BEFORE THE

PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

Philadelphia Water Department Proposed Changes in Water, Wastewater and Stormwater Rates and Charges	**:**	**FY 2022-2023**

MAIN BRIEF OF THE PUBLIC ADVOCATE

May 11, 2021

TABLE OF CONTENTS

I. INTRODUCTION

The Philadelphia Water Department (PWD[1]) filed its advance notice on January 15, 2021 and its formal notice on February 16, 2021 with the Philadelphia Water, Sewer and Storm Water Rate Board (Board), seeking the Board's approval of two successive annual increases in rates and charges, to take effect on September 1, 2021 (FY 2022) and September 1, 2022 (FY 2023), respectively. In combination, PWD sought an additional $141 Million in revenues derived from customer rates over the two-year rate period. The active participants in this proceeding included the Philadelphia Water Department, Water Revenue Bureau, Public Advocate, Philadelphia Large Users Group (PLUG), PECO Energy Company/Exelon (PECO), Lance Haver and Michael Skiendzielewski.[2]

Pursuant to the Board's Regulation II.B.1, Hearing Officer Marlane Chestnut was appointed to preside over the rate hearings and to prepare a report to the Board. Hearing Officer Chestnut issued a prehearing order establishing the schedule for this rate proceeding on February 24, 2021. Hearing Officer Chestnut presided over four virtual/telephonic public input hearings on March 16, 2021 and March 18, 2021. The public input hearings were well-attended and more than 70 written submissions were received from individuals and groups. In addition, elected and appointed officials submitted written comments and information for the Board's consideration. All of the foregoing testimony and submissions have been included on the record of this rate proceeding.

[1] As used herein, "PWD" includes the Philadelphia Water Revenue Bureau (WRB), to the extent required by the context.

[2] Five other individuals registered to participate in the rate proceeding, but did not actively participate: Sharon Keselman, Michael Blowney, Kesrick Jones, Jr., Joseph Sherick, and Julianna Martell.

The Public Advocate and other participants engaged in extensive discovery. All told, the Public Advocate issued 17 sets of discovery[3] (445 requests, not including subparts) to PWD and one set of discovery (one request) to PLUG. The Public Advocate submitted prepared written testimony of Lafayette K. Morgan, Jr. (Public Advocate Statement No. 1), Jerome D. Mierzwa (Public Advocate Statement No. 2) and Roger D. Colton (Public Advocate Statement No. 3) on March 22, 2021. Lance Haver submitted prepared direct testimony on March 22, 2021. The Department and PLUG submitted rebuttal testimony on April 7, 2021.

Following the submission of direct and rebuttal testimony, pursuant to the February prehearing conference order, PWD and the Public Advocate engaged in intensive settlement negotiations. Due to uncertainty regarding PWD's projected need for increased rates and charges over the rate period, technical hearings were deferred pending the outcome of the parties' negotiations. As a result of the extensive negotiations, PWD and the Public Advocate reached agreement regarding resolution of the majority of issues raised by their witnesses and responsive to the broad stakeholder concern regarding the magnitude of the proposed rate increase. A final settlement term sheet was distributed to all participants on April 29, 2021. PECO and PLUG expressed their non-opposition to the settlement terms and Messrs. Haver and Skiendzielewski expressed their opposition to the settlement terms.

On April 30, 2021, Hearing Officer Chestnut presided over the technical hearing. The Water Department, Water Revenue Bureau, Public Advocate, PECO and PLUG agreed to mutual waivers of cross-examination of each others' witnesses. Mr. Haver questioned witnesses for the Department and the Public Advocate. Following the technical hearing, Hearing Officer Chestnut issued an order closing the record (with certain exceptions), and establishing the schedule for the

[3] One set of advance discovery was issued prior to PWD's filing of its advance notice. Sixteen sets of discovery, successively numbered, were filed after PWD's advance notice.

balance of the proceeding. An extensive, publicly-available record has been created in this rate proceeding, providing for substantial evidence, adequate to develop issues for presentation to the Hearing Officer.

On May 3, 2021, Mr. Haver submitted a Motion to Compel, requesting that the Public Advocate be directed "to put on the record the name, email address, physical address, and phone number of every civic group, community group, labor union, elected official and individual it contacted regarding the proposed water rate increase" so that "concerned members of the Public can contact them and tell them of the settlement that the Public Advocate secretly negotiated." On May 4, 2021, the Public Advocate filed its answer specifically denying the material allegations of the Motion, but also providing a list of outreach contacts compiled before the public input hearings. The Public Advocate also asserted that Mr. Haver mischaracterized the settlement and that none of the negotiations were conducted in secret, contrary to Mr. Haver's assertions. On May 5, 2021, Hearing Officer Chestnut denied the Motion to Compel, holding that it had been rendered moot by the provision of the Public Advocate's outreach list. Furthermore, Hearing Officer Chestnut stated that "settlement discussions, properly, are confidential to encourage a full and open exchange of proposals and negotiation, to refer to the terms of this settlement as 'secret' is improper and incorrect."

Also on May 5, 2021, PWD and the Public Advocate submitted their Joint Petition for Partial Settlement and Statements in Support thereof. As the Joint Petition recognized, the following issues were reserved for litigation:

> (a) the Department's proposal for implementation of arrearage forgiveness (which was challenged by the Public Advocate who presented an alternative proposal); (b) the Department's proposal for cost recovery of arrearage forgiveness through the TAP Rider (which was challenged by the Public Advocate who presented an alternative proposal); and (c) those issues raised by the individuals who, as active participants, opposed the proposed increased rates and charges by the Department and who expressed opposition to

the Partial Settlement.

Joint Petition ¶11.F.

Accordingly, pursuant to the provisions of the Joint Petition, the Public Advocate submits this Main Brief addressing the issues reserved for litigation.

