

BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

In the Matter of the Philadelphia Water Department's Proposed Change in Water, Wastewater and Stormwater Rates and Charges	Fiscal Years 2022-2023
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**OBJECTIONS TO MR. SKIENDZIELEWSKI'S  
INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS (SET A)**

The Philadelphia Water Department ("Department" or "PWD") objects to the following Set "A" Interrogatories and Requests for Production of Documents (collectively, "discovery requests") of Mr. Skiendzielewski , submitted via email (receipt of which was deemed to be April 5, 2021) as follows. PWD requests that the Hearing Officer sustain these Objections and strike or limit the subject discovery requests.

## BACKGROUND AND CLARIFICATION

PWD customers are responsible for repairing the pipes and fixtures that carry water from the City’s water mains to their home and that carry wastewater from their home to the City’s wastewater main in the street. PWD’s Homeowner’s Emergency Loan Program (HELP) offers zero-interest loans for repairs to customer-owned water service lines and customer-owned sewer lines.<sup>1</sup> Customers have 60 months to pay off the loan, which will remain interest-free unless they fail to make payments on time.

Customers often use HELP loans to fix problems with their water service lines or their sewer lines that connect their home to City pipes. They can also use this loan to replace water service lines that are made of lead, which may pose a health risk. HELP loan funding is intended to be a revolving fund that is replenished as the customer repays the loan.<sup>2</sup> The Department believes that it is important to collect repayments so that program may continue and not be a burden on rate payers.

The Hearing Officer should be aware similar discovery requests were made by Mr. Skiendzielewski (the “Requestor”) in the 2018 General Rate Proceeding<sup>3</sup> and were stricken by the Hearing Officer in response to PWD Objections (dated February 27, 2018) filed in that case.

The Requestor has alleged improprieties in operation of the HELP Loan program before the Tax Review Board: “[After receiving a HELP Loan, Mr. Skiendzielewski] disputed his obligation to fully pay the loan. In this context, he filed a petition with the Tax Review Board

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<sup>1</sup> <https://www.phila.gov/programs/homeowners-emergency-loan-program-help/>

<sup>2</sup> Transcript (2018) at Tr. 71:18-72:8 (5/17/18).

<sup>3</sup> Similar requests were also made in 2020 general rate proceeding. But, the Department’s objections to those requests were not decided due to the withdrawal of the 2020 general rate proceeding.

(“TRB”), seeking partial abatement in settlement of this obligation. The TRB rejected his petition as unsupported by substantial evidence on or about March 3, 2016. The TRB also granted a re-hearing whereupon it again rejected his petition on the same grounds (January 18, 2017). Mr. Skiendzielewski failed or refused to timely appeal the above TRB decisions to the Philadelphia County Court of Common Pleas. Therefore, this matter has been fully litigated. The Department maintains, in addition to the Objections ... that Mr. Skiendzielewski is collaterally estopped from re-litigating this issue before the Rate Board.”<sup>4</sup>

The Department’s Objections are raised in this historical context. In addition, as explained below, the discovery requests are overly-broad in scope, unduly burdensome, and create unreasonable annoyance or burden. This is particularly true given that the requests were not timed by the Requestor so as to permit the Requestor to submit direct testimony in support of his position(s), but were timed to be made prior to the start of the technical hearing. Also (given the 12-year look-back for many of Mr. Skiendzielewski’s discovery requests, the information sought is not relevant to the proposed changes in PWD rates and charges as set forth in the rate filing, and as such, is not reasonably calculated to lead to the discovery of admissible evidence for purposes of rate setting.

### **OBJECTIONS**

The discovery requests are grouped together to minimize repetition of objections.

**MS-A-1** OVER THE LAST 12 YEARS, ON A YEAR BY YEAR BASIS HOW MANY CITATIONS WERE ISSUED FOR FAULTY LATERALS AND/OR FAULTY CURB VENTS?

**MS-A-2** IN THE LAST 12 YEARS, ON A YEAR BY YEAR BASIS, HOW MANY LATERALS WERE REPLACED IN THE CITY OF PHILADELPHIA?

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<sup>4</sup> 2020 Objections to Interrogatory and Request For Production Of Documents Of Michael Skienzielewski at footnote 2. <https://www.phila.gov/media/20200320145119/Objection-to-Skiendzielewski-Discovery-Requests-3.19.20.pdf>

**MS-A-3** IN THE LAST 12 YEARS, ON A YEAR TO YEAR BASIS, HOW MANY CURB TRAPS WERE REPLACED?

**MS-A-4** PLEASE PROVIDE A YEAR BY YEAR BREAK DOWN OF THE AMOUNTS LOANED BY PWD'S HOMEOWNER'S EMERGENCY LOAN PROGRAM (COMMONLY CALLED "HELP LOANS") OVER THE LAST 12 YEARS.

