PWD alter the forms of proof needed to establish residency in alignment with PECO, PGW, and the Revenue Department and ensure its employees uniformly implement policies; (2) PWD promulgates IWRAP regulations that increases citizens who receive affordable bills and forgive arrears; (3) PWD creates grant or installment programs to reduce the high infrastructure cost on the poor and explore partnerships with private plumbers to repair infrastructure problems. Only after it addresses these chronic issues with water accessibility and affordability, should PWD be allowed to raise its rates.

⁷⁶ PWD does not consider the \$80 million above to be part of the rate hearing design. However, the bond rating agencies and PWD’s expert, Katherine Clupper, considered it when calculating “Days Cash on Hand.”

⁷⁷ The Residual Fund was established to maintain the remaining revenues after payment of all operating expenses, all debt services obligations. “The Department does not set rates to cover 100% budget as such these funds are required to allow for any unforeseen expenses and to also balance the original budget.”