

BEFORE THE  
PHILADELPHIA WATER, SEWER AND STORM WATER RATE BOARD

---

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

---

**STATEMENT OF THE PUBLIC ADVOCATE  
IN SUPPORT OF JOINT PETITION FOR PARTIAL SETTLEMENT**

The Public Advocate, appointed pursuant to Section II.B.2 of the Regulations of the Philadelphia Water, Sewer and Storm Water Rate Board (Board) to represent the interests of the class of customers designated “small users,” as one of the signatories to the Joint Petition for Partial Settlement of the above-captioned proceeding (Joint Petition), filed electronically as of the date hereof, submits that the terms and conditions of settlement proposed in the Joint Petition are in the public interest and should be approved. The Public Advocate respectfully requests that the Hearing Officer recommend, and the Board approve in the final Rate Determination, the settlement embodied in the Joint Petition without modification for the reasons discussed herein.

**I. INTRODUCTION AND BACKGROUND**

As set forth in the Joint Petition, the Philadelphia Water Department (Department) filed with the Board its advance notice on January 15, 2021 and its formal notice on February 16, 2021, seeking the Board’s approval of two successive annual increases in rates and charges, to take effect on September 1, 2021 (FY 2022) and September 1, 2022 (FY 2023), respectively. In combination, the Department sought an additional \$141 Million in revenues

from customer rates over the two-year rate period. The active participants in this proceeding included the Department, Water Revenue Bureau, Public Advocate, Philadelphia Large Users Group (PLUG), PECO Energy Company/Exelon (PECO), Lance Haver and Michael Skiendzielewski.<sup>1</sup>

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

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

Following the submission of direct and rebuttal testimony, pursuant to the prehearing conference order, the participants engaged in intensive settlement negotiations. Due to

---

<sup>1</sup> Five other individuals registered to participate in the rate proceeding, but did not actively participate: Sharon Keselman, Michael Blowney, Kesrick Jones, Jr., Joseph Sherick, and Julianna Martell.

<sup>2</sup> One set of advance discovery was issued prior to the Department's filing of its advance notice. Sixteen sets of discovery, successively numbered, were filed after the Department's advance notice.

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

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

An extensive record has been created in this rate proceeding, providing for substantial evidence, adequate to develop issues for presentation to the hearing officer. As set forth more extensively below, the partial settlement significantly reduces the proposed rate increase for FY 2022, commits to further potential reduction of the FY 2023 rate increase based on federal stimulus funds and the Department's financial condition, and includes customer service and operating policy agreements to protect customers during the pandemic, increase access to the Tiered Assistance Program (TAP), promote language access rights, and improve tenant bill access.

For all of the reasons set forth herein, the Public Advocate requests the Hearing Officer recommend, and the Board approve, the Joint Petition for Partial Settlement without modification.

## II. PUBLIC BENEFITS OF THE JOINT PETITION

The Public Advocate believes that the Joint Petition, taken as a whole, is in the public interest and satisfactorily addresses the majority of issues raised by the Public Advocate in the rate proceeding.<sup>3</sup> The proposed partial settlement substantially reduces the Department's rate request, establishes a reconciliation mechanism to further reduce rates in FY 2023 if certain conditions are met, and provides significant customer service enhancements. The proposed partial settlement reduces the overall bill impact of the proposed rate increase on the average small user customer while ensuring that COVID-19 related customer protections remain available to assist customers who need help. The proposed settlement avoids the risk and expense of litigation. Further, the proposed settlement preserves the participants' positions with respect to future proceedings.

In light of the economic uncertainty engendered by the COVID-19 pandemic, the Public Advocate does not believe it prudent to pursue further litigation on the agreements reached in this partial settlement, which, if approved will result in the Department's request being reduced by nearly 60%.