**MS-A-5** IN EACH OF THE LAST 12 YEARS, IN A YEARLY REPORT, LIST WHICH ACCOUNT(S) DID THE CASH ALLOCATED FOR THE LOANS COME?

**MS-A-6** IN EACH OF THE LAST 12 YEARS, LISTED YEAR BY YEAR, LIST THE COST OR LOST REVENUE ASSOCIATED WITH THE INTEREST FREE LOAN. IF A GREATER EXPLANATION IS NEEDED, PLEASE ACCEPT THIS AS HELP. PWD BORROWS CASH AT SET INTEREST RATES. ANY LOAN GIVEN BY PWD EITHER COMES FROM THE PROCEEDS OF A LOAN OR FROM ONE OF PWD'S CASH ACCOUNTS. IF THE HELP LOAN CASH CAME FROM A LOAN, THE AMOUNT OF INTEREST ON THAT PORTION OF THE LOAN USED FOR THE HELP LOAN, YEAR BY YEAR OVER A 12 YEAR PERIOD IS WHAT IS SOUGHT. IF THE CASH FOR THE HELP LOAN COMES FROM A CASH ACCOUNT UNDER THE CONTROL OF THE PWD, THE REQUEST IS TO LIST FOR THE LAST 12 YEARS, YEAR BY YEAR THE COST OF REPLACING THE MONEY TAKEN FROM THE CASH ACCOUNT INCLUDING COVERAGE RATIOS. TO THE EXTENT THAT PWD CLAIMS THERE IS NO COST TO OFFERING INTEREST FREE LOANS, PLEASE EXPLAIN HOW THAT IS POSSIBLE.

**MS-A-7** OVER THE LAST 12 YEARS, YEAR BY YEAR, LIST THE AMOUNT CHARGED TO EACH CLASS OF PWD COSTUMERS FOR ALL ASPECTS OF THE HELP LOAN, INCLUDING THE COST OF ADVERTISING THE

PROGRAM, ADMINISTERING THE PROGRAM, EVALUATING PLUMBERS ALLOWED TO PARTICIPATE IN THE PROGRAM AND ANY AND ALL OTHER COSTS. TO THE EXTENT PWD NEEDS HELP IN UNDERSTANDING THE ISSUE, THIS IS A REQUEST TO ILLUSTRATE IF ALL OR ONLY A SUB SECTION OF PWD PAY FOR THE HELP LOANS

- MS-A-8** OVER THE LAST 12 YEARS HAS ANY PWD FAILED TO COLLECT ANY HELP LOAN?
- MS-A-9** OVER THE LAST 12 YEARS HAS ANY PWD CONSUMER FAILED TO REPAY 100% OF THE HELP LOAN?
- MS-A-10** OVER THE LAST 12 YEARS, LISTED YEAR BY YEAR, WHAT IS THE DOLLAR AMOUNT THAT PWD HAS NOT COLLECTED ON HELP LOANS?
- MS-A-11** OVER THE LAST 12 YEARS, YEAR BY YEAR, HOW WAS THE UNCOLLECTED LOANS CHARGED TO RATE PAYERS? TO THE EXTENT PWD NEEDS HELP UNDERSTANDING THIS QUESTION, IT IS AN ATTEMPT TO DISCOVER WHICH CLASS OF PWD CONSUMER IS CHARGED FOR THE COST OF THE HELP LOAN AND THE UNCOLLECTED HELP LOANS.
- MS-A-12** OVER THE LAST 12 YEARS, LISTED YEAR BY YEAR, PLEASE PROVIDE THE NAME OF THE PWD EMPLOYEE WHO WAS CHARGED WITH DECIDING WHICH RATE CLASS WOULD BEAR THE COST OF UNCOLLECTED HELP LOANS.

**OBJECTION:**

The Department objects to these interrogatories and requests on the grounds that the discovery sought will cause unreasonable annoyance, burden and expense to the Department. Compilation of information and documents being requested would require a

costly and burdensome special investigation to produce. These interrogatories and requests are seeking information and documents over too great a period of time (the last 12 years, from 2009 to 2021). Given the fact that ratemaking is prospective, such an extensive look-back at a historic 12-year period will not lead to the production of admissible evidence and is extremely burdensome. The discovery requests are particularly burdensome given the shortened period allotted to compile discovery responses in this proceeding and the timing of the request in the schedule.

