

PHILADELPHIA WATER DEPARTMENT  
REBUTTAL STATEMENT NO. 3

BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

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| In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater and Stormwater Rates and Related Charges | Fiscal Years 2022 - 2023 |
|--|--------------------------|

**Rebuttal Testimony**

**of**

**Susan M. Crosby, Melissa La Buda,  
Raftelis Financial Consultants  
Black & Veatch Management Consulting, LLC,  
H. Gil Peach, Mark Thompson, and Yvonne Whitelaw**

**on behalf of**

**The Philadelphia Water Department**

Topics Addressed:

Response to COVID-19  
Recovery of Costs for the Tiered Assistance Program (TAP)  
Implementation of Arrearage Forgiveness under TAP  
Design and Operation of TAP  
Customer Service Issues  
PWD's Proposed Reduction of the "Final-Knock" Fee for TAP Participants  
Benefits of Construction Activities

Dated: April 7, 2021

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**I. INTRODUCTION AND PURPOSE OF TESTIMONY**

**Q1. PLEASE STATE YOUR NAMES AND POSITIONS.**

A1. My name is **Susan M. Crosby** and I serve as the Deputy Revenue Commissioner in charge of the Water Revenue Bureau (“WRB”).

Testifying with me are **Melissa La Buda** who is Deputy Commissioner of Finance of the Water Department (“Department” or “PWD”); **Jon Pilkenton Davis, Henrietta Locklear** and **Jennifer (Fitts) Tavantzis** who constitute a panel from Raftelis Financial Consultants (“RFC”); **Ann Bui, Dave Jagt** and **Brian Merritt** who are members of the Black & Veatch Management Consulting, LLC (“Black & Veatch” or “B&V”) team; **H. Gil Peach, Mark Thompson, and Yvonne Whitelaw** who constitute a panel from H. Gil Peach & Associates (“HGP”).

**Q2. HAS ANYONE ON THIS PANEL PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?**

A2. Yes. I provided testimony in PWD Statement 5. Ms. La Buda provided testimony in PWD Statement 2. RFC provided testimony in PWD Statement 6. Black & Veatch provided testimony in PWD Statements No. 7A and 7B. HGP provided testimony in PWD Statement 8.

**Q3. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

A3. In this rebuttal, we provide our response to some of the concerns and criticisms that Mr. Roger D. Colton has expressed in his direct testimony (PA Statement 3) on behalf of the Public Advocate.

We specifically address the following areas of Mr. Colton’s testimony:

- Response to COVID-19
- Recovery of Costs for the Tiered Assistance Program (TAP)
- Implementation of Arrearage Forgiveness under TAP
- Design and Operation of TAP
- Customer Service Issues
- Reduction of the “Final-Knock” Fee for TAP Participants
- Benefits of Construction Activities

**Q4. PLEASE IDENTIFY THE SCHEDULES THAT ACCOMPANY THIS REBUTTAL TESTIMONY.**

A4. The following schedules accompany our rebuttal testimony.

Schedule SMC-3: Implementation Estimates

Schedule BV-R1: Collection Factor Comparison

**II. PWD’S RESPONSE TO COVID-19**

**Q5. PLEASE DESCRIBE THE CITY’S RESPONSE TO THE COVID-19 PANDEMIC.**

A5. The City has already taken numerous steps to shield our customers from higher rates during the pandemic. In the first instance, PWD withdrew its 2020 rate increase request. Moreover, in March 2020 the City imposed a moratorium on shut-offs and service terminations through April 2021. This moratorium has been extended to April 2022. Also, PWD restored service to all residential customers that were shut-off before the start

1 of the moratorium. Please note that service was restored unless unsafe plumbing  
2 conditions were discovered.

3  
4 It bears emphasis that TAP participants will not be impacted by the rate increases  
5 proposed in the current proceeding (their bills are capped based upon household income).

6  
7 In addition, PWD halted all collection activities including: accrual of penalties, breaches  
8 of payment agreements, referrals to outside collection agencies, referrals to Municipal  
9 Court, and referrals for Sheriff Sale. TAP customers who were eligible for payment  
10 agreement breaches and/or recertifications were a part of a targeted outreach informing  
11 them they could submit a Change of Circumstance Application. It bears emphasis that  
12 TAP participants will not be impacted by the rate increases proposed in the current  
13 proceeding (their bills are capped based upon household income). Additionally, PWD has  
14 been working with UESF on a plan for distributing \$1.2 million<sup>1</sup> in relief to TAP and  
15 Senior Citizen Discount customers. PWD is also working with Philadelphia Housing  
16 Development Corporation (PHDC) to administer grants of up to \$2,000 for qualifying  
17 tenant and landlord customers. Finally, while penalties will begin to accrue on May 1,  
18 2021, any debt accumulated during the pandemic will be shielded and will not be charged  
19 penalties. Senior Citizen Discount customers will also not be charged penalties after May  
20 1. TAP customers will not, and have not ever been, charged penalties.

21  
22  
23  
24  
25  

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<sup>1</sup> UESF is providing \$600,000 in aid and PWD is matching that amount with another \$600,000.

**Q6. DOES MR. COLTON RECOMMEND THAT ADDITIONAL ACTIONS BE  
TAKEN BY THE CITY IN RESPONSE TO THE COVID-19 PANDEMIC?**

A6. Yes. Mr. Colton's recommendations on this topic fall into three categories. First, an extension of the shut-off moratorium. PA Statement 3 (Colton) at 30. Second, special participation rules for TAP. PA Statement 3 (Colton) at 31. Third, a special emergency relief program for residential customer not eligible for TAP. PA Statement 3 (Colton) at 4-5, 31.

**Q7. DO YOU HAVE AN OVERALL RESPONSE TO MR. COLTON'S  
CONCLUSIONS AND RECOMMENDATIONS REGARDING THE COVID-19  
PANDEMIC.**

A7. Yes. To begin, we note that Department filed a Motion In Limine to exclude this part of Mr. Colton's testimony. That Motion argues that this topic is outside of the Rate Board's limited jurisdiction. If the Motion in Limine is granted, Mr. Colton's testimony, in this subject area, is requested to be excluded/stricken from the record.

That being said, please note that the City has already taken numerous steps to shield our customers from higher rates during the pandemic as stated in response to Question 5 above.

A. Extension of Shut-Off Moratorium

**Q8. MR. COLTON'S RECOMMENDS EXTENDING THE SHUT-OFF  
MORATORIUM. PA STATEMENT 3 (COLTON) AT 30. DO YOU AGREE?**

A8. No. As explained in response to the previous question, the City has carefully formulated a balanced approach to protect PWD customers and help maintain the safe and reliable

1 operation of this utility. Unlike PWD’s sister utilities which have already begun  
2 terminating service, PWD has extended the shut-off moratorium until April 2022.  
3 Moreover, the City is actively engaged in securing grants and assistance through UESF  
4 and PHDC. In addition, PWD has taken steps to reduce its revenue requirement. See,  
5 PWD Rebuttal Statement 2. The resources associated with all of these efforts redound to  
6 the benefit of our customers.

7  
8 B. Special Participation Rules for TAP

9 **Q9. MR. COLTON ALSO RECOMMENDS SPECIAL PARTICIPATION RULES**  
10 **FOR TAP. PA STATEMENT 3 (COLTON) AT 31. DO YOU AGREE?**

11 A9. No, we do not agree. In PA Statement 3, Mr. Colton recommends suspending the removal  
12 of TAP participants due to a failure to recertify through June 30, 2023. The recertification  
13 process has been suspended since March 2020, but WRB has plans to resume customer  
14 assistance program recertifications in the near future. Recertifications ensure that  
15 customers who remain eligible for assistance receive an affordable bill, and those that no  
16 longer demonstrate eligibility for a given program are not improperly receiving a  
17 discounted bill, subsidized by other ratepayers.

18  
19 Customers are reminded to recertify 60 days ahead of their program end date, and are  
20 reminded more than once. If an application is incomplete, customers also receive an  
21 “incomplete” letter requesting the missing information. When recertifications resume,  
22 customers will also be able to recertify online.

23  
24 There is ample opportunity for customers to submit an application, and therefore to  
25 successfully recertify if they remain eligible, prior to their participation ending. In PA

1 Statement 3, Mr. Colton also recommends immediate enrollment of customers into TAP  
2 at the highest percentage of income bracket upon self-certification of income. This is  
3 unnecessary. WRB has remained able to accept and process applications in a timely  
4 manner, even during the pandemic. Please refer to the response to PA-III-9. The  
5 application is not too onerous, nor the processing too slow, to warrant a new self-  
6 certification process. Additionally, removing the current application process would  
7 contravene Section 19-1605(3)(c) of the Philadelphia Code. Pursuant to that Section,  
8 PWD is required to place a customer in the most affordable payment plan available. An  
9 application must be filled out in order for PWD to do this.

10  
11 C. Special Emergency Relief Program

12 **Q10. MR. COLTON RECOMMENDS A SPECIAL EMERGENCY RELIEF**  
13 **PROGRAM FOR RESIDENTIAL CUSTOMERS NOT ELIGIBLE FOR TAP. PA**  
14 **STATEMENT 3 (COLTON) AT 4-5, 31. DO YOU AGREE WITH THIS**  
15 **RECOMMENDATION?**

16 A10. As explained in response to Question 5, the City has already formulated a balanced  
17 response to COVID-19 impacts. The benefits we propose to leverage involve a  
18 combination of funding through UESF, PHDC, and other sources. See also, PWD  
19 Rebuttal Statement 1.



**III. PWD'S RECOVERY OF COSTS FOR TAP**

**Q11. DOES MR. COLTON CONTEST THE DEPARTMENT'S RECOVERY OF TAP RELATED COSTS?**

A11. Yes. Mr. Colton falsely argues that PWD is over recovering TAP related costs. PA Statement 3 (Colton) at 32-43. Mr. Colton makes 12 "findings" about TAP. PA Statement 3 (Colton) at 33-36. Based on his "findings," Mr. Colton indicates that there is an over recovery by PWD. PA Statement 3 (Colton) at 33-36. He further opines that arrearage forgiveness credits should not be recovered through the TAP Rider. PA Statement 3 (Colton) at 5, 36, 40. His position is that PWD has already recovered these costs.

In this case, Mr. Colton is advancing a new theory of revenue reduction that should be rejected.

In earlier work, Mr. Colton emphasized the "Net Back Ratio" (NBR) as a metric to assess the cost-effectiveness to utilities of affordable payment programs. In this earlier era, affordable payment programs were being introduced, as directed by the Pennsylvania Public Utility Commission, and one of the questions was if the programs would provide a return to utilities that was better than the revenue recovery in the absence of affordable payment programs. The emphasis was on maximizing revenue recovery to the utility by providing bills meaningfully lower than bills at cost-of-service rates to customers at or below 150% of the federal poverty income guidelines,<sup>2</sup> and recovering the full difference from other customers. The two quotes below indicate the philosophy of the method:

---

<sup>2</sup> That is, customers whose incomes would not support payment at conventional cost-of-service rates.

- 1 • “Even though the billed amount will decrease, the amount of revenue actually  
2 collected will increase. The concept behind this statement is simple: It is better to  
3 collect 95 percent of a \$70 bill than it is to collect 50% of a \$100 bill.” Colton,  
4 Roger, “A Cost-based Response to Low-Income Energy Problems,” Public  
5 Utilities Fortnightly, March 1, 1991.)
- 6 • “...a soundly reasoned, economically-based program that minimizes utility losses  
7 and maximizes customer contributions makes good business sense. Affordable  
8 payment programs should be designed to increase the “net back” to utilities (that  
9 is, the net revenues collected from customers after collections expenses and other  
10 costs are netted out).” Colton, Roger & Ron Elwood, “A Cost-based Response to  
11 low-Income Energy Problems,” Public Utility Fortnightly, March 1, 1991.