II. SUMMARY OF ARGUMENT

A. TAP Arrearage Forgiveness

PWD is required to provide arrearage forgiveness as a component of TAP. Pursuant to the Philadelphia Code, "earned forgiveness of arrearages **shall be available** under such terms and conditions as are adopted by regulation."[4] While PWD has adopted regulations that purport to provide arrearage forgiveness, PWD has failed to make arrearage forgiveness meaningfully available to TAP customers. Although PWD customers have been eligible to enroll in TAP since October 2017, virtually no customers have earned forgiveness of pre-TAP principal charges in that time. Notwithstanding the fact that PWD regulations provide that after each year of TAP enrollment a TAP customer can earn forgiveness of pre-TAP principal charges older than 15 years, PWD has provided a demonstratively insufficient amount of principal arrearage forgiveness since 2017. PWD's adoption of an arrearage forgiveness "shelf" in which TAP customers earn full pre-TAP arrearage forgiveness only after two full years of continuous enrollment and twenty-four monthly TAP payments, means that no TAP customer will be eligible for full principal arrearage forgiveness, of balances less than 15 years old, until September 2022 at the earliest. Moreover, PWD's operation of TAP has resulted in significant numbers of application denials and program churn, which, if uncorrected, will continue to prevent PWD customers from receiving arrearage forgiveness.

[4] 19-1605(3)(h.2) (emphasis added).

The Board should require PWD to report monthly on its progress to adopt a structure for arrearage forgiveness that allows TAP customers to earn and realize arrearage forgiveness with each monthly TAP payment. Philadelphia's gas and electric utilities, and regulated utilities across the state, provide monthly arrearage forgiveness to customer assistance program participants under comparable terms to those proposed by the Public Advocate. A monthly earned forgiveness program makes arrearage forgiveness immediately available to TAP customers, as required by the Philadelphia Code, and is likely to incent customer payment, to PWD's benefit.

B. Cost Recovery of Arrearage Forgiveness.

PWD has proposed to modify the calculation of the TAP Rider to include cost recovery of arrearage forgiveness beginning in FY 2023. PWD's proposal should be denied because the uncollectability of billings, including total arrearages of TAP and non-TAP customers alike, are already factored into PWD's cost of service study to support base rates via the "collection factors" utilized in PWD's rate model. Approving PWD's modification to the TAP Rider would unnecessarily increase non-TAP customer bills in FY 2023 by permitting PWD to recover unpaid pre-TAP arrears twice, once through base rates and then again through the TAP Rider.

C. Joint Petition for Partial Settlement

Certain pro se Intervenors expressed opposition to the Joint Petition for Partial Settlement supported by PWD and the Public Advocate, and not opposed by PLUG and PECO. The Hearing Officer should recommend and the Board should approve the partial settlement without modification. The proposed settlement is the product of significant and meaningful compromise. It is supported by substantial evidence on the record, will provide just and reasonable rates to PWD retail customers, and includes specific improvements to customer service and operating

policies to increase access to the Tiered Assistance Program (TAP), promote language access rights, improve tenant bill access, and protect customers during the pandemic.

III. RELEVANT LEGAL STANDARDS

The paramount standard for all utility ratemaking is the constitutionally-based "just and reasonable" standard. The just and reasonable standard requires a rate-making body to conduct a careful weighing of the interests of customers in affordable rates against the financial needs of the utility. This strict legal standard reflects ultimately that utility rates that are not appropriately balanced can become confiscatory, depriving customers of interests in property if they cannot maintain service at rates that are too high, and depriving utilities of revenues necessary to maintain property dedicated to public service if rates are too low. The rate maker must balance the interests of customers in receiving efficient utility service at the lowest possible rates, and the interest of the utility in obtaining sufficient revenues to conduct its operations, maintain its financial integrity, and achieve access to financial markets for revenue bonds at reasonable rates.[5] This constitutionally-based standard is applicable to a municipally-owned utility like PWD with the same force and effect as it is to an investor owned utility.[6] It has been conclusively established that no applicable constitutional requirement is more exacting than the requirement of "just and reasonable" rates, and this requirement applies in the context of municipal rate-making (it is not limited to ratemaking at the Pennsylvania Public Utility Commission (PUC)).[7] Moreover, City Council, in establishing the Board, specifically mandated that "rates and charges shall be just, reasonable and nondiscriminatory," thereby expressly incorporating the constitutionally-based just and reasonable standard.[8]

[5] Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 607 (1944).
[6] American Aniline Products, Inc., v. Lock Haven, 135 A. 726 (Pa. 1927).
[7] See Public Advocate v. Philadelphia Gas Commission, 674 A.2d 1056, 1061 (Pa. 1996).
[8] See Phila. Code §13-101(4)(d).

Satisfying the constitutionally-based "just and reasonable" standard requires a rate maker to base its decision on substantial evidence. The "substantial evidence" standard is a strict standard, resting squarely on the utility, which benefits from no presumption in its favor. Courts evaluating the application of the substantial evidence standard in administrative proceedings have clarified that the sufficiency of the evidence required is directly related to the nature and extent of the authority (i.e., rate increase) requested.[9] Pursuant to its own regulations, the Board "shall fully consider and give substantial weight" to the record and the report to be prepared by the Hearing Officer. The Board must also incorporate (by reference or otherwise) the portions of the record supporting its conclusions.[10]

At the same time, in weighing the interests of customers and the utility, the Board must necessarily consider concerns raised regarding the quality of PWD's customer service.[11] Pennsylvania and federal courts have recognized, in the context of setting just and reasonable rates, that the impacts upon customer service, and the quality of service provided, are within the scope of regulatory consideration. Moreover, neither statutory law nor the Constitution imposes

[9] Lansberry v. Pa. PUC, 578 A.2d 600, 603 (Pa. Commw. Ct. 1990).
[10] Board Reg. §II.3(a).
[11] PWD relies upon a June 6, 2016 Memorandum from then City Solicitor Tulante for the proposition that the Board "does not have the power to direct how the Water Department provides service." PWD Motion in Limine (Colton) ¶8 (withdrawn). While the Public Advocate disagrees with aspects of this Memorandum, and questions the legitimacy of certain conclusions it reaches, the Board is fully vested with the authority to review service issues in the context of establishing rates. Indeed, the Memorandum concludes that "[i]t would be impossible for the Rate Board to determine that rates and charges are 'reasonable' without weighing them to some extent against the service provided." 2016 Final Rate Determination, Appendix B at 45. Furthermore, the Memorandum recognizes that the Board is empowered to "tak[e] into account the impact on revenues" of administrative policies. Id. at 49. Accordingly, the Memorandum in no way prohibits the Board from finding that PWD has failed to provide a service required to be provided, as the Board itself concluded in 2018. See 2018 Final Rate Determination at 80 ("The Board directs the Department to determine what legal barriers must be overcome in order to implement an arrearage forgiveness program as explicitly required under the Philadelphia Code… The Board further directs the Department to report back to the Board on the results of those efforts in a timely manner."). No party appealed this finding and directive of the Board's 2018 Rate Determination.

a unilateral obligation on customers to pay for the cost of service without a reciprocal obligation of the utility to satisfy standards of reasonable service.[12]

In addition to the judicially established authority and obligation of the Board to consider concerns regarding service,[13] it is within the scope of the Board's review to evaluate the extent to which PWD practices are impeding access to services required to be provided in exchange for the rates the Board has approved. Notably, nowhere in the Philadelphia Code or Charter is the term "rate" defined. However, under Pennsylvania law, specifically the Public Utility Code, Section 102, "rate" is defined as:

> Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, ***and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental***.
>
> 66 Pa. C.S. §102 (Definitions) (emphasis added).