While the Joint Petition does not directly address certain specific adjustments proposed by the Public Advocate in filed testimony (providing, instead, for overall

---

<sup>3</sup> Any settlement is a product of compromise. A number of issues raised by the Public Advocate that are not discussed in this Statement in Support demonstrate that the Public Advocate has prioritized finding agreements where possible, and compromised by not pursuing certain other issues.

adjustments to the revenue requirement, typical of a “black box” settlement, as described in paragraph 11.A of the Joint Petition), the Public Advocate recognizes and submits that the Joint Petition’s proposed settlement comprises a meaningful compromise.

The sections below discuss those specific terms of settlement proposed in the Joint Petition in response to the Public Advocate’s testimony. Those terms, when taken as a whole, represent a reasonable settlement of the majority of issues raised in the rate proceeding, particularly in light of the uncertainty, duration, expense and likely outcomes of litigation and potential appellate review of these issues. Accordingly, the Public Advocate submits that the Joint Petition is in the public interest and should be approved without modification.

### III. SETTLEMENT

#### A. Revenue Requirement

The Department proposed a two-year rate increase period to implement two successive increases in rates and charges effective September 1, 2021 and September 1, 2022, respectively. As proposed by the Department, if approved in its entirety, the proposed increases would generate \$141 Million in new revenues from customer rates, as set forth below:

PWD Proposal <sup>4</sup>		
	FY 2022	FY 2023
September 1, 2021 Increase	\$48.864 Million	\$60.553 Million
September 1, 2022 Increase		\$31.543 Million
<b>TOTAL</b>		<b>\$140.960 Million</b>

<sup>4</sup> See PWD St. 7A, Sch. BV-1 (Table C-1/C-1A)

The Public Advocate's witness, Mr. Morgan, examined the assumptions utilized by the Department and its consultants to develop the proposed \$141 Million request. Mr. Morgan submitted that certain of the Department's assumptions were unreasonable and proposed adjustments which, if approved, would render a rate increase unnecessary. Mr. Morgan submitted that, on the basis of those adjustments, the Department could manage its debt service coverage requirements by utilizing Rate Stabilization Fund transfers while maintaining adequate reserves. Mr. Morgan also recommended that the Department separately report and account for any stimulus funding received. PA St.-1 at 5:20-6:7. Finally, Mr. Morgan submitted that if the Board approved any rate increase for FY 2023, the Board should only approve those additional revenues that exceed a reasonable estimate of the stimulus funds PWD may receive. PA St.-1 at 8:13-9:4.

Following the submission of Mr. Morgan's testimony, the Department received and thereafter distributed correspondence from the City Finance Director, Rob Dubow.<sup>5</sup> According to Mr. Dubow, the City Administration's proposed FY2022-FY2026 Five Year Plan would not allocate any stimulus funds to the Department pursuant to the American Rescue Plan Act, enacted on March 11, 2021 (ARPA).<sup>6</sup>

In its rebuttal testimony, the Department disagreed with Mr. Morgan's opinions regarding the availability of stimulus funding and the Department's ability to utilize the Rate Stabilization Fund to manage its coverage requirements. PWD St. 3R at 3:5-11. Furthermore, the Department contended that it was too early to assess the impact of the availability of federal stimulus relief, but relied upon the Finance Director's letter in

---

<sup>5</sup> Available at <https://www.phila.gov/media/20210405171512/Water-memo-3.30.21.pdf>.

<sup>6</sup> The City Administration does not unilaterally establish the Water Department's budget. As set forth in the Water Department's Official Statement, the Water Department's budget is prepared by the City Administration and submitted to City Council for adoption. See PWD Ex. 5 at 44.

submitting that “it does not appear that the Department will be receiving stimulus relief so as to prevent the need for increases in rates and charges.” PWD St. 3R at 38:14-18.

