

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

In the Matter of a Proposed Change    )  
in Philadelphia Water Department Rates   )    Fiscal Years 2017-2018

**Participant Summary for Citizens for Pennsylvania’s Future**

May 2, 2016

1           **I.       INTRODUCTION**

2           Citizens for Pennsylvania’s Future (“PennFuture”) submits this Participant Summary  
3 requesting that the Philadelphia Water, Sewer, and Storm Water Rate Board (“Board”) act to  
4 ensure the success of the Philadelphia Water Department’s (the “Department’s” or “PWD’s”) stormwater  
5 management program.

6           As a statewide, public interest environmental organization with an office in Philadelphia,  
7 PennFuture works to create a just future in which nature, communities and the economy thrive.  
8 As part of its mission to restore and protect the environment, PennFuture has devoted significant  
9 resources to promoting effective urban stormwater management, which if done properly, can  
10 help to minimize pollution from urban run-off and improve the quality of Pennsylvania’s waters.  
11 PennFuture strongly supports *Green City Clean Waters* (“GCCW”), the Department’s 25-year  
12 stormwater management plan that protects and enhances local waterways with green  
13 infrastructure. GCCW is the Department’s innovative response to pressure from federal and  
14 state government agencies to reduce pollution from its combined and separate stormwater  
15 outfalls. It serves as a national model for urban stormwater management solutions that provide  
16 social, economic, and environmental benefits.

17           Because of the Department’s long-term commitment to GCCW, it is critical that PWD  
18 have reliable, long-term funding to ensure the success of the program. If the Department does  
19 not have adequate resources to carry out GCCW, city residents and rate payers would not only  
20 lose out on the improved water quality promised by the program, but they could also suffer  
21 economically as a result of the consequences of violating a binding Consent Order and  
22 Agreement with government agencies. PennFuture is pleased that PWD expects to meet its five-  
23 year milestones and is committed to ensuring that the Department will be able to fulfill the

1 remainder of its commitments over the remaining twenty years of the *Green City Clean Waters*  
2 program.

3 Through its involvement in these technical hearings, PennFuture seeks to ensure the long-  
4 term success of GCCW and to improve the efficiency of related programs. To that end,  
5 PennFuture respectfully requests that the Board rule favorably on the recommendations  
6 discussed below.

## 7 **II. HISTORY OF THE PROCEEDINGS**

8 On January 8, 2016, the Department issued its advance notice of proposed rate changes  
9 with the Philadelphia City Council and the Board, thereby initiating these technical review  
10 proceedings pursuant to Sections 8-407 and 5-801 of the Philadelphia Home Rule Charter and  
11 Section 13-101 of the Philadelphia Code. On February 8, 2016, PWD filed its formal Notice of  
12 Proposed Changes in Water, Wastewater and Stormwater Rates and Charges (FY 2017-2018)  
13 (“Formal Notice”) containing its proposed regulations that set forth proposed changes in rates  
14 and charges, as well as engineering, financial, and economic documentation supporting its  
15 request for rate relief. The new rates requested by the Formal Notice are intended to become  
16 effective on July 1, 2016.

17 PennFuture submitted its intent to become a Participant in the Board’s Technical Review  
18 Hearings, as defined by Regulations of the Philadelphia Water, Sewer, and Storm Water Rate  
19 Board (“Board Regulations”) § I(1), by email to then-Board counsel Frances Beckley on  
20 February 11, 2016. Following a period of information gathering, PennFuture submitted an  
21 outline of its positions along with the testimony of its expert David F. Russell, P.E., on March  
22 24, 2016. PennFuture participated in several days of the Technical Review Hearings, which  
23 were conducted on April 5, 6, 7, 11, 12, and 13, 2016. PennFuture respectfully submits the

1 instant Participant Summary to set forth its arguments relating to the proposed stormwater rate  
2 design.

3 **III. LEGAL STANDARDS**

4 **A. Participant**

5 Board Regulations define a “Participant” as follows:

6 Any individual, corporation or other entity affected by the Department’s proposed  
7 rates and charges who timely notifies the Board of a desire to participate in the  
8 technical review hearings. A Participant may give that notice as soon as the date  
9 of the filing of Advance Notice and, unless the Board specifically grants  
10 permission to join the Rate Change Proceeding later, no later than seven (7) days  
11 after the filing of Formal Notice. Both the Department and, if one is appointed,  
12 the Public Advocate will be deemed to be Participants without notification to the  
13 Board.

14  
15 Board Regulations § I(1).

16 **B. Proposed Rate Relief**

17 The Philadelphia Home Rule Charter provides:

18 In accordance with such standards as the Council may from time to time ordain,  
19 the Water Department shall fix and regulate rates and charges for supplying  
20 water, including charges to be made in connection with water meters, and for  
21 supplying sewage disposal services; provided however, that City Council may by  
22 ordinance, establish an independent rate-making body to be responsible for fixing  
23 and regulating rates and charges for water and sewer services; and provided  
24 further that City Council may by ordinance, establish open and transparent  
25 processes and procedures for fixing and regulating said rates and charges. The  
26 standards pursuant to which rates and charges shall be fixed shall be such as to  
27 yield to the City at least an amount equal to operating expenses and interest and  
28 sinking fund charges on any debt incurred or about to be incurred for water  
29 supply, sewage and sewage disposal purposes. In computing operating expenses,  
30 there shall be included proportionate charges for all services performed for the  
31 Department by all officers, departments, boards or commissions of the City.

32  
33 Philadelphia Home Rule Charter § 5-801. In providing services that address the impacts of  
34 stormwater generated within the City, the Water Department is essentially “supplying sewage  
35 disposal services,” for which it is authorized to fix and regulate rates and charges.