12  
13 We note that at that time, Mr. Colton argued “...a soundly reasoned, economically-based  
14 program that minimizes utility losses and maximizes customer contributions makes good  
15 business sense.” [emphasis added]

16  
17 Mr. Colton’s testimony for Part II, TAP Rate Issues does not support full recovery at  
18 cost-of-service rates. So far as we are aware, Mr. Colton has promoted his revenue  
19 reduction argument in Pennsylvania cases for perhaps a little more than a year with no  
20 buy in from utilities. There may be one or more cases in which a settlement agreement  
21 permitted some piece of the Mr. Colton’s revenue reduction argument without agreement  
22 to the method, and with the provision that it is open to challenge in the following rate  
23 case.

24 Since the revenue reduction argument is more of a concept than a specific mechanism, it  
25 appears somewhat amorphous from case to case. As far as we are aware there is no  
specific revenue reduction algorithm. This amorphous nature makes it possible to damage  
revenue recovery in a case and return in the next case to push for additional revenue  
reduction.

1  
2 Mr. Colton has provided no explanation of the derivation of his revenue reduction  
3 proposals. That is, no logic for moving from minimizing utility losses and maximizing  
4 customer contributions to the argument against good business sense to reduce revenue  
5 recovery.

6  
7 Mr. Colton has also not provided any citations to the utility rate-making literature to  
8 justify derivation of his new theory of revenue reduction.

9  
10 Under the United States systems of utility regulation, and with the exception of  
11 decoupled utilities, which establish equivalent results through an alternative mechanism,  
12 rates are set beginning with a cost-of-service study. Revenue requirements are derived  
13 from the cost-of-service study and approved in a regulatory hearing. The way the utility  
14 works is to collect at the full cost-of-service rate. For low-income payment assistance  
15 programs, collection is of a reduced amount for customers in the program with the  
16 balance collected from other customers.

17  
18 Mr. Colton's theory of reduced revenue recovery is not consistent with free-market  
19 approximation principles or the standard of just and reasonable rates. Under the just and  
20 reasonable rates standard, the utility is entitled to revenue recovery up to cost-of-service  
21 amounts. This approximates what a utility in a free market would be entitled to recover.  
22 Anything short of that damages the utility and the basis of the regulatory system.

23  
24 Full cost recovery is essential to PWD's ability to meet its obligations and to maintain  
25 reasonable financial reserves. Moving away from just and reasonable rates and full cost

1 recovery will place PWD financial reserves at risk, moreover, as demonstrated in this  
2 proceeding, Mr. Colton's new theory is a slippery slope.

3  
4 The future is unknown and is characterized by deep uncertainty and the critical need to  
5 continue to build the resiliency of the water and wastewater systems. In this context, Mr.  
6 Colton's new theory of revenue reduction is too risky and should be rejected.

7  
8 **Q12. DO YOU AGREE WITH MR. COLTON'S PROPOSED APPLICATION OF A**  
9 **COLLECTABILITY OFFSET OF 45% TO TAP CREDITS (I.E. TAP**  
10 **DISCOUNTS)?**

11 A12. No. The premise for Mr. Colton's collectability offset appears to be based primarily on  
12 the assumption that TAP discounts are included in base rates (see PA Statement 3  
13 (Colton) at 36, lines 6 to 11):

14  
15 The participation by low-income customers in TAP, in other words, does not  
16 create "new" costs. Instead, participation in TAP simply moves the unpaid bills  
17 out of the group of customers known as "residential" customers and into the  
18 group of customers known as "TAP participants." To allow the dollars of TAP  
discounts to be added to the TAP Rider without correspondingly adjusting for  
those dollars that already have been included in base rates allows PWD to collect  
those dollars in both places.

19  
20 First, no portion of TAP Discounts are included in base rates as shown in Table C-1A  
21 (see PWD Statement No. 7A, Schedule BV-1). Base rates are premised upon the  
22 corresponding test year cost of service. Since the 2018 Rate Determination, no portion of  
23 the TAP Discounts have been included in base rates. Base rates are established based  
24 upon projected customer receipts outside of TAP Discounts and incorporated separately  
25 via Table C-1B (see PWD Statement No. 7A, Schedule BV-1).

TAP does not move unpaid bills out of one group of customers to another. Rather, “the bill discount provided to TAP customers (and therefore can never be collected from that group) is a “new cost burden” imposed on other ratepayers (the Non-TAP customers). The ‘lost billings’ from TAP customers have to be billed to Non-TAP customers for PWD to meet its revenue requirements.” PWD (2019) Rebuttal Statement 5 at 6.<sup>3</sup> That statement was true in 2019 and still holds true today.

The TAP discount is the difference between the full cost-of-service-based bill and the TAP-based bill, which is a fixed amount based upon their individual income. Further, the discounted portion of TAP Bills would not be recovered via Non-TAP Customers if it were not for the TAP Rate Rider. TAP Discounts are not included in base rates nor are any amount of TAP Discounts recovered from customers via Base Rates.

**Q13. PLEASE COMMENT ON MR. COLTON’S DEVELOPMENT OF LOW INCOME COLLECTION FACTORS.**

A13. Mr. Colton’s derivation of a 45% low-income collection factor selectively applies the available data. A better comparison of the various payment patterns would be to look at the overall performance over time.

|                              | Senior Citizen Discount Customers | TAP Customers | TAP Customers Outside of Enrollment | Non-Stormwater Only System-Wide (Proposed) |
|------------------------------|-----------------------------------|---------------|-------------------------------------|--|
| Cumulative Collection Factor | 94.95%                            | 92.29%        | 67.17%                              | 97.3%                                      |

<sup>3</sup> <https://www.phila.gov/media/20180504173010/PWDRebuttalTestimonyNo5Colton20180504FINAL.pdf>

1 As presented in the table above the collection factor for TAP Customers Outside of  
2 Enrollment is 67.17%, when derived in the same manner as used to develop system-wide  
3 collection factor utilized in the Cost of Service analysis; Mr. Colton’s proposed  
4 “collectability offset” of 45%, is far less than the overall average collection factor for  
5 TAP Customers Outside of Enrollment. A comparison of the various collections factors  
6 in comparison to the system-wide non-stormwater only collection factor is presented in  
7 Schedule BV-R1.

8  
9 Finally, in setting rates and charges for the recovery of special customer discounts, the  
10 individual customer group’s payment patterns are not considered because we apply a  
11 system-wide collection factor to project receipts. This approach is used consistently in  
12 developing all discounted rates, including the Senior Discount, the Charities/Schools  
13 Discount, the PHA Discount. In the same manner, the TAP Rate Rider consistently  
14 applies the system-wide collection factor to reconcile provided TAP discounts and  
15 collected revenues. Setting a rate based upon an approach that differs that the one used to  
16 develop all other discounted rates is inconsistent. Moreover, doing so, introduces  
17 uncertainty regarding the interplay between the established system-wide collection factor  
18 and the proposed new factor.

19  
20 The Department does not agree to the use of the low-income collection factor, not solely  
21 because data specific to PWD was unavailable. Retail customer rates are established on a  
22 system-wide basis, and separate rates are not derived by class. Use of the system-wide  
23 collection factor in context of the TAP Rate Rider is the most appropriate application (of  
24 the collection factor) in this case.

**Q14. IS THERE ANY INFORMATION THAT THE RATE BOARD SHOULD BE  
AWARE OF WHEN CONSIDERING REVISIONS TO THE TAP RATE RIDER?**

A14. Yes. The TAP Rate Rider was intended to be administratively simple. In addition, it was a construct that reflects the fact that PWD/WRB cannot impose a separate surcharge on individual or specific customer types due to the current billing system and associated limitations. As a result, TAP-R revenues cannot be tracked separately; they are only estimated in context of the TAP Rate Rider. There is no separate balancing account to enable detailed tracking of revenues, whereas provided TAP discounts are reported upon using the CAMP Database.

TAP Rate Rider is designed and intended to recover the TAP discount provided to TAP Customers from Non-TAP Customers. The TAP discount reported is the difference between the TAP Customers' Income Based Bills and the Cost of Service based schedule of Rates and Charges. The Cost of Service based schedule of Rates and Charges are developed using a System-Wide Collection Factor, which represents the historical average payment pattern for all customer types. In context of the Rate Rider, two adjustments are made when reconciling the actual TAP Discount provided to TAP Customers:

1. Because the existing billing system doesn't provide the capability to have a separate surcharge nor specific customer types, as such, the TAP-R is added to the quantity charges for water and sewer service. When determining the amount of TAP Discounts provided for reconciliation purposes the amount of TAP-R billed to TAP Customers is removed.
2. Because the remaining TAP-R discount is based upon cost of service-based rates, which are established using the system-wide collection factor, the TAP Discount is further reduced by application of said factor. This removes the portion of rates which were adjusted for future revenue sufficiency based on the system-wide collection factors.

1 Under the current TAP Rate Rider and associated calculation methodology, the total  
2 system-wide collection factor is applied. This is a multi-year collection factor. Meaning it  
3 represents all payments received over time. Since rates and charges are established using  
4 the system-wide collection factor and TAP-R revenues are reconciled annually, the  
5 reconciliation calculation should reflect this. In addition, the reconciliation calculations  
6 do not reflect the fact that some Non-TAP customers also receive special customer  
7 discounts (i.e., seniors, PHA, charitable/educational institutions as identified in PWD  
8 Rates and Charges Section 5.2).

9  
10 To better reflect actual performance, the TAP-R Formula should be modified as follows:

- 11  
12 • The E-FACTOR should be adjusted so that, only the billing year collection factor  
13 is applied to Non-TAP Revenues, as follows:
  - 14 ○  $E = (\text{TAP Discount Provided}) \times (97.3\% - \text{System Wide Collection Factor used for rate making}) - (\text{TAP Billings}) \times (86.60\% - \text{Billing Year Collection Factor})$
- 15  
16 • The determination of TAP-R Revenues from Non-TAP Customers is based upon  
17 billed volumes. Billed volumes for Non-TAP customers should be adjusted to  
18 reflect the discounted portion of the bills for each respective special customer  
19 group as stated and PWD's Rates and Charges (i.e. PHA, Seniors, Charities and  
20 Schools).

21 The above adjustments would more appropriately: 1) adjust TAP discounts for the  
22 collection factor utilized in establishing the rates and charges, against which the provided  
23 TAP Discounts should be measured; 2) reflect that the TAP-R surcharges are only valid  
24 for one fiscal year; and 3) account for TAP-R revenues by accounting for special  
25 customer discounts.



1 **Q15. MR. COLTON CLAIMS THAT PWD IS OVERCOLLECTING REVENUES. DO**  
2 **YOU AGREE WITH MR. COLTON'S POSITION? IN PROVIDING YOUR**  
3 **RESPONSE, PLEASE FURTHER EXPLAIN THE PURPOSES AND INTENDED**  
4 **USE OF THE COLLECTION FACTOR.**

5 A15. No. We do not agree.

6  
7 Mr. Colton's analysis seems to ignore that the TAP Rate Rider already includes a  
8 reconciliation component, that is specifically designed to reconcile the amount of TAP  
9 Discounts provided with the estimated revenues recovered via Non-TAP Customers.

10  
11 As previously noted, the TAP Discount is not recovered via Base Rates.

12  
13 The Department must project their finances on a cash-basis and rates and charges must  
14 reflect anticipated receipts. The collection factor is intended to aid in projecting future  
15 revenues based upon billings and establishing rates that will provide sufficient revenues  
16 to meet the Cost of Service. The collection factors are not applied with the intent to allow  
17 the Department to recover prior arrears or unpaid bills retrospectively. There is no over-  
18 collection of costs because rates are set prospectively, not retrospectively. PWD has not  
19 borrowed monies to cover unpaid bills nor has the Department included bad debt as an  
20 expense in their analysis.

21  
22 In accordance with the General Bond Ordinance, PWD must set rates and charges on a  
23 receipts basis.

- 24  
25
  - The use of the collection factor is to project future receipts, such that the Department has sufficient revenue to meet revenue requirements and meet the

various financial metric and legal requirements as set forth in the General Bond Ordinance.