The proper scope of this proceeding is limited to the rates and charges proposed by the Department. Prior requirements established by the City or some other authority are not pertinent to the prospective rates and charges for the Rate Period (Fiscal Year 2022 and Fiscal Year 2023). The Board has limited jurisdiction. The Rate Board is empowered to approve, modify or reject proposed rates and charges. See, Section 13-101, Philadelphia Code. The Rate Board does not have oversight authority over the Department. This interrogatory and request are not seeking information related to the prospective rates and charges proposed for the Rate Period. The requested information will not assist the Rate Board in determining the prospective rates and charges for the Rate Period. No nexus has been established between the requested information and documents and the prospective rates and charges proposed for the Rate Period.

In addition to the foregoing, MS-A-12 is objectionable to the extent it seeks confidential privileged, proprietary or other privileged information. The request involves the production of the names of Department employees. This raises significant privacy concerns (rights of privacy related to personally identifiable information). See, *Pennsylvania Liquor Control Board v. Beh*, 215 A.3d 1046 (Pa.Cmwlt. 2019).

**MS-A-13** PLEASE PROVIDE THE LEGAL OPINION GIVING PWD THE RIGHT TO CHARGE ONLY ONE CLASS OF CUSTOMER, IF THAT IS WHAT HAS BEEN HAPPENING, FOR THE UNCOLLECTED AND COST OF THE HELP LOANS.

**OBJECTION:**

Legal opinions are not generally discoverable. *See, e.g.*, Pa.R.C.P. 4003.3; 52 Pa. Code § 5.323(a). iscovery of legal opinions violates the attorney work product privilege, violates

the attorney work-product privilege, and would require the Department to divulge its or its attorney's mental impressions, analyses, or assessments of the merits respecting issues, claims, defenses or any other aspect of the matters as to which legal representation was provided.

**MS-A-14** OVER THE LAST 12 YEARS HAS THE PWD OR ANY CITY DEPARTMENT PAID FOR THE REPLACEMENT OF ANY LATERAL AND/OR CURB TRAP?

**MS-A-15** IF THE ANSWER [TO MS-A-14 ] IS YES, PLEASE PROVIDE THE NUMBER OF REPLACEMENTS PAID FOR BY EITHER PWD OR OTHER CITY FUNDS FOR THE LAST 12 YEARS IN A YEAR BY YEAR CHART.

**MS-A-16** IF THE ANSWER TO MS-A-14 IS NO, THAT NO CITY DEPARTMENT HAS EVER PAID TO REPLACE A BROKEN LATERAL AND/OR CURB VENT, PLEASE EXPLAIN HOW IT IS JUST TO FORCE CONSUMERS TO PAY FOR REPAIRS TO DAMAGES CAUSED BY A CITY DEPARTMENT.

**MS-A-17** IF THE ANSWER TO MS-A-14 IS YES, FOR THE LAST 12 YEARS PLEASE PROVIDE A YEAR BY YEAR BREAK DOWN OF THE NUMBER OF LATERAL AND/OR CURB VENTS REPLACEMENTS THAT HAVE BEEN PAID FOR BY A CITY DEPARTMENT.

**MS-A-18** FOR THE LAST 12 YEARS, LISTED YEAR BY YEAR PLEASE PROVIDE THE PERSON AT PWD WHO HAS DECIDED WHICH LATERAL AND/OR CURB VENT REPLACEMENTS WILL BE PAID FOR BY A CITY DEPARTMENT AND WHICH WILL NOT BE.

**MS-A-19** OVER THE LAST 12 YEARS, IN A YEAR BY YEAR BREAK DOWN PLEASE PROVIDE THE NUMBER OF TIMES THE CITY'S RISK MANAGEMENT DEPARTMENT HAS PAID TO REPAIR PIPES DAMAGED BY PWD AND/OR ANY CITY DEPARTMENT.

**OBJECTION:**

The Department objects to these interrogatories and requests on the grounds that the discovery sought will cause unreasonable annoyance, burden and expense to the Department. Compilation of information and documents being requested would require a costly and burdensome special investigation to produce. These interrogatories and requests are seeking information and documents over too great a period of time (the last 12 years, from 2009 to 2021). Given the fact that ratemaking is prospective, such an extensive look-back at a historic 12-year period will not lead to the production of admissible evidence and is extremely burdensome. The discovery requests are particularly burdensome given the shortened period allotted to compile discovery responses in this proceeding and the timing of the request in the schedule.

The Department incorporates its Objections to MS-A: 1-12 herein by reference.