1           The Philadelphia Code in turn sets forth the standards established by the Council that  
2 govern the Water Department in fixing and regulating rates and charges. The Philadelphia Code  
3 states:

4           (a) *Financial Standards.* The rates and charges shall be such as shall  
5 yield to the City at least an amount equal to operating expenses and debt service,  
6 on all obligations of the City in respect of the water, sewer, storm water systems  
7 and, in respect of water, sewer and storm water revenue obligations of the City,  
8 such additional amounts as shall be required to comply with any rate covenant  
9 and sinking fund reserve requirements approved by ordinance of Council in  
10 connection with the authorization or issuance of water, sewer and storm water  
11 revenue bonds, and proportionate charges for all services performed for the Water  
12 Department by all officers, departments, boards or commissions of the City.

13           (b) The rates and charges shall yield not more than the total appropriation  
14 from the Water Fund to the Water Department and to all other departments,  
15 boards or commissions, plus a reasonable sum to cover unforeseeable or unusual  
16 expenses, reasonably anticipated cost increases or diminutions in expected  
17 revenue, less the cost of supplying water to City facilities and fire systems and, in  
18 addition, such amounts as, together with additional amounts charged in respect of  
19 the City's sewer system, shall be required to comply with any rate covenant and  
20 sinking fund reserve requirements approved by ordinance of Council in  
21 connection with the authorization or issuance of water and sewer revenue bonds.  
22 Such rates and charges may provide for sufficient revenue to stabilize them over a  
23 reasonable number of years.

24           (i) In fixing rates and charges the Board shall recognize the  
25 importance of financial stability to customers and fully consider the Water  
26 Department's Financial Stability Plan. In addition, the Board shall determine the  
27 extent to which current revenues should fund capital expenditures and minimum  
28 levels of reserves to be maintained during the rate period. When determining such  
29 levels of current funding of capital expenditures and minimum levels of reserves,  
30 the Board shall consider all relevant information presented including, but not  
31 limited to, peer utility practices, best management practices and projected impacts  
32 on customer rates. The Board shall set forth any such determinations in the  
33 Board's written report pursuant to this chapter.

34           (ii) Rates and charges shall be developed in accordance with  
35 sound utility rate making practices and consistent with the current industry  
36 standards for water, wastewater and storm water rates. Industry standards include  
37 the current versions of: American Waterworks Association (AWWA) Principles  
38 of Rates, Fees and Charges Manual (M-1) and Water Environment Federation's  
39 Wastewater Financing & Charges for Wastewater Systems.

40           (iii) Whenever the Water Department has proposed changes to the  
41 rates and charges, the Board, having acted in accordance with this Section 13-101,  
42 shall issue a written report incorporating the information used by the Board in  
43 reaching a decision to approve, modify or reject the proposed rates and charges.

1 (iv) The decision to approve, modify or reject the proposed rates  
2 shall be made in a timely manner, but no later than 120 days from the filing of  
3 notice of any proposed change in rates and charges as established in this Section.

4 (c) The rates and charges shall be equitably apportioned among the  
5 various classes of consumers.

6 (d) The rates and charges shall be just, reasonable and nondiscriminatory  
7 as to the same class of consumers.

8 (e) Special rates and charges, to be designated as "charity water rates and  
9 charges", shall be established for public and private schools, institutions of purely  
10 public charity, and places used for actual religious worship.

11 (f) Special rates and charges, to be designated as "public housing water  
12 rates and charges" shall be established for property of the Philadelphia Housing  
13 Authority and shall be set so that the Philadelphia Housing Authority receives a  
14 five percent (5%) reduction off of the Water Department's service and quantity  
15 charges.

16  
17 Philadelphia Code § 13-101(4).

18 In addition to the foregoing standards, courts have recognized a constitutional mandate  
19 that rates must be just and reasonable. *See Public Advocate v. Phila. Gas Comm'n*, 544 Pa. 129,  
20 139-40, 674 A.2d 1056, 1061 (1996).

#### 21 **IV. PROPOSED FINDINGS OF FACT**

22 1. PennFuture is an entity affected by the Department's proposed rates and charges.

23 a. PennFuture is a statewide, public interest environmental organization that  
24 works to create a just future in which nature, communities and the economy  
25 thrive. Position Outline for Citizens for Pennsylvania's Future, March 24,

26 2016 ("PennFuture Position Outline") at p. 1, *ll.* 6-7, *available at*

27 <http://www.phila.gov/water/rateboard/Testimony%20of%20Registered%20Pa>  
28 [rticipants/PennFuture\\_Testimony\\_for\\_PWD\\_Rate\\_Proceeding/PennFuturePos](http://www.phila.gov/water/rateboard/Testimony%20of%20Registered%20Participants/PennFuture_Testimony_for_PWD_Rate_Proceeding/PennFuturePositionPaperFinal3-24-16.pdf)  
29 [itionPaperFinal3-24-16.pdf](http://www.phila.gov/water/rateboard/Testimony%20of%20Registered%20Participants/PennFuture_Testimony_for_PWD_Rate_Proceeding/PennFuturePositionPaperFinal3-24-16.pdf) (last accessed May 2, 2016).

30 b. PennFuture has devoted significant resources to promoting effective urban  
31 stormwater management, which if done properly, can help to minimize

- 1 pollution from urban run-off and improve the quality of Pennsylvania's  
2 waters. PennFuture Position Outline at p. 1, *ll.* 8-10.
- 3 c. PennFuture has worked to ensure the success of the Philadelphia Water  
4 Department's *Green City, Clean Waters* ("GCCW") stormwater management  
5 program. PennFuture Position Outline at p. 1, *l.* 11.
- 6 d. PennFuture has an office in Philadelphia. PennFuture Position Outline at p. 1,  
7 *l.* 6; *see* PennFuture Home Page, <http://www.pennfuture.org/> (listing office  
8 locations in footer) (last accessed May 2, 2016).
- 9 2. PennFuture timely notified the Board of a desire to fully take part in the technical  
10 review hearings as a Participant.
- 11 a. The Department filed its formal notice on February 8, 2016. Board, 2016  
12 Rate Proceeding Record,  
13 <http://www.phila.gov/water/rateboard/rateproceeding/Pages/default.aspx> (last  
14 accessed May 2, 2016).
- 15 b. PennFuture submitted its intent to become a Participant in the Board's  
16 Technical Review Hearings by email to then-Board counsel Frances Beckley  
17 on February 11, 2016. Email from Michael Helbing, PennFuture Staff  
18 Attorney, to Frances Beckley, Board Counsel (Feb. 11, 2016, 3:24 p.m. EST)  
19 (on file with PennFuture counsel).
- 20 c. Since shortly after notifying Board Counsel of its intent to participate,  
21 PennFuture has been listed as a Participant in the technical hearings on the  
22 Board's rate proceeding website. Board, 2016 Rate Proceeding Participants,

1                   <http://www.phila.gov/water/rateboard/Pages/2016Participants.aspx> (last  
2                   accessed May 2, 2016).