[12] See Nat'l Utilities, Inc. v. Pa. PUC, 709 A.2d 972, 979 (Pa. Commw. Ct. 1998), following D.C. Transit Sys., Inc. v. Washington Metro. Area Transit Com'n, 466 F.2d 394, 411 (D.C. Cir. 1972), *cert denied.*

[13] Just as the applicable provisions of the Philadelphia Code and Charter do not define "rate," they likewise fail to define "service." Accordingly, and by analogy, the broad definition applicable under Pennsylvania law should apply. Thus "service" should be understood as follows:

> Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them, but shall not include any acts done, rendered or performed, or any thing furnished or supplied, or any facility used, furnished or supplied by public utilities or contract carriers by motor vehicle in the transportation of voting machines to and from polling places for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election, or in the transportation of any injured, ill or dead person, or in the transportation by towing of wrecked or disabled motor vehicles, or in the transportation of pulpwood or chemical wood from woodlots.
>
> 66 Pa. C.S. §102 (definitions).

Accordingly, and by analogy, the rules, regulations, and practices that affect the availability of a rate to a customer to compensate the utility for the services associated with the rate are inextricable from the rate itself. Indeed, failure or refusal to provide the services associated with the applicable rate cannot be legally-justified. This must be true for the simple and straight-forward reason that if the Board sets the rates, PWD must not be permitted by policy or practice to impede customer access to the services associated with them. Accordingly, as set forth more fully below, in evaluating the availability of TAP rates to low-income customers, the Board must assess the reasonableness of PWD's policy and practice of failing to provide earned forgiveness of arrearages to TAP customers, a service explicitly required by City Council ordinance.

IV. ARGUMENT

A. PWD Has Failed to Provide Arrearage Forgiveness Required in Exchange for TAP Rate Payments

1. Requested Relief

The Board should find that PWD has failed to provide arrearage forgiveness to TAP customers, impeding access to a service required by the Philadelphia Code and inextricably linked to the payment of TAP rates approved by the Board. The Board should require PWD to report monthly on the performance of its arrearage forgiveness policies and any obstacles prohibiting PWD from operating an arrearage forgiveness program that allows TAP customers to earn and realize arrearage forgiveness immediately with each monthly TAP payment. The Board should further require PWD to report monthly on its efforts to reduce TAP denials and TAP churn, which limit the availability of pre-TAP arrearage forgiveness to low-income customers.

2. PWD has failed to make arrearage forgiveness meaningfully available to TAP customers.

Pursuant to the Philadelphia Code, "earned forgiveness of arrearages **shall be available** under such terms and conditions as are adopted by regulation."[14] Since TAP's inception, PWD has promulgated regulations relevant to its duty to provide arrearage forgiveness to TAP customers. These regulations fail to make arrearage forgiveness immediately available and instead require TAP customers to wait years to earn forgiveness.

PWD's current TAP regulations provide, in relevant part, as follows:

> If a Customer maintains continuous enrollment, the Customer will obtain forgiveness of outstanding arrears under the following conditions:
>
> (a) A Customer maintaining enrollment in TAP, who makes twenty-four (24) complete monthly payments of the TAP Bill, will earn forgiveness of penalty charges on pre-TAP arrears.
>
> (b) After each year of continued enrollment in TAP, any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1).
>
> (c) A Customer maintaining continuous enrollment in TAP who makes twenty-four (24) complete monthly payments of the TAP Bill on or after September 1, 2020, will earn forgiveness of pre-TAP arrears. The credit for the pre-TAP arrears will be applied to the Customer's account on or after the twenty-fourth (24th) complete monthly payment of the Customer's TAP bill during such period of enrollment.[15]

PWD's regulations fail to make arrearage forgiveness available in several ways. First, under PWD's regulations many TAP customers have not earned arrearage forgiveness even though they have made full and on-time TAP payments. From July 2017 through December 2020, 34,666 low-income customers were newly enrolled in TAP, bringing a total of $109,603,111 of pre-existing arrears.[16] Yet, as of December 2020, PWD has provided less than $3.1 million in arrearage forgiveness of penalty charges and a measly $2,292 in arrearage forgiveness of

[14] Phila. Code §19-1605(h.2).
[15] PWD Reg. 206.7.
[16] PA St. 3 (Direct Testimony of Roger D. Colton) at 52.

principal charges.[17] As Roger Colton set forth in his testimony "from the inception of TAP, between 75% and 80% of TAP payments made were in-full and on-time. In total, from October 2017 through December 2020, an aggregate of 75.9% of TAP payments made represented in-full and on-time payments."[18] By December 2020, "the sum of TAP payments divided by the sum of TAP bills exceeded 80%. TAP participants, 95% of whom enrolled in the program with a pre-program arrears averaging more than $3,200 per participant, in other words, had paid more than 80% of the dollars they had been billed under TAP during the first 40+ months of the TAP program." [19] Despite this positive payment trend, as of December 2020 PWD had forgiven less than 3% of eligible pre-TAP arrears. The vast majority of TAP customers have not earned arrearage forgiveness as required by the Philadelphia Code.