- Collection factors are not used to cure unpaid bills nor are they used to pay down outstanding bills or arrears.
- The Department uses the multi-year payment pattern and they continue to collect on past due bills over time, which results in a higher total collection factor.
  - Over-collection is not occurring on a system-wide basis.
  - If the Department were only to utilize the billing year collection factor of 86.6% in establishing rates and charges, rates would be set too high.

Mr. Colton proposes that the Department must credit customers back for “over collection.” However, the Department is not a “Company” nor an IOU. There is no profit motive in any of their financial metrics nor in setting rates and charges. Any over-performance on the revenue side, is ultimately returned to the customer, in either the form of managing future rate increases and/or investments into the water and sewer system infrastructure as well as ongoing operational needs.

- For base rates, whenever revenues exceed total expenses and obligations in a fiscal year, the Department deposits that money into the Rate Stabilization Fund, which serves as the Department’s primary reserve fund.
  - It is also used help manage rate increases when feasible.
  - Consider in the context of this proceeding, the Department has projected to use the RSF to sustain operations and meet financial requirements for FY 21. In fact, the Department has utilized RSF funds to meet obligations and other financial requirements the past 5 years.
  - By foregoing a rate adjustment in FY 21 and utilizing the RSF continually, the Department has indirectly “credited” customers.

1 **Q16. DO YOU AGREE WITH MR. COLTON’S POSITION THAT THE**  
2 **DEPARTMENT SHOULD NOT BE ALLOWED TO COLLECT ANY PORTION**  
3 **OF FORGIVEN TAP CUSTOMER ARREARS?**

4 A16. No. We do not agree.

5  
6 Mr. Colton states that “The ‘lost revenue adjustment factor of 9%’ is an  
7 acknowledgement of the fact that PWD would fail to collect 91% of the billed revenues  
8 included in the pre-program arrears even in the absence of the TAP arrearage  
9 forgiveness.”

10  
11 This statement misrepresents both the purpose of the lost revenue adjustment factor and  
12 the underlying analysis. TAP arrearage forgiveness policy does not allow the Department  
13 to currently collect on any forgiven TAP arrears. In fact, enforcement activities have  
14 ceased and payments against the outstanding balances are no longer required. PWD does  
15 not collect on any associated penalties or interest. The lost revenue adjustment factor, as  
16 described in PWD Statement 7B, is intended to provide a simplified method to allow  
17 PWD to recover a portion of forgiven arrears regardless of age. Once a customer applies  
18 for the TAP, their arrears are “roped off” and enforcement activities cease.

19  
20 The proposed Lost Revenue Adjustment Factor uses the payment pattern of TAP  
21 Customers Outside of Enrollment to estimate how balances (or arrears) might change  
22 over time. The result is a weighted average based upon the age of the arrears as of the end  
23 of FY 2020. In fact, the proposed Lost Revenue Adjustment factor was revised from the  
24 prior analysis to the figure currently proposed.

25 As we have indicated before, the statement that “PWD would fail to collect 91% of the

1 billed revenues included in the pre-program arrears even in the absence of the TAP  
2 arrearage forgiveness” misrepresents the intent of the Lost Revenue Adjustment Factor.  
3 The Lost Revenue Adjustment Factor is intended to provide a simplified factor, that can  
4 be applied to actual arrears forgiven regardless of age. This eliminates the need to apply a  
5 balance factor to the age of the arrears, track individual and report the age of individual  
6 customer for reconciliation purposes. This is evident, in comparing the previously  
7 proposed Lost Revenue Adjustment Factor versus the current version. The prior analysis  
8 proposed a Lost Revenue Adjustment Factor of 10% and the current proposal is 9%. The  
9 reason for this is that, in developing the Lost Revenue Adjustment Factor, we apply an  
10 average balance factor, intended to reflect the percentage of the outstanding payment that  
11 would be received based upon the age of the arrears against the current aged arrears.  
12 Since that analysis, the arrears have aged but the balance factor is little changed in  
13 comparison. This has more to do with the TAP policy of roping off arrears than the  
14 amount of the outstanding balance that might have otherwise been paid.

15  
16 Currently, the average balance factor (which represents data from FY 2012 to FY 2020)  
17 is applied to the pre-program arrears based upon their age as of the end of FY 2020. This  
18 is not necessarily the same as it would be had data been available prior to the  
19 development of the program or even now. Immediately prior to entering the program,  
20 there is a greater likelihood that the amounts from the most recent 24-month period  
21 would be recovered either from the customer or via some other means (such as UESF  
22 Grants or other sources).

23  
24 Mr. Colton advocated for the implementation of TAP Arrearage forgiveness, which the  
25 WRB and the Department have included. Further, based upon Mr. Colton prior proposals,

1 PWD has proposed to recover a portion of TAP arrearage forgiveness in the TAP Rate  
2 Rider. PWD's proposed Lost Revenue Adjustment Factor is based upon actual  
3 Department data. Allowing PWD the ability to collect 9% of the overall arrears that are  
4 actually forgiven, is not unreasonable. In fact, if for example the entire \$39 million in  
5 Pre-Program TAP arrears, used in developing the proposed "Lost Revenue Adjustment  
6 Factor" were forgiven, PWD would only propose to collect \$3.6 million of that amount.  
7 The proposed revisions to the TAP Rate Rider would only allow PWD to recover the  
8 amount of arrears actually forgiven prior the associated reconciliation filing. This is  
9 likely to be some amount less than the \$39 million cited here.

10  
11 Mr. Colton further states that "The dollars of PWD arrearage forgiveness credits are  
12 already reflected in PWD's calculation of its base rates." To be clear, the purpose of the  
13 application and use of the collection factors is to help in projecting future revenues from  
14 billings and to provide the Department with revenue sufficient to meet its customer's  
15 needs moving forward. The collection factors are not intended to collect on prior unpaid  
16 bills or outstanding arrears. Those amounts still remain the responsibility of the  
17 customers. In absence of the TAP Rate Rider or any other recovery mechanism, PWD has  
18 no ability to recover those past due amounts associated with customers enrolled in the  
19 TAP.

20  
21 Mr. Colton's denial of the arrearage forgiveness factor presupposes all TAP Customers  
22 will meet the arrearage forgiveness requirements and that PWD should pre-emptively  
23 adjust collection factors, even in light of the fact that these arrears have not been paid.  
24 The proposed arrearage forgiveness factor is already weighted to account for data that is  
25 outside of the reporting period used to establish rates and charges, to specifically avoid

double counting.

Again, the TAP Rate Rider is intended to be administratively simple, repeatable and reconcilable and related to how the overall rates and charges are established, reflecting the corresponding cost of service analysis.

#### **IV. IMPLEMENTATION OF ARREARAGE FORGIVENESS UNDER TAP**

##### **Q17. HAS THE CITY MADE POLICY DETERMINATIONS REGARDING ARREARAGE FORGIVENESS?**

A17. Yes. PWD and the Department of Revenue issued regulations after public hearing on arrearage forgiveness on March 13, 2017, which took effect when TAP launched on July 1, 2017. Section 206.7(a) of the regulations allowed for TAP customers to receive forgiveness of outstanding penalty charges on pre-TAP arrears after twenty-four (24) consecutive monthly payments of the TAP Bill. Amendments to the regulations were issued after public hearing on February 10, 2020, which took effect when principal forgiveness launched on September 1, 2020. The amendments to Section 206.7(a) removed the requirement that the monthly payments be consecutive to receive forgiveness of outstanding penalty charges on pre-TAP arrears. The amendments to Section 206.7(c) allowed for TAP customers to receive forgiveness of outstanding pre-TAP arrears after twenty-four (24) monthly payments. The addition of Section 206.7(d) allowed for partial forgiveness of pre-TAP arrears if the TAP customer is no longer eligible for continued participation due to a change in household income.

**Q18. IS THE DEPARTMENT'S PROPOSAL FOR ARREARAGE FORGIVENESS  
CONSISTENT WITH THE ABOVE-DESCRIBED POLICY  
DETERMINATIONS?**

A18. Yes. The City's current policy has forgiveness being earned after twenty-four (24) payments, but these payments do not have to be consecutive. For example, if a TAP customer makes twelve (12) payments but fails to recertify, when the customer applies and is accepted back into the program, the count will pick up at twelve (12). They will not have to make twenty-four (24) brand new payments. Additionally, if a TAP customer is removed due to a change in income, forgiveness will be applied to the pre-TAP arrears in a prorated amount equal to the number of payments made at that time. Of note, because penalty forgiveness and principal forgiveness launched on different dates, penalty and principal forgiveness may occur at different times.

**Q19. DOES MR. COLTON MAKE RECOMMENDATIONS THAT WOULD ALTER  
CURRENT CITY POLICY CONCERNING ARREARAGE FORGIVENESS?**

A19. Yes. Mr. Colton opines that to fulfill the intent of the I-WRAP legislation, arrearage forgiveness should be available before 24 payments are completed, which departs from current City policy. Instead, Mr. Colton's recommends that arrearage forgiveness should be granted in proration for each month in which a TAP participant makes a full 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. Mr. Colton also recommends that proration of arrearage forgiveness should begin immediately, with credits granted for payments previously made.

**Q20. DO YOU AGREE WITH MR. COLTON'S RECOMMENDATION? PLEASE EXPLAIN.**

A20. No. Current WRB policy is to allow for forgiveness after payment of 24 TAP bills, but participation does not need to be continuous. Customers that fail to recertify, opt out of TAP, or otherwise fail to maintain their participation in TAP are responsible for pre-program arrears until reenrolling in TAP. At that time, they may continue working toward arrearage forgiveness.

**Q21. DOES MR. COLTON'S RECOMMENDATION IMPACT THE DEPARTMENT'S PROPOSED MODIFICATION OF THE TAP RIDER?**

A21. Yes. Mr. Colton recommends the rejection of the Department's proposed modification of the TAP Rider to reflect arrearage forgiveness. PA Statement 3 (Colton) at 63-64.

**Q22. DO YOU AGREE WITH THE ABOVE RECOMMENDATION?**

A22. No. The Department continues to recommend that arrearage forgiveness be implemented as originally proposed. Please note that this recommendation is consistent with Mr. Colton's stated position in the 2018 general rate proceeding.

## **V. DESIGN AND OPERATION OF TAP**

**Q23. DOES MR. COLTON MAKE ANY RECOMMENDATIONS THAT WOULD CHANGE THE DESIGN AND OPERATION OF TAP?**

A23. Yes. Mr. Colton makes recommendations that would change the design and operation of TAP in six areas. PA Statement 3 (Colton) at 64-87.



1 **Q24. DOES THE DEPARTMENT AND WRB HAVE AN OVERALL RESPONSE TO**  
2 **MR. COLTON’S CONCLUSIONS AND RECOMMENDATIONS REGARDING**  
3 **THE DESIGN AND OPERATION OF TAP.**

4 A24. The Department filed a Motion In Limine to exclude this part of Mr. Colton’s testimony.  
5 That Motion argues that this topic is outside of the Rate Board’s limited jurisdiction. If  
6 the Motion in Limine is granted, Mr. Colton’s testimony, in this subject area, is requested  
7 to be excluded/stricken from the record.

8  
9 A. Extending TAP to Philadelphia Tenants

10 **Q25. PLEASE RESPOND TO MR. COLTON’S RECOMMENDATIONS ON**  
11 **EXTENDING TAP TO PHILADELPHIA TENANTS AND RELATED**  
12 **PROPOSALS.**

13 A25. To begin, it should be noted that eligible tenants are already participants in TAP.  
14 Therefore, the over-arching premise for Mr. Colton’s recommendation in this area is  
15 plainly wrong. In addition, there are no conflicts between what the PWD website states is  
16 the required documentation to apply for a tenant account and the PWD regulation  
17 governing its establishment. PWD Regulation 100.2(a) dictates minimum requirements to  
18 open a tenant account, but in no way limits what WRB is allowed to ask for pursuant to  
19 internal policy. Providing the documents requested ensures the account is established  
20 properly.

21  
22 B. Transferring Past-Due Account Balances to New Tenant Accounts.