3                   3. The 2011 Consent Order and Agreement (“COA”) entered into between the  
4                   Department and the Pennsylvania Department of Environmental Protection  
5                   (“PaDEP”) requires the Department to satisfy water quality milestones related to  
6                   stormwater management. Direct Testimony of Joanne Dahme and Erin Williams  
7                   (“PWD Statement 4”), available at

8                   [http://www.phila.gov/water/rateboard/PDF/PWD\\_St.-4.pdf](http://www.phila.gov/water/rateboard/PDF/PWD_St.-4.pdf) (last accessed May 2,  
9                   2016), at p. 3-4.

10                  4. The COA requires the Department to eliminate and remove the mass of pollutants  
11                  that otherwise would be removed by the capture of 85% of the combined sewage  
12                  volume collected in the combined sewer system during precipitation events. PWD  
13                  Statement 4 at p. 3.

14                  5. If the Department fails to comply with any of its milestone requirements, it could be  
15                  subject to significant financial penalties. PWD Statement 4 at p. 4.

16                  6. The GCCW program is the Department’s landmark 25-year strategy for complying  
17                  with the 2011 COA with PaDEP. PWD Statement 4 at p. 3.

18                  7. Consistent with the GCCW program, the Department has undertaken and will  
19                  continue to undertake stormwater management projects that control stormwater and  
20                  reduce combined sewer overflows, using, among other things, green technology.  
21                  PWD Statement 4 at pp. 3-5.

22                  8. PWD expects to spend approximately \$2.4 billion on the GCCW program over the  
23                  course of 25 years. PWD Statement 4 at p. 3.



- 1           9. The Department began to transition from a meter-based system to a parcel based  
2           system on July 1, 2010. April 7, 2016 Technical Hearing Transcript at p. 25, *ll.* 11-  
3           15.
- 4           10. The Stormwater Assistance Phase-In Program, which was a predecessor to the  
5           Enhanced Customer Assistance Program (“Enhanced CAP”), was put into place on  
6           July 1, 2011. PWD Statement 4 at p. 6; April 7, 2016 Technical Hearing Transcript,  
7           *available at* [http://www.phila.gov/water/rateboard/Transcripts/4.7.16-Transcript-](http://www.phila.gov/water/rateboard/Transcripts/4.7.16-Transcript-mini.pdf)  
8           [mini.pdf](http://www.phila.gov/water/rateboard/Transcripts/4.7.16-Transcript-mini.pdf) (last accessed May 2, 2016), at p. 37, *l.* 21 through p. 38, *l.* 2.
- 9           11. The Enhanced CAP program was implemented on January 1, 2013. April 7, 2016  
10           Technical Hearing Transcript at p. 38, *ll.* 3-5.
- 11           12. The Enhanced CAP program is a rate mitigation program intended to assist customers  
12           who would otherwise be most impacted by the Department’s transition from meter-  
13           based charges to parcel-based charges. PWD Statement 4 at p. 6.
- 14           13. The Enhanced CAP program was a subject of Phase 2 of the FY 2013-2015  
15           Philadelphia Water Department rate proceeding. Transcript Request TR-7 (“2013-  
16           2015 Rate Proceeding Phase 2 Settlement”), *available at*  
17           <http://www.phila.gov/water/rateboard/Transcripts/TR-7-Attachment.pdf> (last  
18           accessed May 2, 2016), at pp. 2, 4-5, 6, 7.
- 19           14. The 2013-2015 rate determination proceeding was bifurcated into two phases, one to  
20           address revenues, revenue requirements, cost allocation and rate structure issues, and  
21           the other to address stormwater credits, incentives, and the Enhanced CAP program.  
22           2013-2015 Rate Proceeding Phase 2 Settlement at p. 2.

- 1           15. The 2013-2015 Rate Proceeding Phase 2 Settlement explicitly contemplates  
2           consideration of the Enhanced CAP program during subsequent rate proceedings.  
3           2013-2015 Rate Proceeding Phase 2 Settlement at p. 6 (“The Department will file  
4           final regulations that expressly recognize that the proposed Enhanced CAP program  
5           for non-residential customers remains subject to further review, extension,  
6           modification or termination in a subsequent Rate Determination.”) (emphasis added).
- 7           16. Enhanced CAP customers have their eligible property’s monthly water bill adjusted  
8           to be equivalent to an amount that would make the stormwater charge 10% higher  
9           than the fiscal year prior, thus gradually transitioning these properties to the parcel-  
10          based system for determining their stormwater management charges. PWD  
11          Statement 4 at p. 6.
- 12          17. The Department expects the Enhanced CAP program to continue as long as customers  
13          continue to meet the program requirements found in Philadelphia Water Department  
14          Regulations, Chapter 2 § 204.0(B). PWD response to PennFuture Interrogatories,  
15          available at <http://www.phila.gov/water/rateboard/PDF/PennfutureSet1-response.pdf>  
16          (last accessed May 2, 2016), at Interrogatory PF 1-12.
- 17          18. Based on the Department’s projected revenue impact, which shows an impact of  
18          \$3.417 million in FY 2017 and a decrease of \$100,000 each year thereafter through  
19          FY 2021, impacts from the Enhanced CAP program could continue for over three  
20          decades. Supplemental Direct Testimony of Black & Veatch (“PWD Statement 9B”),  
21          available at [http://www.phila.gov/water/rateboard/PDF/PWD\\_St.-9B.pdf](http://www.phila.gov/water/rateboard/PDF/PWD_St.-9B.pdf) (last  
22          accessed May 2, 2016), at p. 8; Direct Testimony of David Russell, P.E. (“PennFuture  
23          Statement 1”), available at