The Joint Petition recognizes that the Department may directly receive certain federal stimulus funds, whether due to City Council action or pursuant to programs administering funds allocated via the Consolidated Appropriations Act of 2021, enacted on December 27, 2020 (“CARES Act”) and ARPA. With this in mind, the Department and Public Advocate agreed to propose the following new revenues from customer rates:

Joint Petitioners’ Proposal		
	FY 2022	FY 2023
September 1, 2021 Increase	\$10.411 Million	\$12.901 Million
September 1, 2022 Increase		\$34.110 Million
TOTAL		\$57.422 Million

The proposed settlement terms reasonably resolve the conflicting opinions of the Department and Public Advocate witnesses, significantly reduce the rate increase and defer the majority of the customer bill impacts to September 2022. In all, the Joint Petition recommends rate increases designed to produce no more than 40.74% of the Department’s requested increase. Furthermore, the Joint Petition recommends that the Board require, as agreed by the Department and the Public Advocate, a Special Rate Reconciliation Proceeding for FY 2023. As set forth in the Joint Petition, that Special Rate Reconciliation Proceeding would adjust the FY 2023 increase *downward* to reflect the receipt of federal stimulus funding (subject to a minimum threshold) and based on the level of reserves the Department may hold in its Rate Stabilization Fund as of the end of FY 2021.

The Public Advocate submits that the significant reduction to the revenue request proposed in the Joint Petition recognizes the affordability concerns raised by customers and the uncertainty associated with potential federal stimulus funding and the Department’s

short-term financial performance, while enabling the Department to satisfy the obligations imposed by the 1989 General Bond Ordinance (as amended). Combined with the additional elements of the agreement set forth below, the partial settlement is overwhelmingly in the public interest.

#### B. Cost of Service

The Public Advocate's witness, Jerome D. Mierzwa, submitted testimony including a proposal to modify the Department's water class cost of service study (CCOS) to align the extra-capacity factors with the demands of certain customer classes. PA St. 2 at 14-15. Mr. Mierzwa also recommended modifications to the extra-capacity factors and base functional cost allocations for public fire protection service. PA St. 2 at 15-17. Finally, Mr. Mierzwa recommended that existing rates for public fire protection and wholesale service be maintained (and not reduced), in order to proportionately assign the Department's proposed decreases for those customers to residential and Senior Citizen customers. PA St. 2 at 20. The Joint Petition maintains the rate design, revenue allocation and class cost of service study proposed by the Department and does not implement the Public Advocate's adjustments.

However, Mr. Mierzwa made two recommendations which are addressed in the Joint Petition. Mr. Mierzwa proposed a reallocation of gross area and impervious area stormwater rates to take into account that all ratepayers contribute to funding stormwater overflow remediation programs that benefit only commercial and industrial customers. PA St. 2 at 25. Furthermore, Mr. Mierzwa recommended that the Department evaluate a separate stormwater charge methodology to reflect the small parcel size of the majority of rowhomes in

Philadelphia. PA St. 2 at 26. The Joint Petition reflects the Department's commitment to undertake further evaluation and develop proposals (following or in connection with stakeholder meetings) to share the costs/benefits of ratepayer-funded non-residential stormwater overflow remediation projects and to develop a proposal to evaluate tiered residential stormwater rate structures to reflect the range of residential property sizes.

### C. Quality of Service

The Public Advocate's expert, Roger D. Colton, through filed testimony, raised several concerns about customer service. See PA St. 3. The Joint Petition reflects the Department's commitment to evaluate and provide quarterly reports to the Board regarding improvements in the following customer service areas:

#### 1. COVID-19 Customer Protections

As part of the agreements set forth in the Joint Petition, the Department/Water Revenue Bureau have agreed to payment agreement standards, outreach, and evaluation of tenant access issues. The Department/Water Revenue Bureau will provide flexible payment arrangements, continuing to extend payment agreements up to five years and income-based payment agreements up to 15 years. Furthermore, the Department/Water Revenue will conduct outreach to customers with past due balances and evaluate proactively extending payment arrangements for customers who have fallen behind during the COVID-19 pandemic.