Second, TAP customers who enrolled in TAP in 2017 carrying pre-TAP arrears less than fifteen years old will not be eligible for arrearage forgiveness of their pre-TAP principal charges until September 2022 at the earliest. This is because PWD's regulations establish that the clock for earning arrearage forgiveness of pre-TAP principal charges (less than fifteen years old) begins to run on September 1, 2020. Customers who enrolled in TAP prior to that date, even customers who have already made twenty-four complete monthly payments while enrolled in TAP, will have to wait until September 2022 to realize arrearage forgiveness of their pre-TAP principal charges. For a TAP customer who enrolled in TAP in 2017, the customer will have waited nearly five years to earn arrearage forgiveness. Moreover, these customers will not earn arrearage forgiveness if they fall out of TAP between then and now for reasons other than being

[17] Id. at 55.
[18] Id. at 45-46.
[19] Id.

over income.[20] PWD's practice is inconsistent with the TAP requirements set forth in the Philadelphia Code, which include arrearage forgiveness (mandating its availability to TAP customers) as part of a single holistic program for customers paying TAP rates authorized by the Board.[21]

Third, while PWD's regulations provide terms for arrearage forgiveness for TAP customers carrying pre-TAP principal charges older than fifteen years, virtually no customers have benefited from this provision.[22] PWD Regulation 206.7(b) provides that "after each year of continued enrollment in TAP, any arrears older than fifteen years will be removed in accordance with Philadelphia Code Section 19-1605(1)"; however, as of December 2020, PWD has inexplicably provided just $2,292 of principal forgiveness.[23] This negligible amount of arrearage forgiveness warrants further investigation. As Mr. Colton testified:

> Consider, however, that TAP participants, to date, have had three ways to earn arrearage forgiveness (above and beyond the 24-month approach starting in September 2020): (1) an arrearage exceeding 15-years in age; (2) an arrearage the forgiveness of which was accelerated in its entirety at the time a TAP participant sought to refinance his or her home through PFHA; and (3) an arrearage a pro rata portion of which was forgiven for all complete payments made to date in the event that the TAP participant had sought to recertify but was found to be no longer income eligible for TAP.
> …

[20] A separate provision of Regulation 206.7 provides that a customer may earn some arrearage forgiveness if the customer is unable to maintain enrollment in TAP for twenty-four (24) consecutive months "due to a change in household income that results in a determination that the Customer is no longer eligible for enrollment in TAP." A customer can only access this partial forgiveness if the customer's reason for falling out of TAP is an increase in income that PWD has determined places the customer outside of eligibility for enrollment. PWD Reg. 206.7(d). A customer who exits the program due to inability to recertify is not eligible for partial arrearage forgiveness under this provision.
[21] Phila. Code §19-1605(3) authorized TAP (née IWRAP) as a single program consisting of several specific and related terms and conditions, including: (1) Board-established affordable bills (§19-1605(3)(a)); (2) PWD's obligation to deliver the most affordable option available (§19-1605(3)(c)); (3) reconnection terms associated with TAP repayment (§19-1605(3)(f); minimum bill requirements (§19-1605(3)(h.1); earned forgiveness of arrearages (§19-1605(3)(h.2); and written determinations and appeal rights (§§19-1605(3)(j), 19-1605(3)(k), 19-1605(3)(l)).
[22] While a one-year shelf is better than a twenty-four month shelf, any shelf suffers from the same design flaw, customers do not immediately realize arrearage forgiveness with each monthly payment.
[23] PA St. 3 at 54-56.

> PWD should be required to provide a complete accounting of the principal arrearage that should have been forgiven under these three existing PWD policies, as compared to the $2,300 of principal arrearages that were reported as having been forgiven in fact (PA-VIII-24). To the extent that principal forgiveness has not been granted where merited, PWD should provide such forgiveness with interest.[24]

In sum, Mr. Colton's testimony supports a finding that PWD has failed to provide arrearage forgiveness consistent with the Philadelphia Code and its regulations and policies.

In rebuttal testimony, PWD witnesses testified that "principal forgiveness was not established until September 1, 2020" and that "there is no principal arrearage that 'should' have been forgiven under existing PWD policies as Mr. Colton suggests." This testimony is flatly contradicted by PWD Regulation 206.7(b), which provides for principal forgiveness for arrears older than fifteen years. PWD did not rebut Mr. Colton's testimony that principal forgiveness is also available in certain circumstances when a TAP customer seeks to refinance his or her home through PFHA, and when a TAP customer seeks to recertify but is found to be no longer income eligible for TAP. PWD has failed to explain why its existing principal forgiveness policies have resulted in TAP customers receiving just $2,292 in principal forgiveness as of December 2020. PWD should be required to account for the failings of its principal forgiveness policies. The insufficient amount of principal forgiveness provided to TAP customers is further evidence that PWD has failed to make earned arrearage forgiveness available to TAP customers as required by the Philadelphia Code.

3. PWD's flawed operation of TAP contributes to TAP customers' inability to earn arrearage forgiveness.

PWD's failure to make arrearage forgiveness available to TAP customers is not merely due to self-imposed and unreasonable limits in PWD's regulations. PWD fails to make arrearage forgiveness available to TAP customers by operating TAP in such a way that large numbers of

[24] Id. at 56-57.

customers are unable to access the program or maintain enrollment long enough to benefit from arrearage forgiveness.

PWD's operation of TAP results in significant numbers of denials for reasons other than customers being over income. Between January 1 and December 31, 2019, PWD fully processed over 23,000 TAP applications.[25] Of those, 6,643, nearly 30% of all TAP applications, were denied.[26] Of the customers denied access to TAP in 2019, only 539, or 2%, were denied for failure to meet income guidelines.[27] Comparatively, 5,072 applicants, approximately 22% were denied for missing or invalid income or residency documentation or missing information on the application form.[28] These customers were unable to earn arrearage forgiveness because they were unable to access the TAP program.

In addition, PWD's data reveals that significant numbers of customers fall out of the TAP program. This turnover or "churn" inhibits customers' ability to access arrearage forgiveness under PWD's current forgiveness structure. In 2019, PWD reported that a whopping 8,094 customers defaulted from TAP.[29] Because PWD's current arrearage forgiveness structure provides a benefit only after the customer has completed twenty-four monthly payments, most customers who fall out of the program receive no arrearage forgiveness, even if they completed monthly payments during the period in which they were enrolled in TAP. Mr. Colton describes this phenomenon succinctly in his testimony, stating in relevant part:

> The 24-month requirement now imposed by PWD means that, despite having paid 80% or more of the bills they have received, PWD participants are not receiving arrearage forgiveness in return for those complete payments. Again, it is important to remember the

[25] PWD St. 5, Schedule SMC-2 at 1.
[26] Id. at 2.
[27] Id. at 9. 14 customers were denied for failure to meet income and residency guidelines. 525 customers were denied for failure to meet income guidelines (no special hardship).
[28] Id. 4,603 customers were denied for missing or invalid income or residency documentation. 469 were denied for missing information on application form.
[29] PWD to PA-XVI-9.