- 1 [http://www.phila.gov/water/rateboard/Testimony%20of%20Registered%20Participan](http://www.phila.gov/water/rateboard/Testimony%20of%20Registered%20Participants/PennFuture_Testimony_for_PWD_Rate_Proceeding/PennFuture%20Russell%20Testimony%20Final%203-24-16.pdf)  
2 [ts/PennFuture\\_Testimony\\_for\\_PWD\\_Rate\\_Proceeding/PennFuture%20Russell%20T](ts/PennFuture_Testimony_for_PWD_Rate_Proceeding/PennFuture%20Russell%20T)  
3 <estimony%20Final%203-24-16.pdf> (last accessed May 2, 2016), at p. 11, *ll.* 3-9.
- 4 19. The Department classifies the revenue impact due to the Enhanced CAP Program as  
5 “contra revenue.” PWD Statement 9B, Exhibit BV-S1 at Appendix 6.
- 6 20. Customers receiving rate mitigation from the Enhanced CAP program are not  
7 providing tangible stormwater management benefits to the Department in return for  
8 the rate mitigation they receive under that program. April 7, 2016 Technical Hearing  
9 Transcript at pp. 23-24.
- 10 21. Estimated contra revenue, or revenue loss, due to the Enhanced CAP program is  
11 added to the non-residential stormwater cost of service to be collected from non-  
12 residential rate payers by increasing their gross area (“GA”) and impervious area  
13 (“IA”) rates. PWD Statement 9B at pp. 7 and 9; PWD Statement 9B, Exhibit BV-S2.
- 14 22. Begun in 2012, the Stormwater Management Incentive Program (“SMIP”) provides  
15 grants to non-residential property owners to pay for designing and building  
16 Stormwater retrofit projects. PWD Statement 4 at pp. 6-7; PWD Response to  
17 PennFuture Interrogatory PF 1-1.
- 18 23. A “greened acre” is an acre of impervious cover connected to a combined sewer that  
19 subsequently is reconfigured to utilize green stormwater infrastructure to manage all  
20 or a portion of the stormwater runoff from that acre. PWD Statement 4 at p. 3.
- 21 24. Establishment of greened acres is among the metrics used to evaluate compliance  
22 with the 2011 COA between the Department and PaDEP. PWD Statement 4 at p. 3.

- 1           25. When completed, SMIP projects produce greened acres that the Department can  
2           count toward the compliance requirements specified in the 2011 COA between the  
3           Department and PaDEP. PWD Statement 4 at pp. 6-7.
- 4           26. In 2014, the Department added an incentive program called the Greened Acres  
5           Retrofit Program (“GARP”), which has helped to grow the Department’s incentive  
6           programs by providing stormwater grants directly to project developers or  
7           aggregators. PWD Statement 4 at p. 7; PWD Response to PennFuture Interrogatory  
8           1-1.
- 9           27. The Department has awarded a total of more than \$30 million in SMIP and GARP  
10          grants over the programs’ history. PWD Statement 4 at p. 7.
- 11          28. The combined budget for both the SMIP and GARP programs was doubled from \$5  
12          million to \$10 million in FY 2015. PWD Statement 4 at p. 7.
- 13          29. The SMIP and GARP program budget was fully utilized from FY 2013 through FY  
14          2015. PWD Statement 9B at p. 3.
- 15          30. Although the Department claims that no applications were denied for lack of funding  
16          in recent years, it acknowledges that it could do more to raise awareness of these  
17          programs and that it may be able to work with more applicants to help them  
18          successfully navigate the “rigorous” application review process. April 7, 2016  
19          Technical Hearing Transcript at pp. 29-30, 45-46.
- 20          31. The average cost to the Department of a greened acre built on private land using  
21          funding from the SMIP and GARP programs is \$90,000. PWD Response to  
22          PennFuture Interrogatory PF 1-8; *see also* PWD Statement 4 at p. 6.

1           32. The average cost to the Department of a greened acre built on public land is  
2           \$300,000. PWD Response to PennFuture Interrogatory PF 1-8; *see also* PWD  
3           Statement 4 at p. 6.

#### 4           **V.       PROPOSED CONCLUSIONS OF LAW**

- 5           1. PennFuture is a Participant entitled to take part in these technical hearing  
6           proceedings. *See* Board Regulations § I(l).
- 7           2. Except as provided below regarding the Enhanced CAP program and the SMIP and  
8           GARP stormwater incentive programs, the Department's proposed stormwater rate  
9           proposal satisfies the legal standards governing the regulation of rates and charges  
10          and should be enacted as proposed by the Department. *See* Philadelphia Code § 13-  
11          101(4).
- 12          3. The Board has jurisdiction to consider the continuation of the Enhanced CAP  
13          program. *See* Philadelphia Code § 13-101(4)(d); 2013-2015 Rate Proceeding Phase 2  
14          Settlement at 4-5, 5-6, 7.
- 15          4. The Department's Enhanced CAP program, as currently structured, should be phased  
16          out by FY 2019, because it results in rates and charges that are not just, reasonable  
17          and nondiscriminatory as to the same class of consumers, contrary to the  
18          requirements of Philadelphia Code § 13-101(4)(d).
- 19          5. To ensure that future rate increases necessary to satisfy Philadelphia Code § 13-  
20          101(4)(a) are kept to a minimum, the Department's proposed budget for its SMIP and  
21          GARP stormwater incentive programs should be increased to at least \$16.5 million in  
22          FY 2017 and \$18 million in FY 2018.
- 23

1           **VI.    ARGUMENT**

2                   **A. PennFuture is a Participant Entitled to Take Part in this Proceeding.**

3           As an entity affected by the Department’s proposed rate change that provided timely  
4 notice to the Board of its intent to participate in the technical hearings, PennFuture satisfies the  
5 conditions set forth in the Board Regulations for becoming a Participant in this rate case.