23 **Q26. DOES MR. COLTON MAKE ANY RECOMMENDATIONS REGARDING NEW**  
24 **TENANT ACCOUNTS?**

25 A26. Yes. He recommends the following:

- (a) Landlords be deemed to consent to the establishment of a tenant account if no objection is received within 20 days.
- (b) The 20 days begins running on the first business day after the tenant completes an application for a tenant account.
- (c) PWD should switch all accounts for which there has been a tenant application made in the 12 months preceding this rate case and for which no written objection has been received by a landlord to tenant accounts.
- (d) Income-eligible participants should be enrolled in TAP retroactive to the date on which they applied for the program.
- (e) Allow tenants to “opt in” to having the balance transferred from the first date of their lease without having to make a special request from the Law Department.

**Q27. PLEASE RESPOND TO THOSE RECOMMENDATIONS.**

A27. PWD provides the following responses to Mr. Colton’s recommendations.

- (a) With regard to landlord “deemed consent,” no action by PWD is required, since this already reflects PWD’s standard operating procedure. If PWD does not receive written objection from the landlord within the statutory time period, the landlord is deemed to have consented and a tenant account is created.
- (b) With regard to the time period for establishing a tenant account, no action

1 by PWD is required, since the 20 days does begin on the first business day  
2 after application is made.

3 (c) With regard to creating new tenant accounts for recent applications as  
4 described above, no action by WRB is required, since all accounts for  
5 which an application is made and no objection is received from the  
6 landlord during the required time period have already been changed into  
7 tenant accounts.

8  
9 (d). With regard to the effective date for TAP enrollment, the Philadelphia  
10 Code does not require retroactive enrollment. More specifically, Section  
11 19-605 (3)(i) of the Code states that “a Customer shall be enrolled in  
12 IWRAP upon approval of a completed application...” When applicants  
13 have their completed application approved by WRB, they are enrolled in  
14 TAP and begin receiving a TAP bill immediately.

15  
16 (e) With regard to “opting-in” for balance transfers, please note that although  
17 such transfers have been done in limited circumstances upon special  
18 request made directly to the Law Department, it is not standard operating  
19 procedure to establish a tenant account with a balance. Pursuant to the  
20 Philadelphia Home Rule Charter, the Law Department is responsible for  
21 all debt collection for the City. As such, the Law Department must review  
22 and approve such balance transfers.  
23  
24  
25

C. TAP Recertification

**Q28. DOES MR. COLTON CRITICIZE THE TAP RECERTIFICATION PROCESS  
AND RECOMMEND POLICY CHANGES?**

A28. Yes. Mr. Colton believes that the TAP recertification process poses unreasonable impediments to receiving assistance. He opines that the current process reduces the number of customers who are active TAP participants. He indicates that the recertification process limits the chances for eligible customers to earn arrearage forgiveness.

Specifically, Mr. Colton recommends the following: (a) the TAP certification process should mirror that of other PA utilities; (b) TAP households that submit documentation of their participation in LIHEAP annually only be required to recertify for TAP no sooner than every three years; (c) TAP households whose primary source of income is Social Security, Supplemental Security Income, or pensions should be required to recertify no sooner than every three years; and, (d) All other TAP households should be required to recertify no sooner than every two years.

**Q29. PLEASE RESPOND TO THOSE RECOMMENDATIONS.**

A29. Between April 2020 and December 2020, customers were not required to recertify to maintain their participation in TAP but they were invited to provide WRB with updated information in case their circumstances had changed. Raftelis does report “new enrollees” during this timeframe, and per the response to PA-III-11, “new enrollees” could be customers enrolling for the first time in TAP, customers recertifying in TAP, or customers reenrolling based on updated information. Between April and December, these “new enrollees” fell into the first and third categories. Allowing customers to provide

1 updated information ensures that customers are receiving the most affordable bill, and, it  
2 is required by the IWRAP regulations.

3  
4 Applications require the minimum documentation necessary to ensure a customer's  
5 eligibility for the program, and WRB is able to accept information in a variety of formats.  
6 Some information in the application, including service address, is pre-populated on the  
7 application paper or online form.

8  
9 D. TAP Outreach

10 **Q30. MR. COLTON ALSO RECOMMENDS GREATER OUTREACH TO**  
11 **CUSTOMERS WHOSE SERVICE WAS RESTORED DURING COVID-19 AND**  
12 **TO MAKE TAP ENROLLMENT AVAILABLE TO THEM. PA STATEMENT 3**  
13 **(COLTON) AT 7-8, 78-79. PLEASE RESPOND.**

14 A30. TAP Outreach is an ongoing effort. The City is continuously reaching out to the public in  
15 various ways including through social media platforms, e-mail, and community  
16 organizations. In addition, targeted mailings were sent to customers receiving the Senior  
17 Citizen Discount as well as those with payment agreements. In addition, targeted  
18 mailings are being sent to customers currently active in TAP.

19  
20 E. Availability of TAP Application

21 **Q31. PLEASE RESPOND TO MR. COLTON'S RECOMMENDATIONS ON**  
22 **CHANGES IN THE TAP APPLICATION PROCESS. PA STATEMENT 3**  
23 **(COLTON) AT 8, 80.**

24 A31. Mr. Colton recommends removing the access code requirement and making the  
25 application available without a barcode during the moratorium. Although PWD is not

1 currently performing shutoffs, the barcode generated by the access code is still required.  
2 When the access code is entered, a bar code is generated that specifically reflects the  
3 customer of record at the property and pre-populates portions of the application easing  
4 completion for the customer. Outside of moratoriums, it automatically halts any shut-off  
5 proceedings that may be in process at the time of application and stops any future shut-  
6 off action. In addition to the shut-off protections, the barcode is critical to producing the  
7 reporting required by the Ordinance. The access code is located on the water bill, but the  
8 customer can obtain an application without the access code by calling the contact center  
9 and requesting an application be mailed to them.

10  
11 F. Race and TAP Denials

12 **Q32. PLEASE DESCRIBE MR. COLTON’S ALLEGATIONS REGARDING RACE**  
13 **AND TAP DENIALS.**

14 A32. Mr. Colton concludes that there is a demonstrated pattern of racial bias associated with  
15 TAP denials, (excluding black persons from participating in TAP). Mr. Colton is  
16 mistaken in reaching this conclusion based upon his limited and flawed analysis.

17  
18 **Q33. DO YOU AGREE WITH MR. COLTON’S FINDINGS?**

19 A33. No. Mr. Colton’s analysis of TAP denial and Black exclusion claims to document “a  
20 pattern of Black exclusion” PA Statement 3 (Colton) at 86, line 5. This claimed finding  
21 of Black exclusion is then presented using a rhetorical device. Specifically, “An  
22 insistence that there is “no problem” of implicit racial bias in the PWD implementation of  
23 TAP would only serve to continue the patterns identified....” PA Statement 3 (Colton) at  
24 86, lines 6-7. Use of this device involves two logical fallacies.

- (1) One is “poisoning the well”. “Poisoning the well” is a rhetorical formulation that inherently associates a person or organization with prejudicial information. In poisoning the well, the water in the well is ruined; no matter how good or how pure the water was, it is now sullied. Damage is done by the rhetorical construction.
- (2) The other fallacy present in the presentation is “affirming the consequent”. Here, the (flawed) analysis finds an apparent association by zip code of the “number of TAP denials” and the percentage Black persons within a zip code. Based on the (flawed) analysis, an argument is stated as an allegation of operation of a racialized process. The form of the argument is  $A \rightarrow C$ , where C is the assertion of finding a pattern of Black exclusion. Then, given C, the construction is given by analogy that implicit racial bias is operating in the work steps of application processing. So, A (assertion of bias) implies C (apparent finding with regard to number of TAP denials).

The error of affirming the consequent is that reasoning backwards (C therefore A) does not necessarily work. For example, there could be a  $B \rightarrow C$  that is the actual linkage.

Suppose the application screening is working perfectly (or nearly perfectly). That could also result in the development of the same pattern (if the pattern were true, which it is not). Working with data, one often finds interesting patterns that wash out in further, more careful, analysis.

In any case, the rhetorical framing is inappropriate. Here, for easy comparison, we repeat the inappropriate assertion: “An insistence that there is “no problem” of implicit racial bias in the PWD implementation of TAP would only serve to continue the patterns identified....” PA Statement 3 (Colton) at 86, lines 6-7. We here assert the opposite: that *appropriate operation of the screening process is being conducted by PWD*. We rule out any implicit racial bias in the processing of applications using a more careful analysis and showing that the Mr. Colton’s analysis is wrong. This result is based on standard analysis using well established statistical methods (Pearson Correlation Coefficient) that retain the

1 power of the full data set.

2  
3 **Q34. PLEASE DISCUSS THE ANALYSIS CONDUCTED.**

4 A34. The Pearson Correlation Coefficient, which measures the degree to which two variables  
5 move together, is shown between TAP denials as a percent of TAP accounts and several  
6 other variables in Table 1.

7  
8 On the left side of Table 1, the variables in the analysis are defined. For example,  
9 “RacePct\_Black” is Black persons as percent of population in each zip code and  
10 “RacePct\_White” is White persons as percent of population in each zip code. Looking at  
11 the fifth row down from the top of the table, we see the result for percentage Black by zip  
12 code and percent denials is the opposite to Mr. Colton’s analysis.

13 [Table 1: Correlation Analysis Results appears on next page]  
14  
15  
16  
17  
18  
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25



**Table 1: Analysis Results: Correlations.**

| Pearson Correlation Coefficients<br>Prob >  r  under H0: Rho=0<br>Number of Observations     |                          |
|--|--------------------------|
|  | PctDenials_TAP2020       |
| UnEmpRate<br>Percent of civilian labor force 16 and older that are unemployed                | -0.45555<br>0.0024<br>42 |
| PopPct_LT50FPL<br>Percent of total population with income less than 50% of FPL               | -0.28042<br>0.0721<br>42 |
| PopPct_LT150FPL<br>Percent of total population with income less than 150% of FPL             | -0.44635<br>0.0030<br>42 |
| PopPct_LT200FPL<br>Percent of total population with income less than 200% of FPL             | -0.45339<br>0.0026<br>42 |
| RacePct_Black<br>Black persons as percent of population                                      | -0.43994<br>0.0036<br>42 |
| RacePct_White<br>White persons as percent of population                                      | 0.50367<br>0.0007<br>42  |
| EducPct_BSPlus<br>Percent of population 25 or older with Bachelor degree or higher           | 0.44410<br>0.0032<br>42  |
| EducPct_SomeCollege<br>Percent of population 25 or older with some college, associate degree | -0.31580<br>0.0416<br>42 |
| EducPct_HS<br>Percent of population 25 or older with high school education                   | -0.33901<br>0.0281<br>42 |
| EducPct_LTHS<br>Percent of population 25 or older with less than high school education       | -0.38433<br>0.0120<br>42 |

Percent denials are negatively correlated with percentage Black in the zip codes, and (fifth row up from the bottom) positively associated with percentage White in the zip codes. Based on our analysis, there is no racial exclusion in the operation of PWD

1 application screening.<sup>4</sup>

2  
3 For more perspective, the higher the percent White in a zip code, the higher TAP percent  
4 denials in the zip code. The higher percent of college graduates or higher education a zip  
5 code, the higher TAP percent denials. Three of the variables show that more poverty in a  
6 zip code is associated with fewer percent denials. Where percentage with education less  
7 than college graduation is higher, there are lower percent denials.

8  
9 **Q35. WHAT ARE THE FLAWS IN MR. COLTON'S ANALYSIS?**

10 A35. There are four basic flaws in Mr. Colton's analysis: (i) he failed to recognize the proper  
11 operation of program screening; (ii) he failed to "operationalize" the TAP denial variable;  
12 (iii) he failed to introduce the TAP denial variable in a balanced way; and, (iv) he failed  
13 to use a standard method for correlation analysis.

14  
15 **Q36. PLEASE DESCRIBE THE FIRST FLAW MR. COLTON'S ANALYSIS.**

16 A36. First, Mr. Colton failed to recognize that proper operation of program screening as a part  
17 of the TAP application process.