**MS-A-20** PLEASE SUPPLY A COPY OF THE NOTICE INFORMING PWD RATE PAYERS GIVEN A LATERAL AND/OR CURB VENT CITATION THAT ALL PHILADELPHIANS HAVE A RIGHT TO SEEK REIMBURSEMENT FOR DAMAGES CAUSED BY THE CITY OF PHILADELPHIA FROM THE CITY'S RISK MANAGEMENT OFFICE.



**OBJECTION:**

Objection. The proper scope of this proceeding is limited to the rates and charges proposed by the Department. The information and documents provided to customers are not pertinent to the prospective rates and charges for the Rate Period (Fiscal Year 2022 and Fiscal Year 2023). The Board has limited jurisdiction. The Rate Board is empowered to approve, modify or reject proposed rates and charges. See, Section 13-101, Philadelphia Code. The Rate Board does not have oversight authority over the Department. This interrogatory and request are not seeking information related to the prospective rates and charges proposed for the Rate Period. The requested information will not assist the Rate Board in determining the prospective rates and charges for the Rate Period. No nexus has been established between the information provided to customers and the prospective rates and charges proposed for the Rate Period.

Without waiving the above objections, the Department intends to provide a response to this discovery request on or before April 12, 2021.

**MS-A-21** PLEASE PROVIDE A COPY OF THE WRITTEN NOTICE GIVEN TO PWD CONSUMERS GIVEN A LATERAL AND/OR CURB TRAP CITATION EXPLAINING THE CONSUMERS APPEAL RIGHT.

**OBJECTION:**

Objection. The proper scope of this proceeding is limited to the rates and charges proposed by the Department. The information and documents provided to customers are not pertinent to the prospective rates and charges for the Rate Period (Fiscal Year 2022 and Fiscal Year 2023). The Board has limited jurisdiction. The Rate Board is empowered to approve, modify or reject proposed rates and charges. See, Section 13-101, Philadelphia Code. The Rate Board does not have oversight authority over the Department. This interrogatory and request are not seeking information related to the prospective rates and charges proposed for the Rate Period. The requested information will not assist the Rate Board in determining the prospective rates and charges for the Rate Period. No nexus has

been established between the information provided to customers and the prospective rates and charges proposed for the Rate Period.

Without waiving the above objections, the Department intends to provide a response to this discovery request on or before April 12, 2021.

**MS-A-[22]<sup>5</sup>** OVER THE LAST 12 YEARS HAS ANY HELP LOAN BEEN FORGIVEN OR DISCOUNTED?

**MS-A-[23]<sup>6</sup>** IF THE ANSWER TO MS-A-21 IS YES, PROVIDE THE PERSON WHO MADE THE DECISION TO FORGIVE THE LOAN.

**MS-A-[24]<sup>7</sup>** IF THE ANSWER TO MS-A-21 IS YES, PROVIDE THE WRITTEN CRITERIA USED TO DETERMINE WHEN A HELP LOAN IS FORGIVEN.

**MS-A-[25]<sup>8</sup>** IF THE ANSWER TO MS-A-21 IS YES, PROVIDE THE NAME OF THE AUTHOR OF THE WRITTEN CRITERIA.

**OBJECTION:**

The Department objects to these interrogatories and requests on the grounds that the discovery sought will cause unreasonable annoyance, burden and expense to the Department. Compilation of information and documents being requested would require a costly and burdensome special investigation to produce. These interrogatories and requests are seeking information and documents over too great a period of time (the last 12 years, from 2009 to 2021). Given the fact that ratemaking is prospective, such an extensive look-back at a historic 12-year period will not lead to the production of admissible evidence and is extremely burdensome. The discovery requests are particularly burdensome given the shortened period allotted to compile discovery responses in this proceeding and the timing of the request in the schedule.

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<sup>5</sup> This was originally numbered as the second MS-A-21, it was renumbered to MS-A-22 for ease of reference.

<sup>6</sup> This was originally numbered as MS-A-22, it was renumbered to MS-A-23.

<sup>7</sup> This was originally numbered as MS-A-23, it was renumbered to MS-A-24.

<sup>8</sup> This was originally numbered as MS-A-24, it was renumbered to MS-A-25.

The Department incorporates its Objections to MS-A: 1-12 herein by reference.

Notwithstanding the above objections and without waiver thereof, the Department intends to further respond to the Skiendzielewski discovery requests on or before April 12, 2021.

WHEREFORE, the Department formally objects to the Interrogatories and Requests identified above and requests that its Objections be sustained and that it be relieved of the requirement of any further response to same except as described above.

Respectfully submitted,

/s/ Andre C. Dasent

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Dated: April 8, 2021