6           PennFuture is an organization affected by the Department’s proposed rates and charges.  
7 (Proposed Finding of Fact No. 1.) As a statewide, public interest environmental organization,  
8 PennFuture works to create a just future in which nature, communities and the economy thrive.

9 (Proposed Finding of Fact No. 1.a.) As part of its mission to restore and protect the  
10 environment, PennFuture has devoted significant resources to promoting effective urban  
11 stormwater management, which if done properly, can help to minimize pollution from urban run-  
12 off and improve the quality of Pennsylvania’s waters. (Proposed Finding of Fact No. 1.b.) To  
13 further that goal in the city of Philadelphia, PennFuture has worked to ensure the success of the  
14 Department’s GCCW stormwater management program. (Proposed Finding of Fact No. 1.c.) In  
15 addition to its investment in the outcome of Philadelphia’s stormwater management, PennFuture  
16 also maintains an office in Philadelphia, and thus is directly impacted by the rates assessed by  
17 the Department. (Proposed Finding of Fact No. 1.d.)

18           PennFuture timely notified the Board of a desire to fully take part in the technical review  
19 hearings as a Participant. (Proposed Finding of Fact No. 2.) Following the Department’s  
20 February 8 formal notice, PennFuture submitted its intent to become a Participant in the Board’s  
21 Technical Review Hearings by email to then-Board counsel Frances Beckley on February 11,  
22 2016. (Proposed Finding of Fact No. 2.a-b.) Since shortly after that time, PennFuture has been

1 listed as a Participant in the technical hearings on the Board’s rate proceeding website.  
2 (Proposed Finding of Fact No. 2.c.)

3 For these reasons, PennFuture is a Participant entitled to take part in these technical  
4 hearing proceedings. (Proposed Conclusion of Law No. 1.)

5 **B. The proposed stormwater rate proposal satisfies the legal standards**  
6 **governing the regulation of rates and charges.**

7  
8 **i. Background and Argument**

9 In order to satisfy its obligations under the Philadelphia Code, the Department’s rates  
10 must yield “at least an amount equal to operating expenses[.]” Philadelphia Code § 13-  
11 101(4)(a). Among the operating expenses the Department must account for are those necessary  
12 to properly manage stormwater in the City and those necessary to comply with the 2011 COA  
13 that it entered into with PaDEP. With the exception of the two issues discussed in detail below  
14 (related to the Enhanced CAP program and the SMIP and GARP programs), the Department’s  
15 proposed stormwater rate design adequately accounts for those responsibilities. The Board  
16 should authorize the Department’s stormwater revenue request as proposed to prevent the  
17 Department from failing to comply with important legal requirements.

18 The Department’s GCCW program is an innovative program developed to use green  
19 technology to reduce pollution and enhance the quality of local waterways. (Proposed Finding  
20 of Fact Nos. 6-7.) The Department developed its 25-year GCCW program in part to satisfy its  
21 obligations under the 2011 COA it entered with PaDEP. (Proposed Finding of Fact No. 6.) That  
22 COA requires the Department to eliminate and remove the mass of pollutants that otherwise  
23 would be removed by the capture of 85% of the combined sewage volume collected in the  
24 combined sewer system during precipitation events, and it creates milestones that the  
25 Department must satisfy at five-year intervals. (Proposed Finding of Fact Nos. 3-4.) If the

1 Department fails to comply with any of its milestone requirements, it could be subject to  
2 significant financial penalties. (Proposed Finding of Fact No. 5.)

3 Consistent with the GCCW program, the Department has undertaken and will continue to  
4 undertake stormwater management projects that control stormwater and reduce combined sewer  
5 overflows. (Proposed Finding of Fact No. 7.) The Department expects to spend approximately  
6 \$2.4 billion on the GCCW program over the course of 25 years. (Proposed Finding of Fact No.  
7 8.)

8 Because of the importance of the water quality goals in the COA, and the potential  
9 financial consequences of not complying with the COA, it is essential that the Department meet  
10 all of its milestones under the COA. PennFuture's expert, David F. Russell, P.E., reviewed the  
11 Department's compliance with the COA to date and assessed the adequacy of the Department's  
12 requested rate increase for ensuring continued compliance with the COA. *See, generally,*  
13 PennFuture Statement 1 at pp. 4-9. Based on this analysis, PennFuture believes that it is likely  
14 that the Department's past efforts will allow it to meet its five-year compliance targets in place  
15 for the end of FY 2016. *Id.* at p. 8, *l.* 2 through p. 9 *l.* 2.

16 Based on the Department's past success and its projected spending levels over the two  
17 rate years, Mr. Russell determined that the Department is likely to continue on pace to comply  
18 with its ten-year compliance targets under the COA and GCCW if it receives the stormwater  
19 revenues it requests in this rate proceeding. PennFuture Statement 1 at pp. 4-5. Because of the  
20 importance of continuing its GCCW program and complying with the COA, Mr. Russell  
21 concludes that the Department's proposed revenue requirements that are directly associated with  
22 paying for the capital cost and O&M expenses related to stormwater management are necessary  
23 and reasonable and should not be reduced in either rate year. *Id.* at p. 9, *ll.* 3-8.



1 For these reasons, except as provided below, the Department’s proposed stormwater rate  
2 proposal satisfies the legal standards governing the regulation of rates and charges and should be  
3 enacted as proposed by the Department. (Proposed Conclusion of Law No. 2.)

4 **ii. Impact of this Recommendation on Rate Increase for FY 2017 and**  
5 **2018**

6  
7 Adoption of this recommendation would have no impact on the Department’s requested  
8 rate increase for FY 2017 and 2018.