18  
19 Generally, any program design requires one or more screening steps to ensure that only  
20 those who qualify for the program (according to the program design) are accepted into  
21 the program. If the screening is carried out correctly, program screening will require both  
22 inclusions and exclusions. That is how programs operate. Screening work requires  
23 implementing the program eligibility rules. The task is to follow the program design. If  
24 there is a question about that, it is not a question of application processing but of the rules

25  

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<sup>4</sup> Note also that the applications do not include a question about race or ethnicity.

1 for application processing. Denial is a good thing if an applicant does not qualify based  
2 on the decision rules. Similarly, acceptance into the program is a good thing if the  
3 applicant qualifies based on the decision rules. The responsibility of staff is to follow the  
4 program decision rules.

5  
6 **Q37. PLEASE DESCRIBE THE SECOND FLAW IN MR. COLTON’S ANALYSIS.**

7 A37. Second, Mr. Colton did not properly operationalize the “TAP Denial” variable — to  
8 show it relative to an appropriate base.

9  
10 This is a fatal flaw. To use the number of denials by zip code by itself is misleading. For  
11 example, it would be expected that the number of denials in a zip code would be related  
12 to (a) the population of the zip code, (b) the number of applications received from the zip  
13 code, and (c) the number of applications approved in the zip code. Any of these  
14 corrections could potentially wipe out the influence of a variable operationalized as  
15 number of denials per zip code. For a metric that would not be misleading, “TAP Denial”  
16 should be expressed not as a number of cases, but as a relative frequency. Expression as a  
17 relative frequency normalizes the variable to remove bias from the analysis. “TAP  
18 Denial” should be expressed relative to a relevant base. Relative frequencies are  
19 standardized percentages; so are also easier to use and easier for the reader to understand.  
20 Instead of simply “how many” in a zip code, it is expressed as “how many per one-  
21 hundred” in a zip code. The importance of normalizing counts is shown through the  
22 example in Table 2.

**Table 2: Why Normalization is Essential for Analysis.**

| Area       | TAP Denials | TAP Participants | Percent Denials |
|------------|-------------|------------------|-----------------|
| Zip Code A | 100         | 200              | 50%             |
| Zip Code B | 200         | 800              | 25%             |

This example shows that there are twice as many denials in Zip Code B than Zip Code A. However, Zip Code B has four times the number of TAP participants. As a result, the rate of denials relative to participants is twice as high in Zip Code A. Only considering the count of TAP denials one would erroneously conclude that there is a much larger issue of denials in Zip Code B. Findings from an analysis that starts with the count of denials without regard to relative size of zip codes is predestined to produce erroneous findings. This is exactly what Mr. Colton did in his analysis of race and, consequently, his findings are fatally flawed and must be ruled out. Another way to see the folly of analyzing the number of denials rather than denials relative to billing assistance program participation levels is to apply correlation analysis to the number of denials, the number of TAP approvals and the total number of applications for billing assistance. The results of this correlation analysis are shown in Table 3 below using the same format as Table 1.

**Table 2: Findings from Un-Normalized Analysis.**

| <b>Pearson Correlation Coefficients</b><br><b>Prob &gt;  r  under H0: Rho=0</b><br><b>Number of Observations</b> |                              |                          |                           |
|--|------------------------------|--------------------------|---------------------------|
|  | <b>Denials</b>               | <b>TAP Approvals</b>     | <b>Total Applications</b> |
| <b>RacePct_Black</b><br><b>Black persons as percent of population</b>  | 0.57834<br><.0001<br>44      | 0.54627<br>0.0001<br>44  | 0.56717<br><.0001<br>44   |
| <b>RacePct_White</b><br><b>White persons as percent of population</b>  | -<br>0.68100<br><.0001<br>44 | -0.64886<br><.0001<br>44 | -0.66676<br><.0001<br>44  |

Considering the correlation of billing assistance program denials with race (the Denials column in

1 Table 2), we find the same relationship as Mr. Colton, the number of billing assistance denials  
2 increases as the percentage of Black persons in a zip code increases. This unremarkable  
3 conclusion is simply the result of more program activity and not a higher *rate of denial* in zip  
4 codes with larger percentages of Black populations, as shown in the last two columns of  
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1 Table 2. In other words, there is greater program activity in zip codes with greater  
2 percentage of Black persons, more applications for assistance, more approvals, and more  
3 denials. This greater level of program activity is related to higher percentages of the  
4 population with program qualifying income levels which also tend to have higher  
5 percentages of Black persons.<sup>5</sup>  
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25 <sup>5</sup> The Pearson Correlation Coefficient between the percentage of Black persons and the percentage of  
population below 150% of the Federal Poverty Level is 0.57, indicating a strong correlation between TAP qualifying  
income and the percent Black persons in a zip code.

Table 2 shows just the opposite relationship between the correlation between levels of billing assistance program activity and the percentage of White persons in a zip code. As percentage of White persons increase, all measures of program activity decrease; applications, TAP approvals, and denials. This is related to the fact that zip codes with higher percentages of White persons tend to have smaller percentages of the population with program qualifying income (Pearson Correlation Coefficient equal to -0.71).

**Q38. PLEASE DESCRIBE THE THIRD FLAW IN MR. COLTON’S ANALYSIS.**

A38. Third, Mr. Colton does not introduce the variable “TAP denial” in a balanced way.

The variable is only treated as if it were pejorative. However, to work well, a program with eligibility criteria has to screen applications. Nowhere in the write-up does Mr. Colton acknowledge that denial of an application is a reasonable result if the application is, in fact, either incomplete or indicates that the applicant is ineligible for participation in the program. “Denial” is the responsible action necessary to protect the integrity of the program if no basis for eligibility has been established at the screening step in the organizational processing of applications.

Similarly, active screening out of applications that fail to meet the eligibility requirements of a program is a positive action to ensure the integrity of a program. “TAP Denial” is rhetorically presented as if it were perforce pejorative, but it is not. Mr. Colton’s analysis proceeds without reference to denied applications being correctly denied. This is another fatal flaw in Mr. Colton’s argument. Knowing the number of TAP denials per zip code does not, by itself, mean anything.



**Q39. PLEASE DESCRIBE THE FOURTH FLAW IN MR. COLTON'S ANALYSIS.**

A39. Fourth, Mr. Colton's method is not standard for correlation analysis. Simply put, Mr. Colton's method of analysis is not standard.

Mr. Colton assigns number of applications denied (denials are for incompleteness or for failing to meet eligibility requirements) by zip code. He then arranges the zip codes by number of applications denied into a rank order pattern. Nine zip code groups are then formed from forty-five rank ordered zip codes, again in rank order. The top three zip code groups (those containing the most applications denied) are then retained for analysis, as well as the bottom three groups (those containing the least Black applications denied). The middle three groups are excluded from the analysis. Since there are five zip codes in each zip code group, this means that thirty zip codes are included in the analysis and fifteen zip codes are excluded from the analysis. Please note that this is questionable methodology.

That is, methodology, when moving among levels of analysis (we are interested in individual households, but the analysis is by zip code aggregates) requires considerable caution. Information can be lost. Recognizing this, we used all the data without excluding the fifteen zip codes excluded by Mr. Colton. We also used correlation analysis, which is a standard method in physical science and social science for determining association of variables.

**Q40. AFTER CAREFUL ANALYSIS, IS IT REASONABLE TO CONCLUDE THAT  
TAP DENIALS ARE DISCRIMINATORY?**

A40. No. As explained, by using a more careful standard analysis with well-established statistical methods, H. Gil Peach & Associates were able conclude that there is no racial exclusion demonstrated in the data examined associated with the TAP application process.

Specifically, based on standard statistical analysis of an appropriately specified variable measuring TAP denial rates and the full extent of available zip codes for analysis, we find that zip codes with higher percentages of Black persons have lower TAP denial rates.

An advantage of the standard analytic approach is that correlation analysis is well documented, understood and accepted in higher education, business, and government. A second advantage is that since correlation is reported in terms of the correlation coefficient,  $r$ , it come with a recognized measure of strength of effect.<sup>6</sup> A third advantage is that the value of  $r$  is also reported (Table 1) with a probability attached, so we can say that the negative correlation of TAP denial and percent Black within zip codes being false has a probability of less that than four chances in one thousand. The method used by Mr. Colton does not permit expression of an accepted measure of either strength of effect or of the statistical probability of the result being in error, additional reasons why the use of the non-standard method is less appropriate.

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<sup>6</sup> The correlation [ $r$ ] of percent Black by zip code with TAP denial is -0.44 and demonstrates that there is no pattern of Black exclusion in PWD application processing. This is a medium effect size (Cohen, Jacob, Statistical Power Analysis for the Behavioral Sciences, Second Edition. Hillsdale, NJ, Lawrence Erlbaum Associates, 1988, P. 30.

**VI. CUSTOMER SERVICE ISSUES**

**Q41. DOES MR. COLTON MAKE ANY RECOMMENDATIONS ON CUSTOMER SERVICE ISSUES?**

A41. Yes. First, Mr. Colton contests the Department's compliance with the language access requirement. He makes recommendations to correct the perceived deficiency. PA Statement 3 (Colton) at 87-99. Second, Mr. Colton proposes to increase the threshold for disconnection for TAP participants. PA Statement 3 (Colton) at 99-101. Third, Mr. Colton makes recommendations on the use of municipal liens to secure payment of unpaid bills. PA Statement 3 (Colton) at 101-114.

**Q42. DOES THE DEPARTMENT AND WRB HAVE AN OVERALL RESPONSE TO MR. COLTON'S CONCLUSIONS AND RECOMMENDATIONS REGARDING CUSTOMER SERVICE ISSUES?**

A42. The Department filed a Motion In Limine to exclude this part of Mr. Colton's testimony. That Motion argues that this topic is outside of the Rate Board's limited jurisdiction. If the Motion in Limine is granted, Mr. Colton's testimony, in this subject area, is requested to be excluded/stricken from the record.

A. Compliance with the City's Language Access Requirement

**Q43. PLEASE DESCRIBE THE CITY'S LANGUAGE ACCESS REQUIREMENT.**

A43. Language Access Plans are required by the Philadelphia Home Rule Charter 8-600.

**Q44. DOES MR. COLTON CONTEST THE WRB/PWD COMPLIANCE WITH  
THOSE REQUIREMENTS?**

A44. Yes. Mr. Colton states that he concludes that “PWD complies with neither the local ordinance relating to language access nor the Federal Fair Housing Act.” PA Statement 3 (Colton) at 87.

**Q45. DOES THE DEPARTMENT AGREE WITH MR. COLTON’S CONCLUSIONS  
REGARDING LANGUAGE ACCESS COMPLIANCE?**

A45. No. We believe that WRB and PWD are in compliance with applicable City and federal requirements. PWD service applications are currently readily available in the following languages: Arabic, Cambodian, Chinese (traditional), Chinese (simplified), Italian, Portuguese, Russian, Spanish, Vietnamese, and English. If a language other than those listed is requested, WRB has a separate procedure to obtain translated documents.

**Q46. PLEASE RESPOND TO MR. COLTON’S RECOMMENDATIONS.**

A46. Mr. Colton’s recommendations assume that the City does not have proper translation resources. He recommends providing language translation services to customers with limited English proficiency. WRB provides translation services for all customers that require it. Mr. Colton also recommends that the City provide immediate access to a telephone interpreter. WRB utilizes telephone translation services when an in-person translator is not available. Please also note that during the COVID-19 pandemic, the City has used telephone translation services even more often to limit physical interaction.

B. Threshold for Disconnection to TAP Participants

**Q47. DOES MR. COLTON PROPOSE TO CHANGE IN THE THRESHOLD FOR  
TERMINATION OF SERVICE FOR TAP PARTICIPANTS?**

A47. Yes. Mr. Colton proposes to set the threshold for disconnection for TAP participants at the same threshold as other residential customers. PA Statement 3 (Colton) at 9, 101. He suggests that to do otherwise is discriminatory.