> starting point. From July 2017 through December 2020, 36,514 low-income customers newly enrolled in TAP. Of these new enrollees, 34,666 (95%) enrolled with pre-program arrearages on their account. In December 2020, however, TAP's total enrollment was 16,433 participants, only 45% of the total number of low-income customers who had enrolled in the program.
> …
> Overall, from September 2018 through February 2020, PWD enrolled 19,302 new TAP enrollees, but total TAP participation increased from only 13,894 (September 2018) to 14,245 (February 2020), an increase of 351 participants.
> …
> Of the 36,514 low income customers who newly enrolled in TAP through December 2020, 95% of whom had pre-program arrears, only 16,433 were participating in December 2020. This means that 20,081 of those new TAP enrollees, who had paid a cumulative 80% of their TAP bills, were not able to receive any arrearage forgiveness because of PWD's oppressive 24-month regulation.[30]

PWD has adopted a structure for arrearage forgiveness that requires continuous enrollment in TAP when PWD data shows that significant numbers of customers fall out of the TAP program.

Further, PWD's operation of TAP results in a significant number of customers defaulting from TAP for reasons other than customers being over income. In 2018, of the 292 customers who defaulted from TAP, only one, or .3% of all customers who defaulted from TAP, defaulted for failure to meet income guidelines at recertification.[31] In 2019, of the 8,094 customers who defaulted from TAP, only 67, or .8% of all customers who defaulted from TAP, defaulted for failure to meet income guidelines at recertification.[32] In 2020, of the 1,436 customers who defaulted from TAP, only 17, or 1.2% of all customers who defaulted from TAP, defaulted for failure to meet income guidelines at recertification.[33] PWD did not report any TAP participants for having been defaulted from the program due to non-payment.[34] PWD's TAP reports reveal that the overwhelming majority of TAP defaults are due to the customer's failure to successfully

[30] PA St. 3 at 47-52.
[31] PWD to PA-XVI-9.
[32] Id.
[33] Id.
[34] PA St. 3 at 52.

recertify.[35] Although these customers proved their eligibility for TAP to PWD's satisfaction just a year prior to defaulting, PWD nevertheless determined that these customers were not eligible to recertify. These customers were unable to earn arrearage forgiveness because they were unable to maintain enrollment in the TAP program.

PWD's operation of TAP imposes a major impediment to TAP customers' ability to receive arrearage forgiveness under PWD's current forgiveness structure. Substantial numbers of TAP denials and TAP defaults suggest major deficiencies in PWD's operation of TAP. Customers are not failing to access TAP or maintain enrollment due to income ineligibility but more often due to PWD's policies regarding the completeness of their initial and recertification applications. In order to make arrearage forgiveness available to TAP customers, as required by the Philadelphia Code, PWD needs to assess and modify its policies regarding TAP denials and defaults.

4. Mr. Colton's recommended structure for earned arrearage forgiveness is the optimal structure for the TAP arrearage forgiveness program.

Mr. Colton proposes an improved structure for arrearage forgiveness. He testified as follows:

> Arrearage forgiveness should be ratable for each month in which a TAP participant makes a complete payment. Arrearage forgiveness of 1/24th of a TAP participant's pre-program arrears should vest for TAP participants with each complete payment the participant makes. This pro ration of arrearage forgiveness should begin immediately, with credits granted for payments previously made.[36]

Mr. Colton's recommendation fulfills the letter and spirit of the Philadelphia Code requirement, namely that payment of TAP rates results in earned arrearage forgiveness for TAP customers. His recommendation provides an immediate benefit to TAP customers who are overwhelmingly

[35] Id.
[36] PA St. 3 at 53.

completing their TAP payments while they remain enrolled in the program. In addition, if adopted, Mr. Colton's recommendation would provide an arrearage forgiveness benefit to the many TAP customers who go on to default from TAP due to PWD's ineffective operation of the program.

PWD failed to persuasively rebut Mr. Colton's testimony and recommendations. PWD witnesses testified that they do not agree with Mr. Colton's recommendation and that "current WRB policy is to allow for forgiveness after payment of 24 TAP bills, but participation does not need to be continuous."[37] However, PWD acknowledges that a customer who falls out TAP is "responsible for pre-program arrears until reenrolling in TAP."[38] PWD fails to offer any technical or operational impediment to adopting Mr. Colton's proposed structure for the arrearage forgiveness program.

5. The Board has the authority to require PWD to report on the performance of its TAP arrearage forgiveness program and any barriers to improving the program as suggested by Mr. Colton.

In the 2018 PWD Rate Proceeding,[39] the Board concluded that it had the authority to direct PWD to account for its failure to adopt an arrearage forgiveness program. The Board determined as follows:

> The Board is aware that arrearage forgiveness programs are a common element of low-income payment programs similar to TAP, including the program operated by the City-owned Philadelphia Gas Works. See TR. May 11, 2018 at 130. It is not clear why such a program has not been implemented or even proposed for the Philadelphia Water Department at this time, but the Board directs the Department to seek to work with the Department of Revenue and the Law Department to determine what legal barriers must be overcome in order to implement an arrearage forgiveness program as explicitly required under the Philadelphia Code provision noted above. The Board further directs the Department to report back to the Board on the results of those efforts in a timely

[37] PWD Rebuttal Statement 3 at 22.
[38] Id.
[39] Although it is still the subject of appellate litigation (see Pa. Commw. Ct. Docket No. 1070 CD 2019), no party has challenged this aspect of the Board's 2018 Rate Determination.

manner.[40]

Thereafter, PWD promulgated additional regulations, which provide for the twenty-four month forgiveness shelf at issue in this proceeding. Mr. Colton's testimony demonstrates that PWD's shelf approach to arrearage forgiveness fails to make arrearage forgiveness available to the overwhelming majority of TAP customers. Given that the Board has previously determined that it has the authority to direct PWD to analyze the impediments to implementing arrearage forgiveness as required by the Philadelphia Code, and to report back to the Board in a timely fashion, it follows that the Board continues to possess the authority to direct PWD to analyze the impediments to adopting an arrearage forgiveness program that immediately and meaningfully provides arrearage forgiveness to TAP customers.