9 **C. The Enhanced Consumer Assistance Program Should Be Phased Out by**  
10 **FY 2019.**

11 **i. History of the Enhanced CAP Program**

12  
13  
14 Effective July 1, 2010, the Department altered the manner in which stormwater  
15 management service charges are assessed. (Proposed Finding of Fact No. 9.) The switch from a  
16 meter-based to a parcel-based charge resulted in significant initial increases in rates for some  
17 non-residential customers. To moderate the impact of otherwise large and abrupt increases in  
18 certain customers’ monthly bills, the Water Department established a consumer assistance  
19 program, known as the Stormwater Assistance Phase-in Program, which became effective in July  
20 2011. (Proposed Finding of Fact No. 10.) On January 1, 2013, the program was extended and  
21 renamed Enhanced CAP. (Proposed Finding of Fact No. 11.)

22 Like the Stormwater Assistance Phase-in Program before it, Enhanced CAP is a rate  
23 mitigation program designed to limit rate increases to qualified non-residential customers during  
24 the Water Department’s transition in stormwater management service rate designs. (Proposed  
25 Finding of Fact No. 12.) The Enhanced CAP program adjusts an eligible property’s monthly  
26 water bill to be equivalent to an amount that would make the stormwater charge 10% higher than

1 the fiscal year prior, thus gradually transitioning these properties to the parcel-based system for  
2 determining their stormwater management charges. (Proposed Finding of Fact No. 16.)

3 The Enhanced CAP program’s smoothing of rate increases over time impacts annual  
4 stormwater revenue generation. (Proposed Finding of Fact Nos. 18-19.) The mitigated rate for  
5 which Enhanced CAP participants are eligible reduces the amount of revenue the Department  
6 would otherwise receive from those customers. The estimated impact is over \$3.4 million in  
7 reduced revenue for FY 2017 and is expected to remain above \$3 million per year through FY  
8 2021. (Proposed Finding of Fact No. 18.) These impacts are treated as “contra revenue” by the  
9 Department and need to be, and are, recouped from other non-residential stormwater customers.  
10 (Proposed Finding of Fact No. 19.)

11 The Enhanced CAP program was considered during the rate proceeding conducted in  
12 2012. (Proposed Finding of Fact No. 13.) That rate proceeding was bi-furcated into two phases,  
13 one to address revenues, revenue requirements, cost allocation and rate structure issues, and the  
14 other to address stormwater credits, incentives, and the Enhanced CAP program. (Proposed  
15 Finding of Fact No. 14.)

16 **ii. The Board Has Jurisdiction to Consider Changes to the Enhanced**  
17 **CAP Program.**  
18

19 The Board has the task of setting water, wastewater, and stormwater rates to ensure that  
20 sufficient funds are available for capital expenditures and minimum levels of reserves, while  
21 acknowledging the importance of financial stability to customers. Philadelphia Code § 13-  
22 101(4)(b)(1). An important consideration in water rate design is a just allocation of rates and  
23 charges among consumers of the same class. Philadelphia Code § 13-101(4)(d). In considering  
24 these factors, the Board has the jurisdiction to consider the Enhanced CAP program’s continuing  
25 impacts.

1           The Enhanced CAP program was designed as a transitional program to assist highly  
2 impacted customers adjust to a new method of determining stormwater management service  
3 charges. (Proposed Finding of Fact No. 12.) In that regard, it is inextricably intertwined with  
4 the rate-setting questions the Board is being asked to resolve in this matter. Whether the  
5 Enhanced CAP program continues to exist will directly affect the allocation of rates and charges  
6 among customers of the same class. *See Philadelphia Code § 13-101(4)(d)*. Indeed, the budget  
7 the Water Department presented to the Board includes consideration of revenue impacts resulting  
8 from continuation of the Enhanced CAP program. The funds being forgiven to some customers  
9 through the Enhanced CAP program are being absorbed by other non-residential stormwater  
10 customers in the Department’s managing of “contra revenue.” (Proposed Finding of Fact No.  
11 21.) Resolving the question of the Enhanced CAP program’s continued existence, therefore,  
12 falls within the Board’s authority to examine and render judgment as to whether the rates are  
13 “nondiscriminatory to the same class of customers.” *See Philadelphia Code § 13-101(4)(d)*.

14           Further, although this Board was not yet formed, it is important to note that the Enhanced  
15 CAP program was explicitly considered during the Department’s FY 2013-2015 rate proceeding.  
16 (Proposed Finding of Fact No. 13.) Indeed, the 2013-2015 Rate Proceeding Phase 2 Settlement  
17 explicitly contemplates consideration of the Enhanced CAP program during subsequent rate  
18 proceedings. (Proposed Finding of Fact No. 15.) It is clear from the context of the settlement of  
19 the FY 2013-2015 rate case that the parties expected that the design of the Enhanced CAP  
20 program would be revisited in future rate proceedings. PennFuture and the Public Advocate  
21 specifically negotiated a condition with the Department stipulating that the final Enhanced CAP  
22 regulations would be subject to further revision “in a subsequent Rate Determination.”  
23 (Proposed Finding of Fact No. 15.) The clear expectation of the parties was that the

1 compromises reached regarding the Enhanced CAP program during the FY 2013-2015 rate  
2 proceeding would be revisited after additional data had been gathered during subsequent rate  
3 years. A determination by this Board that it does not have jurisdiction over the issue would upset  
4 long-standing expectations that contributed to the terms of the settlement of the last rate case.<sup>1</sup>

5 Because continuation of the Enhanced CAP program directly affects the Department's  
6 budget and the standards this Board is required to consider in evaluating the Department's rate  
7 request, the Board has jurisdiction to consider the continuation of the Enhanced CAP program.  
8 (Proposed Conclusion of Law No. 3.)

9 **iii. The Enhanced CAP Program Should Be Phased Out by FY 2019.**

10 The Department's plan to allow the Enhanced CAP program to remain in place as long as  
11 consumers meet the qualification requirements – a period that could last as long as three decades  
12 – is not just and reasonable.