**Q48. PLEASE RESPOND TO MR. COLTON'S RECOMMENDED THRESHOLD.**

A48. The threshold for disconnection for TAP participants is not unfairly discriminatory. We believe that customers, regardless of participation in TAP, who fall more than two payments behind without some form of collection activity by the utility are likely to end up in a circumstance where the payment burden can become too great. The threshold for disconnection was set at the expected (average) billed amount over a two month period, consistent with Philadelphia Code § 19-1606(2)(c). For customers not participating in TAP, the threshold amount was set at \$150 (estimated typical residential bill amount for two months). For TAP participants, the threshold amount was set at \$75 (estimated TAP bill amount for two months). The difference in threshold amounts reflects the different bill amount for TAP participants, since they pay a reduced bill based on percentage of income.

We believe that failing to take action in response to two months of missed payments is not cost effective. Customers have the responsibility to consistently pay their monthly bills on time, utilities also should initiate timely actions when customers fall behind on their monthly obligations. It should be noted that the Department's proposal to set a lower threshold amount for TAP participant service disconnection was endorsed by

Community Legal Services and Residential Customer Assistance and Service (R-CAS) participants in discussions of this subject in December 2018.<sup>7</sup> Also, the Pennsylvania Office of Consumer Advocate has taken a similar position<sup>8</sup> and stated that addressing unpaid bills sooner rather than later generates benefits for both the customer and the utility.

Mr. Colton's proposal would have the effect of having TAP participants fall four payments behind without some form of collection activity. He does not explain why a greater debt/payment burden would be beneficial for those customers.

C. Use of Municipal Liens to Secure Payment

**Q49. PLEASE GIVE A BRIEF DESCRIPTION OF MUNICIPAL LIENS UNDER THE LIEN LAW.**

A49. It is my understanding that the City has statutory rights under the "Lien Law"<sup>9</sup> to use municipal liens as security for the collection of unpaid bills for services provided by the Department. A lien is a legal claim against a property because of a debt owed.<sup>10</sup>

Specifically, the Lien Law creates the remedy of a lien against benefited property in favor of the City against the property (*in rem*), and not against the person who owns the property (*in personam*).

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<sup>7</sup> Residential Customer Assistance and Service Committee presentation, December 20, 2018.

<sup>8</sup> Customer Assistance Programs : Funding : Levels and Cost Recovery Mechanisms, PUC Docket No. M-00051923, Comments of the OCA (dated January 30, 2006) at 60, citing a 2006 white paper prepared by Mr. Colton.

<sup>9</sup> The Municipal Claims and Tax Lien Act, Act of May 16, 1923, P.L. 207, as amended, 53 P.S. § 7101, *et seq.*

<sup>10</sup> <https://www.phila.gov/2020-08-10-crack-the-code-to-resolve-a-lien-or-judgement-on-a-property/>.

**Q50. DOES THE CITY HAVE POLICIES ON THE USE OF LIENS TO SECURE  
UNPAID DEBT?**

A50. Yes. The City regularly files liens to secure unpaid debts, including business taxes, real estate taxes, and unpaid water bills. The City's liens secure its priority for payment in bankruptcies and mortgage foreclosures, for example.

It is important to understand that, under the Lien Law, a municipal lien arises automatically, by operation of law, as soon as service is used and a charge for a municipal service is assessed. The lien is in rem against the real property at which service was provided as a marker for debt. Just as, for example, a mortgage secures payment of the debt of an underlying loan, a municipal lien secures payment of the debt (arrearage) for unpaid utility bills. To fully securitize the right to be paid for overdue utility bill payments used at a property, a municipal lien against the property should be filed with the County Court. The face amount of the lien is the amount owed on the day of filing. The failure to timely file a municipal lien could impact the priority of the lien as against other debts secured by the property or the ability to actually collect funds from the sale of the property. Again, this is similar to a mortgage. If a mortgage is not filed, the debt that is secured by the mortgage can lose priority to other debts if the property is sold.

Mr. Colton, in arguing that debt should not be liened, assumes that a customer, after entering the program would invariably fulfill the requirements for arrearage forgiveness, remaining in the program at least until arrears are forgiven. In that case, it would be fine for the Department not to secure the debt, because it would be assured that the debt would be forgiven. That is not the case, however, and therefore, the Department must continue to secure debt, a responsible practice.

**Q51. DOES MR. COLTON MAKE ANY RECOMMENDATIONS ON THE USE OF  
MUNICIPAL LIENS?**

A51. Yes. Mr. Colton recommends that PWD prepare and maintain a complete accounting of amounts forgiven. PA Statement 3 (Colton) at 6, 57. Mr. Colton further recommends (a) that PWD should provide if arrearage forgiveness has not been granted that it should be granted with interest, PA Statement 3 (Colton) at 6, 57, and (b) that the City eliminate the unpaid debt, legally secured by lien(s), if a TAP participant decides to sell or refinance their home. PA Statement 3 (Colton) at 6, 113. He also makes recommendations that would prohibit the use of municipal liens to secure debt owed by TAP participants. PA Statement 3 (Colton) at 5-6, 111-112.

**Q52. DO YOU AGREE WITH MR. COLTON'S RECOMMENDATION THAT PWD  
SHOULD BE REQUIRED TO PROVIDE A COMPLETE ACCOUNTING OF  
THE PRINCIPAL ARREARAGE THAT SHOULD HAVE BEEN FORGIVEN  
UNDER THESE THREE EXISTING PWD POLICIES. PA STATEMENT 3  
(COLTON) AT 6, 57.**

A52. No. Principal forgiveness was not established until September 1, 2020. At that time, the clock began running on the twenty-four (24) required TAP payments needed to earn principal forgiveness. Therefore, there is no principal arrearage that "should" have been forgiven under existing PWD policies as Mr. Colton suggests.

**Q53. DO YOU AGREE WITH MR. COLTON'S RECOMMENDATION THAT, TO  
THE EXTENT THAT PRINCIPAL FORGIVENESS HAS NOT BEEN GRANTED**



**WHERE MERITED, PWD SHOULD PROVIDE SUCH FORGIVENESS WITH INTEREST. PA STATEMENT 3 (COLTON) AT 6, 57.**

A53. No. Because the implementation date of principal arrearage forgiveness was not until September 1, 2020, there is no forgiveness that “should” have been offered that has not already been given.

**Q54. DOES THE DEPARTMENT AGREE WITH MR. COLTON’S OTHER RECOMMENDATIONS ON THE USE OF MUNICIPAL LIENS, SPECIFICALLY THAT (1) LIENS SHOULD NOT BE USED FOR PRE-PROGRAM ARREARAGES FOR TAP PARTICIPANTS AND (2) THE CREATION OF A “LIEN-BLOCKER” TO ENSURE THAT LIENS ARE NOT USED? PA STATEMENT 3 (COLTON) AT 5-6, 111-112**

A54. No, the Department disagrees with Mr. Colton’s other recommendations on the use of municipal liens. Mr. Colton mistakenly argues that the liens on TAP pre-program arrears should not be used because the lien conflicts with the IWRAP stricture that TAP customers “shall be required to make no additional payment in respect to any pre-IWRAP arrears to maintain service.”

The existence of the lien does not add a requirement to TAP customers to make a payment on the pre-IWRAP arrears to maintain service. If the customer maintains enrollment in the program and earns forgiveness on lien debt, the lien is cancelled. The lien fee for a cancelled lien is removed and is not owed by the customer either.

Mr. Colton also advocates for a lien blocker. Here, again, Mr. Colton bases his argument on a mistaken understanding of liens and the process. Notwithstanding, as stated above,

1 existence of the lien does not add a requirement to TAP customers to make a payment on  
2 the pre-IWRAP arrears to maintain service, the implementation of the lien blocker would  
3 require omniscience on the Department's part. Liens on pre-program arrears are most  
4 often secured prior to the customers' enrollment in TAP, at which point the Department  
5 is unaware of the customer's future enrollment in the program, not having access to  
6 individual customers' income information or intention to apply for the program.  
7

8 **Q55. DO YOU AGREE WITH MR. COLTON'S RECOMMENDATION THAT "IN**  
9 **THE EVENT AN ACTIVE TAP PARTICIPANT SEEKS TO SELL OR**  
10 **REFINANCE HIS OR HER HOME, THE FORGIVENESS OF ANY PRE-TAP**  
11 **ARREARS REMAINING ON THE TAP PARTICIPANT'S ACCOUNT WILL BE**  
12 **ACCELERATED SO THAT THE PRE-TAP ARREARS ARE FORGIVEN IN**  
13 **THEIR ENTIRETY PRIOR TO THE HOME SALE OR REFINANCING"? PA**  
14 **STATEMENT 3 (COLTON) AT 6, 113.**

15 A55. No. The core purpose of the TAP is to provide an affordable water bill to the customer.  
16 To make that bill affordable, the pre-TAP arrears are shielded from enforcement and can  
17 be forgiven upon making twenty-four (24) complete monthly payments. The forgiveness  
18 is not guaranteed; the participant must earn it through regular, monthly payments. If Mr.  
19 Colton's recommendations were to be implemented, a participant could apply and be  
20 accepted into TAP, remain in the program for two months, make two full monthly  
21 payments, then seek to sell or refinance and effectively have all pre-TAP arrears forgiven  
22 with no obligation to meet the requirements of the program. Additionally, please refer to  
23 answers for questions 50 and 51.  
24  
25

**VII. THE PWD’S PROPOSED REDUCTION OF THE “FINAL-KNOCK” FEE FOR  
TAP PARTICIPANTS**

**Q56. PLEASE DESCRIBE THE “FINAL-KNOCK” FEE.**

A56. This fee is found in Section 6.4(a), which relates to “Shut-Off and Restoration of Water Service.” Part (a) of 6.4 imposes a charge if the Department is required to visit a Property to shut off service for non-payment; and, payment is tendered at the time of the shut-off.

**Q57. WHAT IS THE DEPARTMENT’S PROPOSAL ON THIS FEE?**

A57. The current fee under Section 6.4(a) is \$100 for all residential customers. The proposed fee is \$12 for customers participating in TAP and \$105 for residential customer who are not participating in TAP. See PWD Exhibit 3A (Clean) and 3B (Redlined) at Sections 6.4(a) and 6.4(e).

**Q58. DOES MR. COLTON AGREE WITH THE PWD RECOMMENDATION  
LOWERING THIS FEE FOR TAP PARTICIPANTS?**

A58. No. Mr. Colton recommends the rejection of the Department’s proposal to lower the fee to \$12 fee for TAP participants. PA Statement 3 (Colton) at 117.

**Q59. DO YOU AGREE WITH MR. COLTON’S POLICY RECOMMENDATION?**

A59. No. The Department continues to recommend that this fee be reduced as proposed.

Reducing the fee is consistent with concerns about affordability within the TAP. The lower fee reduces a barrier to maintaining service for TAP participants.

1 That being said, the Department believes that the elimination of this fee altogether for  
2 TAP participants would eliminate any incentive of TAP participants to pay before the  
3 “final-knock.” In doing so, it would send the wrong signal to these customers — to  
4 ignore notices and to not pay bills until the last possible moment.

5  
6 **VIII. BENEFITS OF CONSTRUCTION ACTIVITIES**

7  
8 **Q60. DOES MR. COLTON CONTEST THE SUBSTANTIVE FINDING OF THE**  
9 **ECONOMIC PANEL THAT THE DEPARTMENT’S CAPITAL PROGRAM HAS**  
10 **ECONOMIC BENEFITS IN THE CITY AND THE REGION?**

11 A60. No.

12  
13 **Q61. WHAT IS MR. COLTON CONTESTING?**

14 A61. Mr. Colton contests the relevancy of the testimony from the economic panel. PA  
15 Statement 3 (Colton) at 118-119. Mr. Colton also opines that the testimony of the  
16 economic panel should not be used as a basis for any decision-making in this proceeding.  
17 PA Statement 3 (Colton) at 119-122.