Mr. Colton has recommended that arrearage forgiveness be ratable for each month in which a TAP participant makes a complete payment and that arrearage forgiveness of 1/24th of a TAP participant's pre-program arrears should vest for TAP participants with each complete payment the participant makes.[41] PWD has offered no testimony to show that adopting this recommendation is unfeasible or burdensome. PWD's ineffective arrearage forgiveness policies are depriving TAP customers of an essential service associated with TAP participation which is inextricably linked to the payment of TAP rates authorized by the Board. The Board should issue a determination directing PWD to seek to work with any departments in the City that have oversight over the structure of the TAP arrearage forgiveness program to determine what legal and/or operational barriers must be overcome in order to implement an arrearage forgiveness program as recommended by Mr. Colton. The Board should further direct PWD to report back monthly to the Board on the results of those efforts. In addition, because the Public Advocate's

[40] Rate Determination of Water Department Rates and Charges for FY 2019-2020 (July 12, 2018) at 80.
[41] PA St. 3 at 53.

testimony has called into question whether PWD is appropriately providing arrearage forgiveness of principal charges to TAP customers as required by PWD's existing regulations, the Board should direct PWD to report back monthly to the Board on the amount and type of arrearage forgiveness that PWD is providing to TAP customers.

B. Arrearage Forgiveness Should Not Be Recovered Through the TAP Rider

1. Requested Relief

PWD has proposed to modify the TAP Rider to include a mechanism to recover from non-TAP customers a percentage of the amount of pre-TAP arrears forgiven beginning in FY 2023. The Board should reject PWD's proposal, which would increase costs to non-TAP customers for forgiving debt, the uncollectibility of which is already factored into the base rates PWD proposes to charge.

2. PWD's cost of service study projected receipts taking into account payments (and lack of payments) on all billings.

As explained by PWD's consultants (Black & Veatch), projecting retail operating revenues for PWD requires two steps. In the first step, gross billings for water, sewer and stormwater charges are projected, excluding TAP discounts and TAP-R surcharges.[42] In the second step, receipt factors (called "collection factors") based on historical billing and collections are applied to project operating retail cash receipts.[43] As summarized in Black & Veatch's Water & Wastewater Cost of Service Report:

> Projected revenues under existing rates reflect the anticipated cumulative receipts for the water, sanitary sewer, and stormwater services (including retail and wholesale receipts) each fiscal year. The receipts for each fiscal year are estimated based on the projected system billings and the associated projected collection factors.[44]

[42] PWD St. 7A at 12-13.
[43] PWD St. 7A at 13-14.
[44] PWD St. 7A, Sch. BV-5 at 1-8.

The collection factors were calculated by Raftelis Financial Consultants, Inc. (Raftelis) and submitted in a Payment Patterns Report, set forth at Schedule RFC-6 to PWD Statement No. 6.[45] Black & Veatch then incorporated these collection factors into the development of the Cost of Service Study and projected retail receipts. As explained by Raftelis, the Payment Pattern Report, "summarizes billings for each fiscal year, and payments against those billings in each of three timeframes."[46] Per Raftelis, the billings included in the Payment Patterns Report are defined as:

> [S]ervice and usage charges, with creation dates during the fiscal year of interest. Billings do include all City accounts except those designated as PWD accounts; they include only retail customers, excluding any wholesale customers. Total billings are split between Non-Stormwater Only (Non-SWO) and Stormwater Only (SWO) accounts based on the account's installation designation. Payments for accounts other than City accounts are defined as receipt or transfer credits allocated to billings.[47]

Raftelis further explains that:

> Payments in the 'Billing Year' are those that were received by the end of the fiscal year in which they were billed. Payments in 'Billing year +1' are those that were received during the subsequent fiscal year. Payments in 'Billing year +2 and beyond' are those that were received any time after the subsequent fiscal year.[48]

Accordingly, as summarized by Mr. Morgan, Collection Factors are "calculated from the historical payment pattern for each billing year and are summarized in three payment intervals… These collection factors are used to determine the percentage of revenue that is received during each fiscal year."[49]

Of significance to PWD's proposal to recover arrearage forgiveness for TAP participants through the TAP Rider, the calculation of collection factors "is not limited to non-TAP

[45] The Payment Patterns Report is one of three reports produced by Raftelis for use in the cost of service study. PWD St. 6 at 9.
[46] PWD Statement 6 at 10.
[47] PWD Statement 6 at 10.
[48] Id. See also PWD St. 7A, Sch. BV-5 at 1-8.
[49] PA St. 1 at 17.

customers…. [but] is instead applicable to all customers, including both TAP customers and non-TAP customers."[50] Unlike projected billings, which do not take into account the cost or recovery for TAP *discounts*, the collection factors that are applied to determine revenue requirements for retail service are based upon gross billings and gross receipts (excluding PWD) over a nine-year period from FY 2012 through FY 2020. As is clearly shown on Schedule RFC-6 to PWD Statement No. 6, the collection factor is calculated on the basis of operating receipts against Total Billings (excluding only PWD), split between Non-SWO and SWO accounts based on the account's installation designation, and all payments as shown in the Payment Patterns Report.[51] As a result, the total Company collection factors already takes into account payments (and lack of payments) associated with accounts of TAP and non-TAP customers alike.

3. Because PWD does not collect pre-TAP arrears, those billings reduce the collection factor.

As acknowledged by PWD, when low-income customers enroll in TAP, the arrearages on the customer's account at the time of program enrollment are not subject to collection efforts. As explained by Raftelis:

> When an applicant is enrolled in TAP, any water debt on that applicant's account is assigned to one of two debt collection records: a TAPHLD record for principal charges, an TAPPEN record for penalty charges. The debt collection records remain part of the customer's balance, but are not enforced upon.[52]

Black & Veatch similarly affirm that "[f]or qualified TAP Customers, all pre-program arrears are frozen at the time of enrollment. Once enrolled in TAP, the Water Department no longer pursues collection of the customers' existing (or pre-program) arrears."[53] Because TAP customers' pre-TAP bills are not subject to collection, those debts are included in the total billings against which

[50] PA St. 3 at 61-62.
[51] PWD St. 6, Sch. RFC-6.
[52] PWD St. 6 at 13.
[53] PWD Statement 7B at 10.

actual collections are compared. In other words, they have been factored into the historical billings upon which PWD projects anticipated receipts going forward. The result of the inclusion of pre-TAP billings is to reduce the collection factor, thereby forming the basis for higher rates to collect PWD's revenue requirement.[54] Indeed, "[i]f PWD were to remove the pre-program arrearages from the base, its actual collections would be a higher percentage" of historical billings.[55]

PWD did not convincingly rebut this conclusion. To the contrary, PWD acknowledges that the "application and use of the collection factors is to help in projecting future revenues from billings and to provide the Department with revenue sufficient to meet its customer's needs moving forward."[56] PWD further stated that "in the absence of the TAP Rate Rider or any other recovery mechanism, PWD has no ability to recover ***those past due amounts associated with customers in TAP***."[57] These statements concede that recovery of TAP arrearage forgiveness is not necessary in order for PWD to attain sufficient revenues. Moreover, they acknowledge that PWD's objective is to actually collect the pre-TAP arrearages, which are not intended to be collected, in addition to attaining sufficient revenues via base rates utilizing historical collections data.