13 PWD implemented the Enhanced CAP program to limit rate increases to qualified non-  
14 residential customers during the transition from the meter-based rate system to the parcel-based  
15 system. (Proposed Finding of Fact No. 12.) Despite the fact that the parcel-based system has  
16 been in place for several years, the Enhanced CAP program remains active and is expected to  
17 continue as long as participants remain eligible. (Proposed Finding of Fact No. 17.) At the  
18 declining rate of participation projected by the Department, the Enhanced CAP program can be

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<sup>1</sup> Although PennFuture recognizes that the change it seeks in this proceeding would not be *fully* implemented until after FY 2019 (that is, after the rate period covered by this proceeding), two-thirds of the phase-out process would be implemented during the covered rate period, and it is important that the Board make an appropriate order during this rate proceeding to ensure that there is adequate time for an orderly transition away from the Enhanced CAP program. PennFuture did not seek the complete elimination of the Enhanced CAP program during the current, two-year rate cycle because it believes that a three-year phase-out period is more appropriate. PennFuture further believes the phase-out of the program should begin within the fiscal years under consideration here. As long as the Department continues to seek rate review in two-year intervals, a three-year phase-out of Enhanced CAP (or any program) cannot be fully implemented within the confines of any single rate proceeding, but that should not inhibit the Board from setting a three-year phase out in motion now and addressing (and perhaps modifying) the final stage of the phase-out during the next rate proceeding.

1 expected to have qualifying participants for approximately three decades. (Proposed Finding of  
2 Fact No. 18.)

3 Three decades is an unnecessarily long time to continue a program intended to help  
4 customers transition to a new rate system – especially when that transition is being funded by  
5 other rate payers. (Proposed Finding of Fact Nos. 12, 21; PennFuture Statement 1 at 11.)

6 Although the use of a program to help adversely impacted customers transition to a new fee  
7 structure was reasonable at the time the transition occurred, that transition program needs to be  
8 of sensible duration in order to be just and reasonable to all rate payers. The Department’s  
9 parcel-based system went into place at the beginning of FY 2011. (Proposed Finding of Fact No.  
10 9.) By the end of FY 2019, Enhanced CAP customers will have had nine fiscal years to adjust to  
11 the new system and take necessary steps to either prepare for the higher payments or to make  
12 other changes (possibly through one of the other programs offered by the Department) to  
13 mitigate their stormwater fees. Asking other customers, who are also facing increased  
14 stormwater charges, to continue to subsidize Enhanced CAP customers for many years after the  
15 transition to the parcel-based system is unjust and unreasonable.

16 Continuing to subsidize Enhanced CAP participants also is bad public policy. The  
17 Enhanced CAP program minimizes the incentive that customers who received the discounted  
18 rates have to take measures to limit pollution from stormwater run-off. One of the many benefits  
19 of the parcel-based stormwater rate structure is that non-residential customers’ charges are  
20 determined by the gross area (“GA”) and impervious area (“IA”) of their properties.

21 Philadelphia Water Department Regulations § 304.3(c). The GA and IA are directly related to  
22 the stormwater impacts created by a property. Therefore, by basing rates on GA and IA, the  
23 Department has created a “win-win” incentive structure under which a customer who reduces

1 impervious surfaces or installs stormwater runoff reducing best management practices on a  
2 property will benefit through decreased stormwater fees, and the Department will benefit from  
3 reduced stormwater management obligations. The Department has sought to encourage these  
4 types of behaviors through such programs as the stormwater management incentive program  
5 (“SMIP”), the greened acres retrofit program (“GARP”), and the stormwater management  
6 service (“SWMS”) credits under Philadelphia Water Department Regulations, Chapter 3 § 304.5.

7       By softening the impact of the change to the parcel-based system through the Enhanced  
8 CAP program, the Department reduces the effectiveness of the incentive structure created by the  
9 parcel-based system because Enhanced CAP customers will continue to receive rate mitigation  
10 (although at decreasing rates) for many years, even without reducing impervious area or  
11 implementing stormwater management practices. (*See* PennFuture Statement 1 at 11.)

12 Enhanced CAP customers have less financial incentive than other non-residential customers to  
13 take actions that would yield stormwater management benefits to the Department and, thus,  
14 reduce the cost of stormwater management to other rate payers.

15       In order to ensure a smooth and fair termination of the Enhanced CAP program, the  
16 Board’s order in this proceeding should be consistent with a plan to phase out the Enhanced CAP  
17 program over three years beginning in FY 2017 and ending in FY 2019. (*See* footnote 1, above.)

18 To the extent that customers would suffer significant adverse financial consequences, the  
19 Department can work with these customers in the intervening time period to help them find other  
20 rate mitigation programs, appropriate to their situations, that provide stormwater management  
21 benefits to the Department.

22       A transition program that would last over three decades is not a just and reasonable use of  
23 rate payers’ funds. The Board should recognize the adverse consequences of this program and

1 order the Department to begin phasing it out, so that it will be eliminated by the end of FY 2019.  
2 (Proposed Conclusion of Law No. 4.)

3 **iv. Impact of Phase-out of Enhanced CAP Program on Rate Increase**  
4 **for FY 2017 and 2018**

5  
6 There would be no direct impact of this recommendation on the revenue increase  
7 proposed for FY 2017 or FY 2018. Any adjustment to the contra revenues associated with the  
8 Enhanced CAP program only changes the level of subsidies between participants and non-  
9 participants (Proposed Finding of Fact No. 21); it would not ultimately affect the total amount of  
10 revenue collected by the Department in either year.

11 Adjusting the contra revenues, would, however, impact the allocation of the total revenue  
12 sought by the Department. Beginning in FY 2020, the Board will be able to set the level of  
13 contra revenues attributed to the Enhanced CAP program to zero, thus eliminating any  
14 reallocation of cost among non-residential stormwater customers. PennFuture Statement 1 at 13.  
15 If prompt notice is given about the anticipated phase out of the Enhanced CAP program, it is  
16 possible that the amount of contra revenue budgeted for FY 2017 and 2018 will decrease as a  
17 result of Enhanced CAP customers increasing their efforts to find other ways to reduce their  
18 stormwater fees. *Id.* Thus, there may be small impact on allocation as early as FY 2017.