18  
19 **Q62. PLEASE RESPOND TO MR. COLTON’S CONCLUSION ON RELEVANCY.**

20 A62. There are two points to be made in response to this conclusion by Mr. Colton.

21  
22 First, Mr. Colton is wrong. The amount of the CIP and the Department’s related  
23 construction activities is significant. There have been comments, both in years past and in  
24 this proceeding, regarding the reevaluation of the CIP and the Capital Budget. The  
25 testimony by H. Gil Peach and Associates (PWD Statement 8) shows that there are

1 benefits to construction activity beyond the physical improvement of the Department's  
2 infrastructure. So, in the Department's view, the testimony supports the projected level of  
3 construction activity during the pandemic.

4  
5 Second, Mr. Colton is expressing a legal opinion, as opposed to an expert opinion. PWD  
6 argues in the Motion that legal opinions and conclusions are not proper subject of  
7 technical hearings before the Rate Board.

8  
9 **Q63. PLEASE RESPOND TO MR. COLTON'S POINTS REGARDING "DECISION-**  
10 **MAKING" IN THIS PROCEEDING.**

11 A63. As stated, PWD Statement 8 supports the projected level of construction activity during  
12 the pandemic. Infrastructure investments impact the Department's spending. The  
13 Department prepared a proposed Capital Improvement Program for FY 2022 through  
14 2027, as explained in PWD Statement 3. The Department must be able to fund the repair  
15 and replacement of infrastructure, as explained in PWD Statement 2. The projected  
16 amounts needed to fund such repairs and replacements are set forth in Schedule BV-1 at  
17 Table C-7 through Table C-9.

18  
19 That being said, in putting forward his rebuttal on "decision-making" Mr. Colton first  
20 asserts that the Peach testimony "does not demonstrate its results are unique to CIP." PA  
21 Statement at 119, Lines 8-9. Then, he concludes at the end of his testimony that the Peach  
22 Testimony makes no meaningful contribution to decision-making in the pending PWD  
23 rate proceeding. PA Statement 3 (Colton) at 122, lines 21-22. This is pretty much the  
24 alpha and omega of his testimony regarding the economic analysis of CIP.

1 Mr. Colton's argument is based on three improper assertions:

2  
3 First, Mr. Colton asserts that the IMPLAN study results are not specific to CIP. This is a  
4 serious error on his part since the IMPLAN results are demonstrated to be specific to CIP.  
5 We show, through the IMPLAN analysis that CIP represents a substantial injection of  
6 investment dollars into the local economy that will promote economic activity, support  
7 jobs, and generate tax revenue. This provides important economic stimulus in  
8 Philadelphia and the region to counteract some of the negative impacts of the pandemic.  
9 And, to repeat for emphasis, these results are demonstrated to be specific for CIP.

10  
11 Second, Mr. Colton asserts that the expenditure for CIP is not an expenditure of PWD (or  
12 of the City), but of the ratepayers considers as household consumer spending. This is a  
13 serious error, and his assertion does not conform to actual practice in the United States,  
14 nor is it even remotely practical. We have water departments and cities as a way to  
15 conduct decision-making at a higher level than as an aggregation of households. Diligent  
16 planning, engineering and management at PWD propose what is necessary to maintain  
17 the water and wastewater systems and make them resilient now and in the future. Based  
18 on observation of many natural gas, electric and water utilities, water utilities happen to  
19 be in the lead of other utilities in the study of decision-making under deep uncertainty  
20 (DMDU), precisely the kinds of decisions based on knowledge of technologies and risks  
21 to be made on CIP in this proceeding.

22  
23 A central feature of decision-making in the DMDU framework is a time perception that is  
24 longer than the present moment and is extended through a longer planning period. This  
25 means moving to more of a deep time perspective. In this perspective, the Public

1 Advocate has a public duty beyond a focus on immediate issues. In addition to the  
2 portion of the puzzle involving the sphere of low-income issues of access to water and  
3 payment assistance, and related direct consumer issues, the Public Advocate should  
4 lengthen their time perspective and also work to ensure the CIP to provision water and  
5 wastewater services from a planning, engineering and technological perspective while  
6 helping to realistically address risks. That piece is missing from the Public Advocate's  
7 presentation to date, yet it is essential for insuring the resilience of the water and  
8 wastewater system. In other words, it should be part of the duty of the Public Advocate to  
9 defend CIP to ensure the ongoing resiliency of the water and wastewater systems.

10  
11 From a wider understanding of cities, water utilities and public interest, technology-based  
12 decision-making in utilities is important. A well-functioning organization cannot be  
13 short-staffed and it should be funded to carry out CIP over the current planning horizon  
14 and over decades. This proceeding should ensure the kind of funding that will make that  
15 possible. Otherwise there will normal accidents and a drift towards failure. Intentionality  
16 on the part of staff and engineering knowledge can make for a resilient organization, but  
17 full funding of CIP is a part of the formula for success for PWD and the City.

18  
19 Mr. Colton's assertion of CIP as a household consumer decision lacks discernment and it  
20 also lack foresight. It is myopic, and commits a fundamental error in perception or  
21 presentation of reality.

22  
23 Third, Mr. Colton states that no insight is provided as to why stimulus dollars should be  
24 included in utility rates. This assertion simply addresses the wrong issue. No argument  
25 has been put forward as to utility rates and stimulus dollars, other than fact. It is,

1 however, a fact as demonstrated by the IMPLAN analysis, that that CIP represents a  
2 substantial injection of investment dollars into the local economy that will promote  
3 economic activity, support jobs, and generate tax revenue. This provides important  
4 economic stimulus in Philadelphia and the region to counteract some of the negative  
5 impacts of the pandemic.

6  
7 We assert that the IMPLAN analysis provides valuable economic information in reaching  
8 decisions in this proceeding. It is not asserted (as asserted by Mr. Colton) that the  
9 IMPLAN analysis provides some kind of decision rule. But it does provide positive  
10 economic information to balance out considerations for both the short- and long-term, to  
11 assist in consideration of decisions; just as certain information in Mr. Colton's testimony  
12 provides negative economic information to be taken into account in decision-making. Our  
13 testimony is not about a decision rule; rather, it is about filling out the positive side of  
14 economic information. The regulatory procedure is designed so that both positive and  
15 negative information may be taken into account in order to reach balanced decisions.  
16 IMPLAN results are relevant in this context.

17  
18 **Q64. MR. COLTON'S STATES THAT THE ECONOMIC STIMULUS IMPACTS OF**  
19 **AN INVESTMENT OFFERS NO INSIGHTS INTO THE EXTENT TO WHICH,**  
20 **IF AT ALL, THOSE STIMULUS DOLLARS SHOULD BE INCLUDED IN**  
21 **UTILITY RATES. PA STATEMENT 3 (COLTON) AT 119. PLEASE RESPOND.**

22 **A64.** In the context of the IMPLAN analysis results, which indicate economic activity impacts  
23 from CIP, Mr. Colton asserts a straw man argument. To "put up a straw man" is to  
24 caricature an argument with the aim of attacking the caricature rather than the actual  
25



1 argument. Generally, the straw man argument is more absurd than the actual argument,  
2 making it more easy to attack.

3  
4 Here is Mr. Colton's straw man: "[T]he economic stimulus impacts of an investment  
5 offers no insights into the extent to which...those stimulus dollars should be included in  
6 utility rates." PA Statement at 119, lines 18-20. Further, Mr. Colton asserts that creation  
7 of "...substantial numbers of jobs, and...extensive economic activity...does not mean  
8 that PWD should immediately go out and start spending hundreds of millions of dollars  
9 ... let alone mean that ratepayers should be called upon to pay those investments." PA  
10 Statement 3 (Colton) at 121, lines 6-11. Note that the absurdity of this argument is a  
11 standard feature of a straw man.

12  
13 Here is the actual argument: The IMPLAN analysis demonstrates that PWD's CIP  
14 represents a substantial injection of investment dollars into the local economy that will  
15 provide economic activity, support jobs and generate tax revenue. This provides  
16 important economic stimulus in Philadelphia and the region to counteract some of the  
17 negative impacts of the pandemic.

18  
19 Our analysis results from proper application of a standard economic modeling technique  
20 using the IMPLAN model and technical database. The actual argument simply reports  
21 positive economic consequences of CIP. Since the straw man is Mr. Colton's creation, his  
22 attack on it does not require comment.

23  
24 **Q65. MR. COLTON MAINTAINS THAT SPENDING RATEPAYER DOLLARS ON**  
25 **UTILITY PROJECTS IS ONE OF THE LEAST EFFICIENT (EFFECTIVE)**

**WAYS TO PRODUCE ECONOMIC ACTIVITY. PA STATEMENT 3 (COLTON)  
AT 120. PLEASE RESPOND.**

A65. Mr. Colton misrepresents the water and wastewater systems as if they were discretionary consumer expenditures. See PA Statement 3 (Colton) at 120, lines 1-8. They are not. We have cities and water departments to ensure that technical and engineering knowledge along with city management guide timely and necessary capital investment to ensure resilience of the water and wastewater systems now and into the future. Individual households do not have this knowledge. CIP expenditure is at the level of PWD (or the City of Philadelphia), not at the level of individual consumer discretion, and putting it at the household discretionary consumption level is neither the practice in the United States, nor would it be even remotely practical.

Mr. Colton presents several capital investment examples in Pennsylvania favorably. These include “expenditures on building trails, investing in clean energy, investing in a state housing trust fund, investing in historic preservation, investing in state parks, investing in a natural gas synthesis plant, investing in alternatives to coal, investing in agricultural infrastructure, investing in outdoor recreation.” PA Statement 3 (Colton) at 121, lines 1-6. All of these are government or business investments, not the discretionary decisions of households. CIP is a public expenditure, of the same kind.

Mr. Colton’s reduction of public responsibility, technical knowledge, and management decision to the level of household discretionary consumer spending is reductionist misdirection. The function of this error is to attempt to improperly collapse perception of the problem of the need for social capital planning and expenditures to benefit the whole of the City to the inappropriate level of household discretionary consumer spending. In so

1 doing, it deflects attention from the public responsibility and duty to continually plan,  
2 engineer, maintain, improve, and make resilient the water and wastewater systems, now  
3 and through the future. The viability of the City rests on the exercise of that public  
4 responsibility.

5  
6 We note, in this connection to public responsibility, that the IMPLAN study was  
7 conducted in accordance with the methodology for that type of study. Further, we note  
8 that Mr. Colton's assertion about consumer spending to be one of the least efficient  
9 (effective) ways to produce economic activity is not relevant since the expenditure is not  
10 at the household level.

11  
12 **IX. CONCLUSION**

13  
14 **Q66. IS THERE ANYTHING ELSE THE DEPARTMENT WOULD LIKE TO ADD IN**  
15 **RESPONSE TO MR. COLTON?**

16 A66. Yes. Mr. Colton did not provide any information or projected costs regarding his  
17 recommendations. To fill that void, WRB made preliminary projections of the time and  
18 expense associated with Mr. Colton's recommendations. These preliminary projections,  
19 which are subject to change, are set forth in Schedule SMC-3. None of the expenses in  
20 Schedule SMC-3 are included in the CCOS prepared by Black & Veatch or in the  
21 adjustments proposed by Mr. Morgan.