PWD asserts that "[t]he proposed arrearage forgiveness factor is already weighted to account for data that is outside the reporting period used to establish rates and charges, to specifically avoid double counting."[58] However, this statement fails to rebut Mr. Colton's conclusion. In fact, the "weighting" PWD references appears to rely upon collections data over

[54] PA St. 3 at 62.
[55] PA St. 3 at 63.
[56] PWD St. 3R at 19.
[57] Id. (emphasis added).
[58] PWD St. 3R at 19-20.

the same historical period (FY 2012 through FY 2020) utilized to prepare the collection factors, themselves.[59] Accordingly, PWD's arrearage forgiveness factor simply applies a subset of the same collection data to pre-TAP arrears, without offsetting the collection factors utilized in the cost of service study to increase base rates in the first instance. PWD did not, in rebuttal testimony or otherwise, propose an increase in the collection factor that could make recovery of TAP arrearage forgiveness via the TAP Rider appropriate for consideration.

All billings which are not collected, including pre-TAP bills placed in customers' pre-TAP arrears, are factored into the percentage of collections applied in each of the three aging "buckets" shown in Schedule RFC-6, based on the age of the billings. Thus, PWD's collection factor compensates, via higher rates, for the fact that pre-TAP bills will remain unpaid whether or not forgiven.

4. Including arrearage forgiveness in the TAP Rider would result in double-recovery, and unnecessarily higher bills for non-TAP customers.

PWD's proposal, if approved, would permit PWD to recover pre-program arrears through the TAP Rider, even though non-collection of those very same arrears decreases PWD's collection factor assumptions used in determining higher base rates. As explained by Mr. Colton:

> Unless PWD removes the dollars of pre-program arrearages from the revenue base used to calculate the overall PWD collection factor, base rates are adjusted upwards once to account for the reduced collection factor attributable in large part due to the non-collection of those arrears. Rates are adjusted upwards *again* to include a portion of those arrearages in rates through the TAP Rider as those arrearages are forgiven.
>
> Given that the collectability, or lack thereof, of TAP pre-program arrears is already incorporated into the determination of base rates, the forgiveness of those arrears should not be again recovered through the TAP Rider. The modification of the TAP Rider to reflect arrearage forgiveness as proposed by PWD should be rejected.[60]

[59] See PWD St. 6, Sch. RFC-9.
[60] PA St. 3 at 63.

The unrebutted record establishes that pre-program arrearages associated with the TAP program are already part of the total billings upon which PWD collection factors are premised. Therefore, any approval of an additional mechanism of cost recovery through the TAP Rider would allow PWD to recover these arrearages on two separate occasions, resulting in additional costs to ratepayers. Particularly in light of the expectations customers have likely formed due to the widespread dissemination of the partial settlement term sheet and the mechanism to reduce the FY 2023 rate increase (discussed below), the Hearing Examiner should recommend that the Board deny PWD's TAP arrearage forgiveness proposal. If implemented, PWD's proposal would lead to unjust and unreasonable rates and unnecessarily increase customer bills in FY 2023.

C. The Joint Petition Should be Approved

1. Requested Relief

The Hearing Officer should recommend the Board approve the Joint Petition for partial settlement without modification and over the objections of pro se intervenors Lance Haver and Michael Skiendzielewski (Settlement Opponents). The Settlement Opponents' arguments against approval of the Joint Petition fail to identify any legal or factual basis for denying the Joint Petition and instead either misstate or misconstrue the record and applicable bases for the Board's rate determination.[61]

2. Opposition to the Joint Petition should be rejected

As set forth in its May 5, 2021 Statement in Support of the Joint Petition for Partial Settlement, the Public Advocate submits that, except as set forth in this brief, the rates proposed

[61] Pursuant to the Hearing Officer's April 16, 2021 Order granting PWD's Motion in Limine, any arguments by the Settlement Opponents regarding ostensible violations of public integrity laws, ethical codes, or other misconduct in the administration of PWD's HELP loan program are not properly before the Board in this proceeding.

in the "black box"[62] settlement presented for the Hearing Officer's recommendation, and the Board's final approval, are supported by substantial evidence on the record.[63] Moreover, the Public Advocate submits that the rates presented in the Joint Petition reflect the Department and the Public Advocate's concerted efforts to negotiate a compromise, significantly reducing the rate impact on customers while permitting PWD to achieve the mandates of the 1989 General Bond Ordinance (as amended) and policies to improve customer service and protect customers in the midst of a pandemic. Finally, the Joint Petition subjects the FY 2023 incremental rate increase to downward adjustment to account for the potential federal stimulus funds PWD may receive as well as PWD financial performance. This mechanism seeks to balance PWD's need for certainty that it can meet financial and operating requirements while also promising that customers will benefit, through lower rates, from changes to PWD's financial condition that could not be quantified in this proceeding. For all of the reasons set forth in the Public Advocate's Statement in Support, the Joint Petition and this Main Brief, the Public Advocate submits that the rates proposed in the Joint Petition should be approved as just and reasonable.[64]

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[62] PWD's Statement of Support misstates the record of this proceeding, contending that it made adjustments to its original rate filing to reflect revised pension cost projections and that such adjustments were uncontroverted. PWD presented no such adjustments and the proposed settlement specifically preserved the positions PWD and the Public Advocate had taken in this proceeding. PWD's statement is inconsistent with a "black box" settlement, and appears designed to present, for the first time, a fallback position in the event the Board does not approve the Joint Petition.

[63] PA Statement in Support at 3.