19 **D. Philadelphia Water's Budget for the SMIP and GARP Programs Should**  
20 **Be Increased by \$1.5 Million in FY 2017 and \$3 Million in FY 2018.**

21  
22 **i. Background of the SMIP and GARP programs**

23 The Department initiated the Stormwater Management Incentive Program ("SMIP")  
24 Grant in 2012. (Proposed Finding of Fact No. 22.) This program provides grants to non-  
25 residential property owners to pay for designing and building stormwater retrofit projects.  
26 (Proposed Finding of Fact No. 22.) When completed, these projects produce greened acres that

1 PWD can count toward the compliance requirements specified in the 2011 COA with PaDEP.  
2 (Proposed Finding of Fact Nos. 23-25.)

3 In 2014, the Department added a second program called the Greened Acres Retrofit  
4 Program (“GARP”), which has helped to grow the Department’s incentive programs by  
5 providing stormwater grants directly to project developers or aggregators. (Proposed Finding of  
6 Fact No. 26.)

7 These two incentive programs are key components of the GCCW program, and they help  
8 the Department satisfy the requirements of the COA, which uses greened acres as a metric to  
9 determine compliance. These programs have been very successful and have grown since their  
10 inception. The Department has awarded a total of more than \$30 million in SMIP and GARP  
11 grants. (Proposed Finding of Fact No. 27.) The budgets for both the SMIP and GARP programs  
12 were doubled from \$5 million to \$10 million in FY 2015 (Proposed Finding of Fact No. 28.), and  
13 the SMIP and GARP program budget was fully utilized in FY 2013 through 2015 (Proposed  
14 Finding of Fact No. 29.), suggesting that there may be additional demand for these programs that  
15 could not be met with available funding. Although the Department claims that no applications  
16 were denied for lack of funding in recent years, the Department acknowledges that it could do  
17 more to raise awareness of these programs and that it may be able to work with more applicants  
18 to help them successfully navigate the “rigorous” application review process. (Proposed Finding  
19 of Fact No. 30.)

20 According to the Department’s analysis, the cost of generating a greened acre on private  
21 land using the SMIP and GARP programs (\$90,000) is approximately one-third the cost of  
22 developing a greened acre on public land (\$300,000). (Proposed Finding of Fact Nos. 31-32.)

23

24



**ii. The Budget for SMIP and GARP Should Be Increased.**

As evidenced by the full use of a budget that doubled from FY 2014 to FY 2015 (Proposed Finding of Fact Nos. 28-29.), the Department has experienced significant interest in its SMIP and GARP programs. This success benefitted both the customers who took part in the programs, as well as all PWD customers who will pay a lower rate increase than otherwise applicable. In addition, by satisfying a significant portion of its COA requirements with private stormwater management projects that would not have taken place but for the SMIP and GARP incentives, PWD is able to obtain three greened acres for about the same amount as it would cost the Department to directly create one greened acre on its own. (Proposed Finding of Fact Nos. 31-32.) Clearly, the advantages to both customers and the Department are significant. PennFuture Statement 1 at 16. The Department avoids much higher compliance costs, while the participating landowners save on installation costs and also receive very sizable reductions in their SWMS charges for many years going forward.

Although the Department claims that no applications were denied for lack of funding in recent years, the full subscription of the programs by itself may deter new applicants from seeking to enter what would instantly become a competition for scarce funds. Moreover, as discussed above, the Department acknowledges that it could do more to raise awareness of these programs and that it may be able to work with more applicants to help them successfully navigate the “rigorous” application review process. (Proposed Finding of Fact No. 30.)

As a result, the Board should modestly increase the proposed budget for the SMIP and GARP programs from a proposed value in both years of \$15 million to \$16.5 million in FY 2017 and \$18 million in FY 2018. (PennFuture Statement 1 at 16; Proposed Conclusion of Law No. 5.) Beyond FY 2018, additional increases may be warranted, depending on the results realized in FY 2017 and FY 2018. As discussed above, this revenue would pay three-fold dividends to the

1 Department by decreasing by a third the cost of a greened acre and, thus, decreasing the cost of  
2 compliance with the COA. In the long-term, this improved efficiency is likely to save rate  
3 payers unnecessary fees by decreasing the amount of funding required for compliance with the  
4 COA.

5 **iii. Impact of Increased SMIP and GARP Funding on Rate Increase for**  
6 **FY 2017 and 2018**

7  
8 If the full increases were to be funded on a pay as you go basis, the total revenue  
9 requirement (“RR”) would increase by \$1.5 million in FY 2017 and \$3.0 million in FY 2018.  
10 PennFuture Statement 1 at 16-17. On a percentage basis, the FY 2017 RR would be about 0.19%  
11 (19 one-hundredths of 1% – or 0.0019) higher, and the FY 2018 RR would be about 0.38% (38  
12 one-hundredths of 1% – or 0.0038) higher. *Id.*

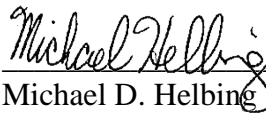
13 These costs are likely to be recouped by ratepayers in the long-term, as the decreased cost  
14 of generating greened acres will result in lower costs of compliance with the COA.

1 **VII. CONCLUSION**

2 For all of the foregoing reasons, PennFuture respectfully requests that the Board find that:

3 (1) PWD's proposed revenue requirements that support the programs and facilities needed to  
4 continue the City's GCCW Program are necessary and reasonable and should not be reduced in  
5 either rate year; (2) the Enhanced CAP program be terminated in three years – by the end of FY  
6 2019 – and that in anticipation of that termination, PWD promote other ways to mitigate  
7 customers' financial burdens while at the same time providing stormwater management benefits;  
8 and (3) funding for PWD's SMIP and GARP programs be increased by 10% in FY 2017 (to  
9 \$16.5 million from \$15.0 million), and by 20% in FY 2018 (to \$18.0 million from \$15.0  
10 million).

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