22  
23 **Q67. DOES THIS CONCLUDE THIS REBUTTAL TESTIMONY?**

24 A67. Yes, it does.  
25

| Recommendation | Description  | Novatti Hours | PHL Dev Hours | PHL Testing and Doc Hours | Total Hours | Total Cost | Duration (Weeks) |
|----------------|--|---------------|---------------|---------------------------|-------------|------------|------------------|
| 1              | <p>PWD should adopt a COVID-19 Emergency Relief Program for residential customers as outlined in the body of my testimony. Eligibility for 1 the COVID-19 ERP should extend to any residential customer meeting the following qualifications: (1) the customer is a current customer who was no less than 90-days in arrears as of January 1, 2021; <i>and</i> (2) the customer is not participating or eligible for TAP. Through the ERP, a customer shall be entitled to a Special Emergency Relief Payment Plan ("SERPP"). Eligible customers shall be proactively enrolled in the SERPP without further action on their part. The SERPP shall be entered into with a \$0 downpayment and shall extend payments for no less than 24 months. Enrollment in the SERPP should continue through the end of Fiscal Year 2023, or upon Petition by either PWD or the Public Advocate. Enrollment in SERPP shall not preclude a customer from subsequently enrolling in TAP, nor shall SERPP preclude a customer from entering into a deferred payment plan, if need-be, for arrearages incurred on or after January 1, 2021. Customers placed in an SERPP shall retain their right to dispute the underlying bills where appropriate.</p> |               |               |                           |             |            |                  |
| 1.1            | Determination of eligibility for ERP <sup>1</sup>  | 0             | 40            | 20                        | 60          | \$6,900    | 2                |
| 1.2            | Creation of a new SERPP payment agreement type   | 200           | 50            | 25                        | 275         | \$45,625   | 10               |
| 3              | <p>PWD should fulfill the intention of the legislation adopted unanimously by the Philadelphia City Council. TAP participants should be provided a good-faith opportunity to earn forgiveness of pre-program arrears by making complete payments. Arrearage forgiveness should be ratable for each month in which a TAP participant makes a complete payment. Arrearage forgiveness of 1/24<sup>th</sup> 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. The Board should require PWD to provide monthly status reports until it fulfills these obligations.</p>   |               |               |                           |             |            |                  |
| 3.1            | Monthly principal forgiveness  | 100           | 25            | 13                        | 138         | \$22,813   | 5                |
| 3.2            | Monthly Status reports   | 0             | 40            | 20                        | 60          | \$6,900    | 2                |
| 4              | <p>PWD should discontinue perfecting liens based on pre-program arrearages for TAP participants. PWD should declare that pre-program arrearages that have been frozen pursuant to TAP, and made eligible for forgiveness, are not claims that are "due" to the City and are not considered "unpaid" so long as the customer remains an active participant in TAP. There is no exception in either the ordinance or in the implementing regulation allowing PWD to enforce collection of a frozen pre-program arrearage subject to forgiveness through a municipal lien process.</p>  |               |               |                           |             |            |                  |
| 4.1            | Discontinue perfecting liens based on pre-program arrearages for TAP participants.   | 0             | 40            | 20                        | 60          | \$6,900    | 2                |
| 5              | <p>PWD should adopt a low-income "lien blocker" (similar to PGW's CRP blocker). Under such a process, PWD actions to perfect a lien would be placed on hold for 12 months after a customer applies for TAP, for 12 months after receiving a UESF grant, at any time a customer is an active TAP participant, or within 90 days subsequent to a customer being removed from TAP for a failure to recertify. Each of these recommendations regarding liens on pre-program arrears is made in conjunction with, and not in conflict with, my previous recommendations regarding arrearage forgiveness. The Board should require PWD to provide monthly status reports until it has implemented a low-income lien blocker.</p>   |               |               |                           |             |            |                  |
| 5.1            | Low-income lien blocker  | 0             | 400           | 200                       | 600         | \$69,000   | 23               |
| 6              | <p>In addition to the recommendations made immediately above, in the event that an active TAP participant seeks to sell or refinance his or her home, the forgiveness of any pre- TAP arrears remaining on the TAP participant's account will be accelerated so that the pre-TAP arrears are forgiven in their entirety prior to the home sale or refinancing. The Board should direct PWD to provide monthly status reports until it has implemented this recommendation.</p>   |               |               |                           |             |            |                  |
| 6.1            | Acceleration of forgiveness prior to sale or refinancing <sup>2</sup>  | 2,000         | 500           | 250                       | 2,750       | \$456,250  | 103              |
| 6.2            | Monthly Status reports   | 0             | 40            | 20                        | 60          | \$6,900    | 2                |
| 7              | <p>PWD should be required to provide a complete accounting of the principal arrearage that <u>should</u> 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 (VIII-24). To the extent that principal forgiveness has not been granted where merited, PWD should provide such forgiveness with interest. The Board should direct PWD to file monthly reports of the amount of principal arrearage forgiveness being granted and under which provision such forgiveness has been granted.</p>  |               |               |                           |             |            |                  |
| 7.1            | Complete accounting of the principal arrearage that should have been forgiven under these three existing PWD policies  | 200           | 50            | 25                        | 275         | \$45,625   | 10               |
| 7.2            | To the extent that principal forgiveness has not been granted where merited, PWD should provide such forgiveness with interest   | 500           | 125           | 63                        | 688         | \$114,063  | 26               |
| 7.3            | Monthly status report  | 0             | 200           | 100                       | 300         | \$34,500   | 11               |

| Recommendation | Description   | Novatti Hours | PHL Dev Hours | PHL Testing and Doc Hours | Total Hours  | Total Cost       | Duration (Weeks) |
|----------------|---|---------------|---------------|---------------------------|--------------|------------------|------------------|
|                | <b>PWD should take the following actions with respect to allowing tenants to establish tenant account:</b><br><b>a. First, PWD must comply with its own regulations with landlords being deemed to consent to the establishment of a tenant account. Notice of the right of a tenant to establish a tenant account shall be included on the PWD website, on all notices provided to a tenant with respect to establishing a tenant account; and all on USTRA notices provided to PWD tenants.</b><br><b>b. The 20 days within which a landlord may provide written objection to a tenant establishing a tenant account shall start running on the first business day after the tenant completes an application for a tenant account.</b><br><b>c. PWD should switch all accounts for which a tenant has made an application within the twelve months prior to PWD's filing of this rate case if no written landlord objection was filed within twenty days of the tenant application.</b><br><b>d. PWD should enroll income-eligible tenants for whom tenant accounts are established in this fashion in TAP retroactive to the day on which the application to establish a tenant account was completed.</b><br><b>e. The Board should direct PWD to provide monthly status reports until it has implemented these recommendations</b> |               |               |                           |              |                  |                  |
| 8              |   |               |               |                           |              |                  |                  |
| 8.1            | Update all notices provided to a tenant with respect to establishing a tenant account; and all on USTRA notices provided to PWD tenants   | 0             | 200           | 100                       | 300          | \$34,500         | 11               |
| 8.2            | The 20 days within which a landlord may provide written objection to a tenant establishing a tenant account shall start running on the first business day after the tenant completes an application for a tenant account.   | 0             | 40            | 20                        | 60           | \$6,900          | 2                |
| 8.3            | PWD should switch all accounts for which a tenant has made an application within the twelve months prior to PWD's filing of this rate case if no written landlord objection was filed within twenty days of the tenant application  | 0             | 300           | 150                       | 450          | \$51,750         | 17               |
| 8.4            | PWD should enroll income-eligible tenants for whom tenant accounts are established in this fashion in TAP retroactive to the day on which the application to establish a tenant account was completed   | 0             | 100           | 50                        | 150          | \$17,250         | 6                |
| 8.5            | Monthly Status reports  | 0             | 40            | 20                        | 60           | \$6,900          | 2                |
| 15             | <b>TAP participants should not be subjected to the disconnection of service for nonpayment for unpaid balances less than any other customer. Participation in TAP should not be a factor that is taken into account in deciding when, or whether, to disconnect service for nonpayment to a PWD customer</b>  |               |               |                           |              |                  |                  |
| 15.1           | Update arrears and shut off processes to change TAP minimum to \$150.   | 200           | 50            | 25                        | 275          | \$45,625         | 10               |
|                | <b>TOTAL</b>  | <b>3,200</b>  | <b>2,240</b>  | <b>1,120</b>              | <b>6,560</b> | <b>\$978,400</b> | <b>246</b>       |

<sup>1</sup>Customers not eligible for TAP are not identifiable without every non-TAP residential customer providing a complete customer assistance application that is then processed to determine TAP eligibility. Denial of or incomplete prior applications cannot be used for this purpose due to the possible change in customer circumstances since those previous applications. Due to the fact that it is impossible to compel every non-TAP residential customer to provide a complete application, eligibility for ERP cannot be determined.

<sup>2</sup>PWD is not made aware of home sales or refinancings prior to their occurrence. This estimate includes adding a new requirement that TAP customers inform PWD of home sales or financing prior to their occurrence, along with the inevitable reversal of arrears that will be necessary in the event that the sale/refinancing falls through.

| Collection Factors      |                           |                                  |   |  |                                  |   |   |                                  |   |                               |                                  |   |
|-------------------------|---------------------------|----------------------------------|---|--|----------------------------------|---|---|----------------------------------|---|-------------------------------|----------------------------------|---|
| Senior Citizen Discount |                           |                                  |   | TAP (including TAP and Senior Citizens Discount) |                                  |   | TAP Customers Outside of TAP Enrollment |                                  |   | Non-Stormwater Only Customers |                                  |   |
| Fiscal Year             | Billing Year <sup>1</sup> | Billing Year Plus 1 <sup>2</sup> | Billing Year Plus 2 and Beyond <sup>3</sup> | Billing Year <sup>1</sup>                        | Billing Year Plus 1 <sup>2</sup> | Billing Year Plus 2 and Beyond <sup>3</sup> | Billing Year <sup>1</sup>               | Billing Year Plus 1 <sup>2</sup> | Billing Year Plus 2 and Beyond <sup>3</sup> | Billing Year <sup>1</sup>     | Billing Year Plus 1 <sup>2</sup> | Billing Year Plus 2 and Beyond <sup>3</sup> |
| FY 2012                 | 85.06%                    | 8.13%                            | 3.28%                                       |  |                                  |   | 43.12%                                  | 14.17%                           | 20.06%                                      | 84.69%                        | 9.67%                            | 2.72%                                       |
| FY 2013                 | 84.85%                    | 9.11%                            | 3.16%                                       |  |                                  |   | 46.89%                                  | 14.61%                           | 19.04%                                      | 84.83%                        | 9.81%                            | 2.68%                                       |
| FY 2014                 | 84.86%                    | 7.89%                            | 3.42%                                       |  |                                  |   | 44.03%                                  | 14.59%                           | 17.35%                                      | 86.19%                        | 8.63%                            | 2.40%                                       |
| FY 2015                 | 84.17%                    | 7.96%                            | 3.14%                                       |  |                                  |   | 42.68%                                  | 13.96%                           | 14.26%                                      | 87.15%                        | 8.26%                            | 2.07%                                       |
| FY 2016                 | 84.76%                    | 7.99%                            | 2.32%                                       |  |                                  |   | 42.78%                                  | 13.63%                           | 10.11%                                      | 87.69%                        | 8.31%                            | 1.65%                                       |
| FY 2017                 | 84.62%                    | 8.06%                            | 1.66%                                       |  |                                  |   | 39.48%                                  | 11.66%                           | 6.80%                                       | 88.17%                        | 8.17%                            | 1.26%                                       |
| FY 2018                 | 83.07%                    | 7.86%                            | 1.05%                                       | 74.49%   | 21.21%                           | 0.75%                                       | 31.56%                                  | 8.21%                            | 5.42%                                       | 87.94%                        | 8.38%                            | 0.77%                                       |
| FY 2019                 | 85.21%                    | 8.51%                            |   | 72.68%   | 15.21%                           |   | 40.73%                                  | 11.86%                           |   | 87.97%                        | 8.89%                            |   |
| FY 2020                 | 81.04%                    |                                  |   | 72.80%   |                                  |   | 38.13%                                  |                                  |   | 84.76%                        |                                  |   |
| Average                 | 84.18%                    | 8.19%                            | 2.58%                                       | 73.32%   | 18.21%                           | 0.75%                                       | 41.04%                                  | 12.84%                           | 13.29%                                      | 86.60%                        | 8.77%                            | 1.94%                                       |
| Cumulative              |                           |                                  | 94.95%                                      |  |                                  | 92.29%                                      |   |                                  | 67.17%                                      |                               |                                  | 97.30%                                      |

<sup>1</sup>Payments within 12 months<sup>2</sup>Payments within 13-24 months<sup>3</sup>Payments after 24 months

Source(s): PWD Statment NO. 6 Direct Testimony and Schedules of Raftelis, FY 2020 Payment Patterns Schedule RFC-6 Pages 1-2 and FY 2020 Low Income Billing and Payments Report Schedule RFC-9 Page 1