Regarding tenant customer concerns raised by the Public Advocate, the Department/Water Revenue Bureau has agreed to review business practices, website

disclosures and regulations, specifically concerning barriers to obtaining customer status. Finally, the Department/Water Revenue Bureau will review policies to facilitate tenants desiring to transfer bills that may have accumulated during their tenancy (prior to obtaining customer status) onto their accounts.

## 2. Shut Off Moratorium

The Department/Water Revenue Bureau have agreed to maintain the current termination moratorium and to review and evaluate the need to extend it further to protect public health and safety. Furthermore, prior to lifting the moratorium, the Department/Water Revenue Bureau will take into account the input from stakeholders, including public health guidance and economic conditions.

## 3. TAP Administration

The Joint Petition maintains the Department's/Water Revenue Bureau's current practice of waiving recertification requirements so that customers who have enrolled in TAP can remain in TAP. In addition, Water Revenue Bureau has committed to considering the merits of longer periods between certification of eligibility for customers who have fixed incomes and/or receive other means-tested benefits such as LIHEAP.

The Department/Water Revenue Bureau also committed to evaluating new approaches to outreach to enroll eligible customers in TAP, including by organizing greater outreach in the Black community. For this purpose, the Department/Water Revenue Bureau will organize, participate and actively engage in meetings and events where the availability of assistance can be communicated. Finally, the Department/Water Revenue Bureau will

organize and participate in community meetings regarding TAP participation with Black community leaders and grassroots organizations to discuss improvements to TAP processes including application, enrollment and recertification.

#### 4. Language Access

The Department/Water Revenue Bureau committed to considering changes in its language access plans, in coordination with the City's Office of Immigrant Affairs in order to improve communication with customers. This includes working with community stakeholders to identify documents needing to be translated and making those documents available on the City's website and in person.

#### D. Miscellaneous; Briefing Issues

The Public Advocate and Department expended considerable time and effort to reach the agreements set forth in the Joint Petition. As part of that process, the Joint Petition seeks to resolve a number of outstanding issues that would otherwise remain for briefing. The Joint Petition withdraws the Department's Motion in Limine to Limit or Exclude Certain Portions of the Testimony of Roger D. Colton, submitted on April 6, 2021, to which the Public Advocate would otherwise have responded in its brief. Furthermore, the Joint Petition requires the Department to provide responses to outstanding discovery requests, which are to be included on the record of the rate proceeding.

However, the Public Advocate and Department were unable to resolve two issues which will be submitted for the Hearing Officer's recommendation in forthcoming briefs. The Public Advocate's witness, Roger D. Colton, testified that the Department/Water

Revenue Bureau had placed “undue restrictions on the ability of TAP participants to earn arrearage forgiveness” as required pursuant to the Philadelphia Code and recommended that TAP participants be provided arrearage forgiveness for each full monthly TAP payment. PA St. 3 at 44-53. In addition, Mr. Colton recommended that the Board reject the Department’s proposal to include arrearage forgiveness in the TAP Rider because the uncollectibility of those dollars was already factored into the proposed rate levels such that including them in the rider would permit the Department to recover twice. PA St. 3 at 60-63.

The Joint Petition recognizes that the Department and the Public Advocate will submit their positions in briefs to the Hearing Officer for resolution. In addition, the Joint Petition recognizes that participants may brief their positions regarding opposition to the settlement expressed by Messrs. Haver and Skiendzielewski.

#### IV. CONCLUSION

For the foregoing reasons, the Public Advocate respectfully requests that the Hearing Officer recommend, and the Board approve in the final rate determination, the terms and conditions of the proposed partial settlement proposed in the Joint Petition, without modification, as being in the public interest.

Respectfully submitted,

/s/ Robert W. Ballenger  
Robert W. Ballenger  
Josie B. H. Pickens  
Kintéshia S. Scott  
Joline R. Price

*For the Public Advocate*