[64] Mr. Haver incorrectly asserts that the settlement is not reasonable and not in the public interest because it allows PWD to "collect what it wants from ratepayers." Lance Haver, Objection to Both the Process and Terms of the Proposed Settlement, filed May 10, 2021 (Settlement Objection) at ¶42. Mr. Haver also claims the settlement "would force consumers to pay more than what the Public Advocates [sic] expert said was needed." Settlement Objection at ¶37. To be clear, Mr. Morgan, on behalf of the Public Advocate, proposed a number of specific adjustments all of which, if approved, would obviate the need for increased rates. PA St. 1 at 6:2-7. While the settlement terms preserve the positions the parties have taken in this proceeding, it is inherent in the notion of settlement that the parties must be willing to accept something other than what was initially sought to end the dispute. In this case, the settlement reflects the reasonable agreements whereby PWD will receive almost 60% less in additional revenues from rates than it initially sought. Furthermore, if approved, PWD will make specific improvements to customer service and operating policies to increase access to TAP, promote language access rights, improve tenant bill

In contrast, the Settlement Opponents raise two primary arguments against settlement:[65] that PWD should not be provided any higher rates based on the potential that federal stimulus funds will be available; and that members of the public were not involved in formulating the proposed settlement terms and so it cannot legally be approved. To the contrary, the proposed settlement rates are based upon PWD attaining the legal minimum debt service coverage allowed under the 1989 General Bond Ordinance (as amended)[66] and specifically take into account the potential for Federal stimulus funds. Moreover, the proposed settlement rates were reached after extensive public input, in compliance with the Board's Regulations, the Philadelphia Code and the City Charter.

As discussed above, the Joint Petition addresses the potential that PWD may receive meaningful stimulus funds in a realistic fashion based upon whether such funds can be received in the short term and utilized for operating expenses. The Settlement Opponents have proffered no basis to anticipate PWD receipt of any specific amount of stimulus funds and, in fact, concede that it is possible none will be received.[67] In response to cross-examination by Mr. Haver, PWD witnesses testified that it is unlikely stimulus funds for capital projects would be received during the rate period.[68] Accordingly, to the extent stimulus funding could benefit ratepayers, the funds would have to be received directly by PWD for operating purposes. There are three realistic

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access, and protect customers during the pandemic. For these reasons, the settlement is both reasonable and in the public interest.

[65] In an effort to summarize the issues, the Public Advocate is disregarding a host of ancillary issues concerning PWD operations that are not addressed in the proposed settlement. See, e.g., Settlement Objection at ¶¶ 30-36.

[66] In response to questions by Mr. Haver regarding whether PWD could provide bondholders lower rates or receive an abeyance, PWD witnesses explained that the potential to do so was limited, and to their knowledge, only conducted in default workouts. April 30 Tr. at 130-131.

[67] See Settlement Objection at ¶¶2, 6.

[68] April 30 Tr. at 74-77 (discussing capital funding potentially available under the Drinking Water and Wastewater Infrastructure Act (S.914), which PWD would not anticipate receiving during the rate period.).

ways in which this could occur: via the Emergency Rental Assistance Program operated by Philadelphia Housing Development Corporation; via CARES Act reimbursements; and via the City's budget process. All three are specifically addressed in the proposed settlement. The Settlement Opponents erroneously contend that PWD is not required to seek such funds;[69] the settlement terms impose on PWD the obligation to utilize its best efforts to obtain them.

Finally, the Settlement Opponents contend that the Joint Petition should not be approved because the proposed settlement terms were established before being made publicly available.[70] This appears to be an extension of the position taken by one Settlement Opponent in written testimony.[71] The Settlement Opponents assert that the settlement terms cannot be approved because they have not been subjected to public hearing.[72] This contention is incorrect. There is no legal requirement that would impose upon settling parties to a rate proceeding a requirement to seek public input prior to presenting a proposed settlement for approval. The caselaw cited in the Settlement Objection simply does not apply to this rate proceeding.[73]

The Settlement Opponents proffer no framework by which public input on the settlement proposal could be meaningfully considered. Furthermore, the Settlement Opponents disregard that any member of the public wanting to be heard in this process had at least three alternative means to do so: (1) to participate in public input hearings; (2) to submit written public input;

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[69] See, e.g., Settlement Objection at ¶24, 39.
[70] See, e.g., April 30 Tr. at 16; Settlement Objection at ¶¶12, 13, 20.
[71] See Lance Haver Direct Testimony at ¶¶12-16 (asserting that public hearings had not been held because stimulus funding amounts were unknown).
[72] Settlement Objection at ¶¶8, 23.
[73] City of Philadelphia v. Weiner, 550 A.2d 274 (Pa. Commw. Ct. 1988), relied upon in the Settlement Objection, was a case challenging an increase in real estate transfer taxes. The Weiner case held that the proposed tax was not considered at a public hearing as required by the City Charter. The case is not applicable in the context of an adjudication of PWD's request for a rate increase where PWD's proposed rates and supporting documentation were subject to extensive public and technical hearing and review, in conformity with the City Charter, Philadelphia Code and Board Regulations.

and/or (3) to register as a participant in the proceedings. The Settlement Opponents fail to recognize that persons choosing to be heard solely via public input have chosen not to engage in the more extensive technical review process detailed in the Board's Regulations. The negotiation of proposed settlement terms is a function properly entrusted to the participants who have elected to formally participate in technical review process in order to evaluate the specific financial assumptions underlying the proposed rate increase.[74]

[74] The Settlement Objection makes myriad incorrect and inflammatory comments. By way of brief response, the Public Advocate does not seek advice or guidance from members of the public on how to represent the interests of "small user" customers, and is not obligated to consult with Mr. Haver or anyone else in doing so. Rather, the Public Advocate is contractually obligated to represent the interests of small users as a group in just and reasonable rates and has at all times zealously done so.

V. CONCLUSION

For all of the foregoing reasons, the Public Advocate asserts that the Board should enter an order granting the following relief:

- Finding that PWD failed to provide arrearage forgiveness to TAP Participants, impeding access to a program service central to TAP rates approved by the Board.
- Requiring PWD to report monthly on: (1) the amount and type of arrearage forgiveness that PWD is providing to TAP customers; (2) the result of its efforts to determine what legal and/or operational barriers must be overcome to implement ratable forgiveness for each month the TAP participant pays the TAP bill; and (3) the efforts PWD is taking to reduce TAP denials and TAP churn.
- Denying PWD's proposal to recover arrearage forgiveness through the TAP rider, which would unnecessarily increase customers' bills in FY 2023 by allowing PWD double recovery for the same uncollectible debt.
- Approving the Joint Petition for Partial Settlement, without modification.

Respectfully Submitted,

/s/ Robert W. Ballenger
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